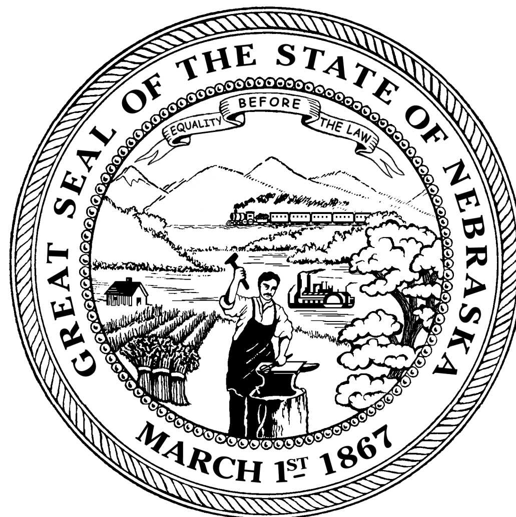
REVISED STATUTES
OF
NEBRASKA

REISSUE OF VOLUME 1

2022

COMPRISING ALL THE STATUTORY LAWS OF A
GENERAL NATURE IN FORCE AT DATE OF
PUBLICATION ON THE SUBJECTS ASSIGNED
TO CHAPTERS 1 TO 11, INCLUSIVE



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CERTIFICATE OF AUTHENTICATION

I, Marcia M. McClurg, Revisor of Statutes, do hereby certify that the Reissue of Volume 1 of the Revised Statutes of Nebraska, 2022, contains all of the laws set forth in Chapters 1 to 11, appearing in Volume 1, Revised Statutes of Nebraska, 2012, as amended and supplemented by the One Hundred Third Legislature, First Session, 2013, through the One Hundred Seventh Legislature, Second Session, 2022, of the Nebraska Legislature, in force at the time of publication hereof.

Marcia M. McClurg
Revisor of Statutes

Lincoln, Nebraska
October 1, 2022

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REISSUE REVISED STATUTES

OF NEBRASKA, 2022

(in full)

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(abbreviated)

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ACCOUNTANTS

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Cross References

License Suspension Act, see section 43-3301.

1-101 Repealed. Laws 1957, c. 1, § 65.

1-102 Repealed. Laws 1957, c. 1, § 65.

1-103 Repealed. Laws 1957, c. 1, § 65.

1-104 Repealed. Laws 1957, c. 1, § 65.

1-105 Act, how cited.

Sections 1-105 to 1-171 shall be known and may be cited as the Public Accountancy Act.

Source: Laws 1957, c. 1, § 64, p. 78; Laws 1991, LB 75, § 14; Laws 1994, LB 957, § 7; R.S.Supp.,1996, § 1-169; Laws 1997, LB 114, § 1; Laws 2009, LB31, § 1; Laws 2015, LB159, § 1.

1-105.01 Nebraska State Board of Public Accountancy; purpose.

It is the purpose of the Nebraska State Board of Public Accountancy to protect the welfare of the citizens of the state by assuring the competency of persons regulated under the Public Accountancy Act through (1) administration of certified public accountant examinations, (2) issuance of certificates and permits to qualified persons and firms, (3) monitoring the requirements for continued issuance of certificates and permits, and (4) disciplining certificate and permit holders who fail to comply with the technical or ethical standards of the public accountancy profession.

Source: Laws 1984, LB 473, § 1; Laws 1997, LB 114, § 2.

The rules of the Nebraska State Board of Public Accountancy allow the board to both restrict advertising and require the use of a disclaimer by inactive registrants. Walsh v. State, 276 Neb. 1034, 759 N.W.2d 100 (2009).

The Nebraska State Board of Public Accountancy may use its rulemaking authority under section 1-112 to promulgate standards and procedures whereby the character and fitness of an applicant for initial certification may be considered by the board in determining whether the applicant is a qualified person under this section. Troshynski v. Nebraska State Bd. of Pub. Accountancy, 270 Neb. 347, 701 N.W.2d 379 (2005).

1-106 Terms, defined.

For purposes of the Public Accountancy Act, unless the context otherwise requires:

(1) Board means the Nebraska State Board of Public Accountancy;

(2) Certificate means a certificate issued under sections 1-114 to 1-124;

(3) Firm means a partnership, limited liability company, or corporation engaged in the practice of public accountancy in this state entitled to register with the board or a proprietorship engaged in the practice of public accountancy in this state;

(4) Partnership includes, but is not limited to, a limited liability partnership;

(5) Peer review means a review of one or more aspects of the professional work of a firm that either or both performs attest engagements or performs compilations by an active certified public accountant who is the holder of a permit issued under subdivision (1)(a) of section 1-136 or the equivalent issued by another state and who is not affiliated with the firm being reviewed;

(6) Permit means a permit to engage in the practice of public accountancy in this state issued under section 1-136;

(7) Practice privilege means the privilege of an accountant to practice public accountancy or hold himself or herself out as a certified public accountant in this state in accordance with section 1-125.01;

(8) State means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States; and

(9) Temporary practice privilege means the privilege of a foreign accountant to temporarily practice public accountancy in this state in accordance with section 1-125.02.

Source: Laws 1957, c. 1, § 1, p. 55; Laws 1991, LB 75, § 1; Laws 1997, LB 114, § 3; Laws 2009, LB31, § 2; Laws 2015, LB159, § 2.

1-107 Nebraska State Board of Public Accountancy; creation; membership; appointment; qualifications; terms; vacancies; removal; reappointment.

There is hereby created the Nebraska State Board of Public Accountancy. The board shall consist of eight members appointed by the Governor.

Six members of the board shall be holders of permits issued under subdivision (1)(a) of section 1-136, and two members of the board shall be laypersons.

All members of the board shall be citizens of the United States and residents of Nebraska. Two of the members of the board, who are holders of permits, shall reside in each congressional district. Two members shall be appointed to the board each year for terms of four years. Vacancies occurring during a term shall be filled by appointment for the unexpired term. Upon the expiration of his or her term of office a member shall continue to serve until his or her successor has been appointed and qualified. The Governor shall remove from the board any member whose permit has become void or has been revoked or suspended and may, after hearing, remove any member of the board for neglect of duty or other just cause. No person who has served two complete terms of four years shall be eligible for reappointment. Appointment to fill an unexpired term shall not be considered a complete term.

Source: Laws 1957, c. 1, § 2, p. 55; Laws 1961, c. 1, § 1, p. 59; Laws 1971, LB 858, § 1; Laws 1979, LB 414, § 1; Laws 1981, LB 92, § 1; Laws 1984, LB 473, § 2; Laws 1997, LB 114, § 4.

1-108 Board; chairperson; rules and regulations; quorum; seal; records.

The board shall elect annually a chairperson from its members. The board shall receive and account for all fees and other money received by it under the Public Accountancy Act. The board may adopt and promulgate rules and regulations for the orderly conduct of its affairs and the administration of the act. A majority of the members of the board shall constitute a quorum for the transaction of business. The board shall adopt a seal. The board shall keep records of its proceedings, and in any proceedings in court, civil or criminal, arising out of or founded upon any provision of the act, copies of such records certified as correct under the seal of the board shall be admissible in evidence as tending to prove the content of the records.

Source: Laws 1957, c. 1, § 3, p. 56; Laws 1997, LB 114, § 5.

1-108.01 Board; conflicts of interest; rules and regulations.

The board shall adopt and promulgate rules and regulations which establish definitions of conflicts of interest for its members and which establish procedures to be followed in case such conflicts arise.

Source: Laws 1984, LB 473, § 3; Laws 1997, LB 114, § 6.

1-109 Board; annual register; contents; personnel; executive director; duties.

(1) In December of each year, the board shall make available for public distribution an annual register containing the names, arranged alphabetically by classifications, of all persons holding permits, the names of the members of the board, and such other matters as may be deemed proper by the board. The register shall be made available to each permitholder.

(2) The board shall employ an executive director, additional personnel, and any other assistance as it may require for the performance of its duties. Unless

otherwise directed by the board, the executive director shall keep a record of all proceedings, transactions, and official acts of the board, be custodian of all the records of the board, and perform such other duties as the board may require.

Source: Laws 1957, c. 1, § 4, p. 57; Laws 1981, LB 92, § 2; Laws 1994, LB 1005, § 1; Laws 1997, LB 114, § 7; Laws 2009, LB31, § 3.

1-110 Board member; salary; expenses.

Each member of the board shall be paid one hundred dollars for each day or portion thereof spent in the discharge of his or her official duties and shall be reimbursed for expenses incurred in the discharge of his or her official duties as provided in sections 81-1174 to 81-1177. Such compensation and expenses shall be paid from the Certified Public Accountants Fund.

Source: Laws 1957, c. 1, § 5, p. 57; Laws 1961, c. 2, § 1, p. 61; Laws 1981, LB 92, § 3; Laws 1981, LB 204, § 1; Laws 1997, LB 114, § 8; Laws 2009, LB31, § 4; Laws 2020, LB381, § 1.

1-111 Fees, costs, and penalties; collection; Certified Public Accountants Fund; created; use; investment; civil penalties; distribution.

(1) All fees collected under the Public Accountancy Act and all costs collected under subdivision (8) of section 1-148 shall be remitted by the board to the State Treasurer for credit to the Certified Public Accountants Fund which is hereby created. Such fund shall, if and when specifically appropriated by the Legislature during any biennium for that purpose, be paid out from time to time by the State Treasurer upon warrants drawn by the Director of Administrative Services on vouchers approved by the board, and such board and expense thereof shall not be supported or paid from any other fund of the state. Transfers may be made from the fund to the General Fund at the direction of the Legislature through June 30, 2011. Any money in the Certified Public Accountants 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 board shall remit civil penalties collected under subdivision (5) of section 1-148 to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1957, c. 1, § 6, p. 57; Laws 1969, c. 1, § 1, p. 61; Laws 1969, c. 584, § 24, p. 2356; Laws 1994, LB 957, § 2; Laws 1995, LB 7, § 1; Laws 1997, LB 114, § 9; Laws 2009, LB31, § 5; Laws 2009, First Spec. Sess., LB3, § 1.

Cross References

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

1-112 Board; professional conduct; rules and regulations.

The board may adopt and promulgate rules and regulations of professional conduct appropriate to establish and maintain a high standard of integrity and dignity in the profession of public accountancy and to govern the administration and enforcement of the Public Accountancy Act. The rules and regulations

shall be adopted and promulgated pursuant to the Administrative Procedure Act.

Source: Laws 1957, c. 1, § 7, p. 58; Laws 1993, LB 41, § 1; Laws 1997, LB 114, § 10.

Cross References

Administrative Procedure Act, see section 84-920.

The Nebraska State Board of Public Accountancy may use its rulemaking authority under this section to promulgate standards and procedures whereby the character and fitness of an applicant for initial certification may be considered by the board in determining whether the applicant is a qualified person under section 1-105.01. Troshynski v. Nebraska State Bd. of Pub. Accountancy, 270 Neb. 347, 701 N.W.2d 379 (2005).

1-113 Advisory committee; membership.

(1) The board shall appoint an advisory committee consisting of at least seven members. A majority of the members shall be appointed as representatives of the postsecondary educational institutions of Nebraska engaged in the instruction of accounting and auditing, including the University of Nebraska, the Nebraska state colleges, and private universities and colleges. One member of the advisory committee shall be a certified public accountant who is a member of the board.

(2) The advisory committee shall meet at the direction of the board and shall advise the board upon the rules and regulations for section 1-116 relating to educational requirements. The board may also consult the advisory committee on any other issues which it deems appropriate.

Source: Laws 1991, LB 75, § 2; Laws 1997, LB 114, § 11; Laws 2016, LB853, § 1.

1-114 Certificate as a certified public accountant; granted; qualifications.

(1) Prior to January 1, 1998, the board shall issue a certificate of certified public accountant to any person (a) who is a resident of this state or has a place of business therein or, as an employee, is regularly employed therein, (b) who has graduated from a college or university of recognized standing, and (c) who has passed a written examination in accounting, auditing, and such other related subjects as the board determines to be appropriate.

(2) On and after January 1, 1998, the board shall issue a certificate as a certified public accountant to any person (a) who is a resident of this state or has a place of business in this state or, as an employee, is regularly employed in this state, (b) who has passed an examination in accounting, auditing, and such other related subjects as the board determines to be appropriate, and (c) who has completed the educational requirements specified in section 1-116.

Source: Laws 1957, c. 1, § 9, p. 58; Laws 1963, c. 1, § 1, p. 59; Laws 1974, LB 811, § 1; Laws 1977, LB 290, § 1; Laws 1984, LB 473, § 4; Laws 1991, LB 75, § 3; Laws 1997, LB 114, § 12; Laws 2003, LB 214, § 1; Laws 2009, LB31, § 6.

The term ''shall'' as used in this provision is permissive rather than mandatory. Troshynski v. Nebraska State Bd. of Pub. Accountancy, 270 Neb. 347, 701 N.W.2d 379 (2005).

1-115 Certified public accountant; examinations, when held; use of prepared questions and grading service.

The examinations described in section 1-114 shall be held by the board and shall take place as often as the board determines to be desirable, but such

examinations shall be held not less frequently than once each year. The board may make such use of all or any part of the Uniform Certified Public Accountants' Examination or Advisory Grading Service, or either of them, as it deems appropriate to assist it in performing its duties.

Source: Laws 1957, c. 1, § 10, p. 59; Laws 1976, LB 619, § 1; Laws 1984, LB 473, § 5; Laws 1991, LB 75, § 4.

1-116 Certified public accountant; examination; eligibility.

Any person making initial application to take the examination described in section 1-114 shall be eligible to take the examination if he or she has completed at least one hundred fifty semester hours or two hundred twenty-five quarter hours of postsecondary academic credit and has earned a baccalaureate or higher degree from a college or university accredited by an accrediting agency recognized by the United States Department of Education or a similar agency as determined to be acceptable by the board. The person shall demonstrate that accounting, auditing, business, and other subjects at the appropriate academic level as required by the board are included within the required hours of postsecondary academic credit. A person who expects to complete the postsecondary academic credit and earn the degree as required by this section may take test sections of the examination within one hundred twenty days prior to completing the postsecondary academic credit and earning the degree, but such person shall not receive any credit for such test sections unless evidence satisfactory to the board showing that such person has completed the postsecondary academic credit and earned the degree as required by this section is received by the board within one hundred fifty days following when the first test section of the examination is taken. The board shall not prescribe the specific curricula of colleges or universities. If the applicant is an individual, the application shall include the applicant's social security number.

Source: Laws 1957, c. 1, § 11, p. 59; Laws 1976, LB 619, § 2; Laws 1984, LB 473, § 6; Laws 1991, LB 75, § 5; Laws 1997, LB 114, § 13; Laws 1997, LB 752, § 49; Laws 1999, LB 346, § 1; Laws 2009, LB31, § 7; Laws 2014, LB967, § 1; Laws 2020, LB808, § 1; Laws 2021, LB528, § 1.

1-117 Certified public accountant; completion of examination; additional requirements.

Any person who has successfully completed the examination described in section 1-114 shall have no status as a certified public accountant unless and until he or she has the requisite experience and also has been issued a certificate as a certified public accountant.

Source: Laws 1957, c. 1, § 12, p. 59; Laws 1976, LB 619, § 3; Laws 1984, LB 473, § 7; Laws 1991, LB 75, § 6; Laws 1997, LB 114, § 14.

1-118 Certified public accountant; reexamination; waiting period.

(1) The board may by rule and regulation prescribe the terms and conditions under which a person who does not pass the examination may be reexamined. The board may also provide by rule and regulation for a reasonable waiting period for reexamination.

(2) A person shall be entitled to any number of reexaminations under section 1-114 subject to the rules and regulations of the board.

Source: Laws 1957, c. 1, § 13, p. 59; Laws 1976, LB 619, § 4; Laws 1984, LB 473, § 8; Laws 1991, LB 75, § 7; Laws 1997, LB 114, § 15; Laws 2003, LB 214, § 2; Laws 2009, LB31, § 8; Laws 2016, LB853, § 2.

1-119 Certified public accountant; examination fee.

The board shall charge a fee as established by the board not to exceed two hundred dollars for the examination provided for under the Public Accountancy Act. An applicant for the examination may be required to pay additional fees as charged by and remitted or paid to a third party for administering the examination, if required by the board.

Source: Laws 1957, c. 1, § 14, p. 60; Laws 1976, LB 619, § 5; Laws 1976, LB 961, § 1; Laws 1979, LB 278, § 1; Laws 1984, LB 473, § 9; Laws 1991, LB 75, § 8; Laws 1997, LB 114, § 16; Laws 2003, LB 214, § 3; Laws 2009, LB31, § 9; Laws 2016, LB853, § 3.

1-120 Certified public accountant; reexamination fee.

The board shall charge fees as established by the board for reexaminations under the Public Accountancy Act. Such fees shall not exceed fifty dollars for each subject in which a person is reexamined. An applicant for the reexamination may be required to pay additional fees as charged by and remitted or paid to a third party for administering the reexamination, if required by the board.

Source: Laws 1957, c. 1, § 15, p. 60; Laws 1976, LB 619, § 6; Laws 1979, LB 278, § 2; Laws 1984, LB 473, § 10; Laws 1991, LB 75, § 9; Laws 1997, LB 114, § 17; Laws 2003, LB 214, § 4; Laws 2009, LB31, § 10.

1-121 Certified public accountant; fees; when payable.

The applicable fee shall be paid by the applicant at the time he or she applies for examination or reexamination.

Source: Laws 1957, c. 1, § 16, p. 60; Laws 1991, LB 75, § 10; Laws 1997, LB 114, § 18; Laws 2016, LB853, § 4.

1-122 Certified public accountant; certificate; use of abbreviation C.P.A.; list.

Any person who has been issued a certificate as a certified public accountant and who holds a permit issued under subdivision (1)(a) of section 1-136, which is in full force and effect, and any person who is classified as inactive under section 1-136, shall be styled and known as a certified public accountant and may also use the abbreviation C.P.A. The board shall maintain a list of active certified public accountants.

Source: Laws 1957, c. 1, § 17, p. 60; Laws 1984, LB 473, § 11; Laws 1997, LB 114, § 19; Laws 2009, LB31, § 11.

1-123 Repealed. Laws 2009, LB 31, § 43.

1-124 Certified public accountant; reciprocal certificate; waiver of examination; fee.

(1)(a) The board may, in its discretion, waive the examination described in section 1-114 and may issue a reciprocal certificate as a certified public accountant to any person who possesses the qualifications specified in subdivision (2)(a) of section 1-114 and section 1-116 and who is the holder of a certificate as a certified public accountant, then in full force and effect, issued under the laws of any state or is the holder of a certificate, license, or degree in a foreign country constituting a recognized qualification for the practice of public accountancy in such country, comparable to that of a certified public accountant of this state, which is then in full force and effect.

(b) The board shall waive the examination described in section 1-114 and the educational requirements specified in section 1-116 and shall issue a reciprocal certificate as a certified public accountant to any person who possesses the qualifications specified in subdivision (2)(a) of section 1-114, who is the holder of a certificate as a certified public accountant, then in full force and effect, issued under the laws of any state, who meets all other current requirements of the board for issuance of a certificate as a certified public accountant, and who, at the time of the application for a reciprocal certificate as a certified public accountant, has had, within the ten years immediately preceding application, at least four years' experience in the practice of public accountancy specified in subsection (1) of section 1-136.02.

(2) The board shall charge each person obtaining a reciprocal certificate issued under this section a fee as established by the board not to exceed four hundred dollars.

Source: Laws 1957, c. 1, § 19, p. 60; Laws 1976, LB 619, § 7; Laws 1976, LB 961, § 2; Laws 1977, LB 290, § 2; Laws 1979, LB 278, § 3; Laws 1984, LB 473, § 12; Laws 1991, LB 75, § 11; Laws 1997, LB 114, § 21; Laws 2003, LB 214, § 5; Laws 2007, LB24, § 1.

1-125 Repealed. Laws 2009, LB 31, § 43.

1-125.01 Certified public accountant in another state; practice privilege; conditions; limitations.

(1) A person who does not hold a certificate as a certified public accountant or a permit issued under subdivision (1)(a) of section 1-136 and who possesses an active permit, certificate, or license which allows the person to engage in the practice of public accountancy as a certified public accountant in another state and whose principal place of business is outside this state shall have all the practice privileges of a certified public accountant who holds a permit issued under subdivision (1)(a) of section 1-136, including the use of the title or designation certified public accountant or C.P.A., without the need to hold a certificate or a permit issued under subdivision (1)(a) of section 1-136, or to notify or register with the board or pay any fee. However, a person is not eligible to exercise the practice privilege afforded under this section if the person has a permit, certificate, or license under current suspension or revocation for reasons other than nonpayment of fees or failure to comply with continuing professional educational requirements in another state.

(2) Any person of another state exercising the practice privilege afforded under this section and any partnership, limited liability company, or other allowed entity of certified public accountants which employ that person hereby simultaneously consent, as a condition of the exercise of the practice privilege:

(a) To the personal and subject-matter jurisdiction and disciplinary authority of the board;

(b) To comply with the Public Accountancy Act and the rules and regulations adopted and promulgated under the act;

(c) That in the event the authorization to engage in the practice of public accountancy in the state of the person's principal place of business is no longer valid, the person will cease offering or rendering professional services in this state individually and on behalf of the person's partnership, limited liability company, or other allowed entity of certified public accountants; and

(d) To the appointment of the state entity which issued the person's authorization to engage in the practice of public accountancy as the person's agent upon whom process may be served in any action or proceeding by the board against the person.

(3) The practice privilege afforded under this section or any other section shall not be interpreted to prevent any governmental body from requiring that public accounting services performed for a governmental body or for an entity regulated by a governmental body be performed by a person or firm holding a permit issued under section 1-136.

(4) Any person who exercises the practice privilege afforded under this section and who, for any entity with its home office in this state, performs attestation services, may only do so through a firm or an affiliated entity which holds a permit issued under section 1-136.

Source: Laws 2009, LB31, § 12.

1-125.02 Foreign accountant; temporary practice privilege; conditions; limitations; fee.

(1) The board may, in its discretion, grant a person who holds a certificate, degree, or license in a foreign country constituting a recognized qualification for the practice of public accountancy in such country, and who does not hold a certificate or permit issued by this state or any other state and whose principal place of business is outside this state, the privilege to temporarily practice in this state on professional business incident to his or her regular practice outside this state, if such privilege to temporarily practice is conducted in conformity with the rules and regulations of the board.

(2) Any person of another country exercising the temporary practice privilege granted under this section and any partnership, limited liability company, or other allowed entity of certified public accountants which employ that person hereby simultaneously consent, as a condition of the grant of the temporary practice privilege:

(a) To the personal and subject-matter jurisdiction and disciplinary authority of the board;

(b) To comply with the Public Accountancy Act and the rules and regulations adopted and promulgated under the act;

(c) That in the event the authorization to engage in the practice of public accountancy in the country of the person's principal place of business is no longer valid, the person will cease offering or rendering professional services in this state individually and on behalf of the person's partnership, limited liability company, or other allowed entity of certified public accountants; and

(d) To the appointment of the board as his or her agent upon whom process may be served in any action or proceeding by the board against the person.

(3) The temporary practice privilege afforded under this section or any other section shall not be interpreted to prevent any governmental body from requiring that public accounting services performed for a governmental body or for an entity regulated by a governmental body be performed by a person or firm who holds a permit issued under section 1-136.

(4) Any person who has been granted the temporary practice privilege afforded under this section and who, for any entity with its home office in this state, performs attestation services, may only do so through a firm or affiliated entity which holds a permit issued under section 1-136.

(5) Any person who has been granted the temporary practice privilege afforded under this section shall use only the title or designation under which he or she is generally known in his or her own country, followed by the name of his or her foreign country.

(6) The board shall charge each person who has been granted the temporary practice privilege afforded under this section a fee as established by the board not to exceed fifty dollars.

Source: Laws 2009, LB31, § 13.

1-126 Certified public accountant; partnership or limited liability company; registration; requirements.

A partnership or limited liability company engaged in this state in the practice of public accountancy may register with the board as a partnership or limited liability company of certified public accountants if it meets the following requirements:

(1) At least one partner of the partnership or member of the limited liability company shall be a certified public accountant of this state in good standing;

(2) Each partner of the partnership who is a certified public accountant or member of the limited liability company who is a certified public accountant personally engaged within this state in the practice of public accountancy as a partner or member thereof shall be a certified public accountant of this state in good standing;

(3) Each partner of the partnership who is a certified public accountant or member of the limited liability company who is a certified public accountant shall be a certified public accountant of some state in good standing; and

(4) Each resident manager in charge of an office of the partnership or limited liability company in this state shall be a certified public accountant of this state in good standing.

An application for such registration shall be made upon the affidavit of a general partner of such partnership or a member of such limited liability company who is a certified public accountant of this state in good standing. The board shall in each case determine whether the applicant is eligible for registration.

A partnership or limited liability company which is so registered and which holds a permit issued under subdivision (1)(b) of section 1-136 may use the words certified public accountants or the abbreviation C.P.A.'s in connection with its partnership or limited liability company name.

Notification shall be given to the board, pursuant to board rules and regulations, regarding the admission to or withdrawal of a partner from any partnership or a member from any limited liability company so registered.

Source: Laws 1957, c. 1, § 21, p. 61; Laws 1993, LB 121, § 46; Laws 1994, LB 957, § 3; Laws 1997, LB 114, § 23; Laws 2009, LB31, § 14.

1-127 Repealed. Laws 1993, LB 41, § 7.

1-128 Repealed. Laws 1984, LB 473, § 27.

1-129 Repealed. Laws 1984, LB 473, § 27.

1-130 Repealed. Laws 1997, LB 114, § 65.

1-131 Repealed. Laws 1997, LB 114, § 65.

1-132 Repealed. Laws 1997, LB 114, § 65.

1-133 Repealed. Laws 2009, LB 31, § 43.

1-134 Public accountant; corporation; registration.

A corporation organized pursuant to the Nebraska Professional Corporation Act which has a place of business in this state may register with the board as a corporation engaged in the practice of public accountancy. Application for such registration must be made upon the affidavit of an officer of such corporation. The board shall in each case determine whether the applicant is eligible for registration. A corporation which is so registered and which holds a permit issued under subdivision (1)(c) of section 1-136 may practice public accountancy and, in that connection, may use a corporate name which indicates, as a part of such name, that it is engaged in such practice.

Source: Laws 1957, c. 1, § 29, p. 64; Laws 1971, LB 858, § 2; Laws 1997, LB 114, § 25; Laws 2009, LB31, § 15.

Cross References

Nebraska Professional Corporation Act, see section 21-2201.

1-135 Public accountant; offices; registration; fee; manager.

Each office established or maintained in this state for the practice of public accountancy in this state by a certified public accountant, by a partnership of certified public accountants or a limited liability company of certified public accountants registered under section 1-126, or by a corporation registered under section 1-134 shall be registered annually under the Public Accountancy Act with the board. The board shall charge an annual fee for the registration of each office as established by the board not to exceed one hundred dollars. The board shall by rule and regulation prescribe the procedure to be followed in effecting such registrations.

Each office shall be under the supervision of a manager who holds a permit issued under section 1-136 which is in full force and effect. Such manager may serve in such capacity at one office only, with the exception of a manager who is a sole owner of a firm or a sole proprietor, who may manage one additional office only. Such manager shall be directly responsible for the supervision and management of each office and may be subject to disciplinary action for the

actions of the person or firm or any persons employed by each office of the person or firm within the State of Nebraska which relate to the practice of public accountancy.

Source: Laws 1957, c. 1, § 30, p. 64; Laws 1976, LB 961, § 3; Laws 1979, LB 278, § 4; Laws 1984, LB 473, § 16; Laws 1993, LB 121, § 48; Laws 1994, LB 957, § 5; Laws 1997, LB 114, § 26; Laws 2003, LB 214, § 6; Laws 2003, LB 258, § 1; Laws 2009, LB31, § 16.

1-136 Public accountant; permits; issuance; fees; failure to renew; effect; inactive list.

(1) Permits to engage in the practice of public accountancy in this state shall be issued by the board to (a) persons who are holders of the certificate of certified public accountant issued under sections 1-114 to 1-124 and who have met the experience requirements of section 1-136.02, (b) partnerships and limited liability companies of certified public accountants registered under section 1-126, and (c) corporations registered under section 1-134 as long as all offices of such certificate holders or registrants in this state for the practice of public accountancy are maintained and registered as required under section 1-135.

(2)(a) Except as provided in the case of permits subject to subdivision (2)(b) of this section, the board shall charge an annual permit fee as established by the board not to exceed one hundred fifty dollars. All permits subject to this subdivision shall expire on June 30 of each year and may be renewed annually for a period of one year by certificate holders and registrants in good standing upon payment of an annual renewal fee as established by the board not to exceed one hundred fifty dollars. The board may prorate the fee for any permit subject to this subdivision issued for less than one year.

(b) The board shall charge a biennial permit fee as established by the board not to exceed three hundred dollars for permits issued under subdivision (1)(a) of this section. All permits subject to this subdivision shall expire on June 30 of the first calendar year after the calendar year of issuance in which the age of the certificate holder or the registrant becomes divisible by two, and may be renewed biennially for a period of two years by certificate holders and registrants in good standing upon payment of a biennial renewal fee as established by the board not to exceed three hundred dollars. The board may prorate the fee for any permit subject to this subdivision issued for less than two years.

(3) Failure of a certificate holder or registrant to apply for a permit within (a) three years from the expiration date of the permit last obtained or renewed or (b) three years from the date upon which the certificate holder or registrant was issued a certificate or registration if no permit was ever issued to such person shall deprive him or her of the right to issuance or renewal of a permit unless the board, in its discretion, determines such failure to have been excusable. In such case the renewal fee or the fee for the issuance of the original permit, as the case may be, shall be such amount as established by the board not to exceed three hundred dollars.

(4) Any certificate holder or registrant who has not lost his or her right to issuance or renewal of a permit and who is not actively engaged in the practice of public accountancy in this state may file a written application with the board to be classified as inactive. A person so classified shall not be issued a permit or be deemed the holder of a permit but shall be carried upon an inactive roll to

be maintained by the board upon the payment of an inactive fee as established by the board not to exceed fifty percent of the fee charged persons actively engaged in the practice of public accountancy as provided in this section. A person so classified shall not be deprived of the right to the issuance or renewal of a permit and may, upon application to the board and upon payment of the current permit fee, be issued a current permit.

Source: Laws 1957, c. 1, § 31, p. 65; Laws 1959, c. 1, § 1, p. 57; Laws 1976, LB 961, § 4; Laws 1977, LB 290, § 4; Laws 1979, LB 278, § 5; Laws 1981, LB 92, § 4; Laws 1984, LB 473, § 17; Laws 1986, LB 869, § 1; Laws 1993, LB 121, § 49; Laws 1997, LB 114, § 27; Laws 2003, LB 214, § 7; Laws 2009, LB31, § 17.

A public accountancy ''certificate holder or registrant who has not lost his or her right to issuance or renewal of a permit,'' who may be classified as inactive pursuant to subsection (4) of this section, is a person who is otherwise entitled to issuance of a permit under the requirements set forth in the Public Accountancy Act. Forget v. State, 265 Neb. 488, 658 N.W.2d 271 (2003).

1-136.01 Permit; renewal; professional development; rules and regulations.

(1) As a condition for renewal of a permit issued under subdivision (1)(a) of section 1-136, the board, pursuant to rules and regulations adopted and promulgated by the board, may require permitholders to furnish evidence of participation in professional development in accounting, auditing, or related areas for fifteen days within the preceding three calendar years or, in order to facilitate the issuance of biennial permits as provided in subdivision (2)(b) of section 1-136, for ten days within the preceding two calendar years. The board may adopt and promulgate rules and regulations regarding such professional development.

(2) In determining compliance with the professional development requirement, the board may include credits earned during the current calendar year in addition to those earned in the preceding calendar years in which professional development is required under subsection (1) of this section. If such credits are included they shall not count toward the next succeeding permit renewal requirement.

Source: Laws 1971, LB 858, § 3; Laws 1979, LB 278, § 6; Laws 1984, LB 473, § 18; Laws 1997, LB 114, § 28; Laws 2009, LB31, § 18.

1-136.02 Permit; when issued.

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

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

(b) Except as provided in subdivision (c) of this subsection, three years of accounting experience satisfactory to the board, in any state or foreign country, in employment as (i) an accountant in government or business under the supervision of an active certified public accountant who is the holder of a permit issued under subdivision (1)(a) of section 1-136 or the equivalent issued

by another state or (ii) faculty at a college or university of recognized standing under the supervision of an active certified public accountant who is the holder of a permit issued under subdivision (1)(a) of section 1-136 or the equivalent issued by another state; or

(c) Two years of accounting experience satisfactory to the board in employment as an accountant in the office of the Auditor of Public Accounts or the Department of Revenue under the supervision of an active certified public accountant who is the holder of a permit issued under subdivision (1)(a) of section 1-136 or the equivalent issued by another state.

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

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

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

Source: Laws 1977, LB 290, § 3; Laws 1993, LB 41, § 2; Laws 1997, LB 114, § 29; Laws 2007, LB24, § 2; Laws 2009, LB31, § 19; Laws 2013, LB27, § 1; Laws 2016, LB853, § 5; Laws 2017, LB56, § 1.

1-136.03 Repealed. Laws 2009, LB 31, § 43.

1-136.04 Permit issuance; experience in lieu of being a college or university graduate.

Any person who has passed the examination described in section 1-114 may qualify for issuance of a permit under subdivision (1)(a) of section 1-136 by (1) having four years of public accounting experience satisfactory to the board in any state or foreign country in practice as a certified public accountant or as a public accountant or in any state or foreign country in employment as a staff accountant by anyone engaging in the practice of public accountancy, or any combination of either of such types of experience, or (2) having five years of auditing experience satisfactory to the board in the office of the Auditor of Public Accounts or in the Department of Revenue, in lieu of being a graduate from a college or university of recognized standing.

Source: Laws 1977, LB 290, § 6; Laws 1984, LB 473, § 19; Laws 1991, LB 75, § 13; Laws 1997, LB 114, § 30; Laws 2009, LB31, § 20; Laws 2016, LB853, § 6.

1-137 Individual certificates, practice privilege, temporary practice privilege, registration, and permits; disciplinary action; grounds.

After notice and hearing as provided in sections 1-140 to 1-149, the board may take disciplinary action as provided in section 1-148 for any one or any combination of the following causes:

(1) Fraud or deceit in obtaining a certificate as a certified public accountant or the practice privilege or temporary practice privilege, registration, or a permit under the Public Accountancy Act;

(2) Dishonesty, fraud, or gross negligence in the practice of public accountancy;

(3) Violation of any of the provisions of sections 1-151 to 1-161;

(4) Violation of a rule of professional conduct adopted and promulgated by the board under the authority granted by the act;

(5) Conviction of a felony under the laws of any state or of the United States;

(6) Conviction of any crime, an element of which is dishonesty or fraud, under the laws of any state or of the United States;

(7) Cancellation, revocation, suspension, or refusal to renew authority to practice as a certified public accountant or a public accountant in any other state, for any cause other than failure to pay a registration fee in such other state;

(8) Suspension or revocation of the right to practice before any state or federal agency; or

(9) Failure of a certificate holder or registrant to obtain a permit issued under section 1-136, within either (a) three years from the expiration date of the permit last obtained or renewed by the certificate holder or registrant or (b) three years from the date upon which the certificate holder or registrant was issued his or her certificate or registration if no permit was ever issued to him or her, unless under section 1-136 such failure was excused by the board pursuant to section 1-136.

Source: Laws 1957, c. 1, § 32, p. 66; Laws 1974, LB 811, § 2; Laws 1981, LB 92, § 5; Laws 1993, LB 41, § 3; Laws 1997, LB 114, § 31; Laws 2009, LB31, § 21.

When a certified public accountant is an officer and shareholder of a corporation, the accountant's actions related to the corporation may reflect adversely on the accountant's fitness to practice as a certified public accountant and be subject to discipline by the Board of Public Accountancy. Zwygart v. State, 273 Neb. 406, 730 N.W.2d 103 (2007).

The power to revoke the certificate of a certified public accountant is in the State Board of Public Accountancy, not in the executive director. Bohling v. State Bd. of Pub. Accountancy, 243 Neb. 666, 501 N.W.2d 714 (1993).

1-137.01 Actions in another state; disciplinary action; grounds; board; investigatory duty.

A holder of a certificate as a certified public accountant or a permit issued under subdivision (1)(a) of section 1-136 who offers or renders services or uses his or her C.P.A. title or designation in another state shall be subject to disciplinary action in this state for such an act committed in either state for which the certificate holder or permitholder would be subject to discipline for such an act committed in this state. The board shall investigate any complaint made by the board of accountancy or equivalent regulatory authority of another state.

Source: Laws 2009, LB31, § 23.

1-138 Partnership or limited liability company; disciplinary action; grounds.

After notice and hearing as provided in sections 1-140 to 1-149, the board shall revoke the registration and permit or the practice privilege of a partnership or a limited liability company of certified public accountants if at any time it does not have all the qualifications prescribed by section 1-126 or sections 1-125.01 and 1-125.02, under which it qualified for registration or for the practice privilege or temporary practice privilege, respectively.

After notice and hearing as provided in sections 1-140 to 1-149, the board may take disciplinary action as provided in section 1-148 for any of the causes enumerated in section 1-137 or for any of the following additional causes:

(1) The revocation or suspension of the certificate or registration or the revocation or suspension or refusal to renew the permit of any partner or member; or

(2) The cancellation, revocation, suspension, or refusal to renew the authority of the partnership or any partner thereof or the limited liability company or any member thereof to practice public accountancy in any other state for any cause other than failure to pay a registration fee in such other state.

Source: Laws 1957, c. 1, § 33, p. 67; Laws 1993, LB 41, § 4; Laws 1993, LB 121, § 50; Laws 1997, LB 114, § 32; Laws 2009, LB31, § 22.

1-139 Corporation; disciplinary action; grounds.

After notice and hearing as provided in sections 1-140 to 1-149, the board may take disciplinary action as provided in section 1-148 if the corporation, or any of its officers, employees, or agents, while acting for or on behalf of such corporation, is guilty of any act, neglect, or failure to act which would have been cause for such act as against an individual under section 1-137.

Source: Laws 1957, c. 1, § 34, p. 68; Laws 1993, LB 41, § 5; Laws 1997, LB 114, § 33.

1-140 Disciplinary action; board; initiation of proceedings.

The board may initiate proceedings under the Public Accountancy Act either on its own motion or on the complaint of any person.

Source: Laws 1957, c. 1, § 35, p. 68; Laws 1997, LB 114, § 34.

1-141 Disciplinary action; notice to accused; how given.

A written notice stating the nature of the charge or charges against the accused and the time and place of the hearing before the board on such charges shall be served on the accused not less than thirty days prior to the date of said hearing either personally or by mailing a copy thereof by either registered or certified mail to the address of the accused last known to the board.

Source: Laws 1957, c. 1, § 36, p. 68.

1-142 Disciplinary action; failure of accused to appear and defend; hearing; order.

If, after having been served with the notice of hearing pursuant to section 1-141, the accused fails to appear at the hearing and defend, the board may proceed to hear evidence against him or her and may enter such order as is justified by the evidence, which order shall be final unless he or she petitions for a review as set forth in section 1-149, except that within thirty days from the date of any order, upon a showing of good cause for failing to appear and defend, the board may reopen the proceedings and may permit the accused to submit evidence in his or her behalf.

Source: Laws 1957, c. 1, § 37, p. 69; Laws 1997, LB 114, § 35.

1-143 Disciplinary action; appearance by accused; privileges.

At any hearing the accused may appear in person and by counsel, produce evidence and witnesses on his or her own behalf, cross-examine witnesses, and examine such evidence as may be produced against him or her. The accused

shall be entitled, on application to the board, to the issuance of subpoenas to compel the attendance of witnesses on his or her behalf.

Source: Laws 1957, c. 1, § 38, p. 69; Laws 1997, LB 114, § 36.

1-144 Disciplinary action; hearing; board; powers.

The board, or any member thereof, may issue subpoenas to compel the attendance of witnesses and the production of documents and may administer oaths, take testimony, hear proofs, and receive exhibits in evidence in connection with or upon hearing under the Public Accountancy Act. In case of disobedience to a subpoena the board may invoke the aid of any court of this state in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Source: Laws 1957, c. 1, § 39, p. 69; Laws 1997, LB 114, § 37.

1-145 Disciplinary action; board; rules of evidence.

The board shall not be bound by rules of evidence.

Source: Laws 1957, c. 1, § 40, p. 69; Laws 1997, LB 114, § 38.

1-146 Disciplinary action; record of hearing.

A stenographic record of the hearing shall be kept and a transcript thereof filed with the board.

Source: Laws 1957, c. 1, § 41, p. 69.

1-147 Disciplinary action; board; legal representation.

At all hearings, the Attorney General of this state, or one of his assistants designated by him, or such other legal counsel as may be employed, shall appear and represent the board.

Source: Laws 1957, c. 1, § 42, p. 69.

1-148 Disciplinary action; action of board.

Upon the completion of any hearing, the board, by majority vote, shall have the authority through entry of a written order to take in its discretion any or all of the following actions:

(1) Issuance of censure or reprimand;

(2) Suspension of judgment;

(3) Placement of the permitholder, certificate holder, registrant, or person exercising the practice privilege or the temporary practice privilege on probation;

(4) Placement of a limitation or limitations on the permit, certificate, or registration and upon the right of the permitholder, certificate holder, registrant, or person exercising the practice privilege or the temporary practice privilege to practice the profession to such extent, scope, or type of practice for such time and under such conditions as are found necessary and proper;

(5) Imposition of a civil penalty not to exceed ten thousand dollars, except that the board shall not impose a civil penalty under this subdivision for any cause enumerated in subdivisions (5) through (9) of section 1-137 and subdivi-

sions (1) and (2) of section 1-138. The amount of the penalty shall be based on the severity of the violation;

(6) Entrance of an order of suspension of the permit, certificate, registration, or practice privilege or temporary practice privilege;

(7) Entrance of an order of revocation of the permit, certificate, registration, or practice privilege or temporary practice privilege;

(8) Imposition of costs as in ordinary civil actions in the district court, which may include attorney and hearing officer fees incurred by the board and the expenses of any investigation undertaken by the board; or

(9) Dismissal of the action.

Source: Laws 1957, c. 1, § 43, p. 70; Laws 1993, LB 41, § 6; Laws 1994, LB 957, § 6; Laws 1997, LB 114, § 39; Laws 2009, LB31, § 24.

The Board of Public Accountancy has discretion to impose attorney fees incurred by the board, which may include fees for an attorney who represents the board and serves as the ''prosecutor'' in a disciplinary case. Zwygart v. State, 273 Neb. 406, 730 N.W.2d 103 (2007).

1-149 Disciplinary action; appeal; procedure.

Any decision of the board may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1957, c. 1, § 44, p. 70; Laws 1988, LB 352, § 1.

Cross References

Administrative Procedure Act, see section 84-920.

1-150 Disciplinary action; additional board powers.

Upon application in writing and after hearing pursuant to notice, the board may issue a new certificate to a certified public accountant whose certificate has been revoked, may permit the reregistration of a person whose registration has been revoked, or may reissue or modify the suspension of any permit which has been revoked or suspended.

Source: Laws 1957, c. 1, § 45, p. 71; Laws 1997, LB 114, § 40.

1-151 Certified public accountant; person; use of term C.P.A.; requirements.

No person shall assume or use the title or designation certified public accountant or the abbreviation C.P.A. or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant unless such person (1) is classified as inactive under section 1-136 or (2) has been issued a certificate as a certified public accountant under sections 1-114 to 1-124 and holds a permit issued under subdivision (1)(a) of section 1-136 which is not revoked or suspended and all of such person's offices in this state for the practice of public accountancy are maintained and registered as required under section 1-135.

Source: Laws 1957, c. 1, § 46, p. 71; Laws 1984, LB 473, § 20; Laws 1997, LB 114, § 41; Laws 2009, LB31, § 25.

1-152 Certified public accountant or public accountant; partnership or limited liability company; use of titles or term C.P.A.; requirements.

No partnership or limited liability company shall assume or use the title or designation certified public accountant or public accountant or the abbrevia-

tion C.P.A. or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or limited liability company is composed of certified public accountants unless such partnership or limited liability company is registered as a partnership of certified public accountants or a limited liability company of certified public accountants under section 1-126 and holds a permit issued under subdivision (1)(b) of section 1-136 which is not revoked or suspended and all of such partnership's or limited liability company's offices in this state for the practice of public accountancy are maintained and registered as required under section 1-135.

Source: Laws 1957, c. 1, § 47, p. 72; Laws 1993, LB 121, § 51; Laws 1997, LB 114, § 42; Laws 2009, LB31, § 26.

1-153 Peer review; rules and regulations.

The board may adopt and promulgate rules and regulations to require a firm to enroll in and comply with all requirements of a board-approved program of peer review and comply with all restrictions placed on any permit by the board in response to the results of a peer review.

Source: Laws 2015, LB159, § 3.

1-154 Repealed. Laws 2009, LB 31, § 43.

1-155 Use of terms, prohibited; exception.

Except as otherwise provided in this section, no person, partnership, or limited liability company shall assume or use the title or designation certified accountant, public accountant, chartered accountant, enrolled accountant, licensed accountant, or registered accountant or any other title or designation likely to be confused with certified public accountant or any of the abbreviations C.A., P.A., E.A., R.A., or L.A. or similar abbreviations likely to be confused with C.P.A. No person shall assume or use the title or designation enrolled agent or E.A. except a person so designated by the Internal Revenue Service. Any person who holds a permit issued under section 1-136 which is not revoked or suspended and all of whose offices in this state for the practice of public accountancy are maintained and registered as required under section 1-135 may hold himself or herself out to the public as an accountant or auditor.

Source: Laws 1957, c. 1, § 50, p. 73; Laws 1993, LB 121, § 53; Laws 1997, LB 114, § 45; Laws 2009, LB31, § 27.

1-156 Corporation; use of terms, prohibited; exception.

No corporation shall assume or use the title or designation certified public accountant or public accountant nor shall any corporation assume or use the title or designation certified accountant, chartered accountant, enrolled accountant, licensed accountant, registered accountant, or any other title or designation likely to be confused with certified public accountant or any of the abbreviations C.P.A., P.A., C.A., E.A., R.A., L.A., or similar abbreviations likely to be confused with C.P.A., except that a corporation which is registered under section 1-134 and holds a permit issued under subdivision (1)(c) of section 1-136 which is not revoked or suspended and all of such corporation's offices in this state for the practice of public accountancy are maintained and registered as required under section 1-135, may use the words accountant, auditor, and other appropriate words to indicate that it is engaged in the practice of public

accountancy but may not use the title or designation certified public accountant, public accountant, certified accountant, chartered accountant, enrolled accountant, licensed accountant, registered accountant, or any other title or designation likely to be confused with certified public accountant or any of the abbreviations C.P.A., C.A., E.A., L.A., R.A., or similar abbreviations likely to be confused with C.P.A.

Source: Laws 1957, c. 1, § 51, p. 73; Laws 1997, LB 114, § 46; Laws 2009, LB31, § 28.

1-157 Accountant or auditor; use of terms; when permitted.

No person shall sign or affix his or her name or any trade or assumed name used by him or her in his or her profession or business with any wording indicating that he or she is an accountant or auditor or with any wording indicating that he or she has expert knowledge in accounting or auditing to any accounting or financial statement or to any opinion on, report on, or certificate to any accounting or financial statement unless he or she holds a permit issued under subdivision (1)(a) of section 1-136 which is not revoked or suspended and all of his or her offices in this state for the practice of public accountancy are maintained and registered as required under section 1-135. This section shall not prohibit any officer, employee, partner, limited liability company member, or principal of any organization from affixing his or her signature to any statement or report in reference to the financial affairs of the organization with any wording designating the position, title, or office which he or she holds in the organization, nor shall this section prohibit any act of a public official or public employee in the performance of his or her duties as such.

Source: Laws 1957, c. 1, § 52, p. 74; Laws 1993, LB 121, § 54; Laws 1994, LB 884, § 1; Laws 1997, LB 114, § 47; Laws 2009, LB31, § 29.

1-158 Partnership or limited liability company; use of terms; requirements.

No person shall sign or affix a partnership or limited liability company name, with any wording indicating that it is a partnership or limited liability company composed of accountants, auditors, or persons having expert knowledge in accounting or auditing, to any accounting or financial statement, or to any report on or certificate to any accounting or financial statement, unless the partnership or limited liability company holds a permit issued under subdivision (1)(b) of section 1-136 which is not revoked or suspended and all of its offices in this state for the practice of public accountancy are maintained and registered as required under section 1-135.

Source: Laws 1957, c. 1, § 53, p. 74; Laws 1993, LB 121, § 55; Laws 1997, LB 114, § 48; Laws 2009, LB31, § 30.

1-159 Corporation; use of terms; requirements.

No person shall sign or affix a corporate name with any wording indicating that it is a corporation performing services as accountants or auditors or composed of accountants or auditors or persons having expert knowledge in accounting or auditing, to any accounting or financial statement, or to any report on or certificate to any accounting or financial statement, except that a corporation which is registered under section 1-134 and holds a permit issued

under subdivision (1)(c) of section 1-136 which is not revoked or suspended may affix its corporate name with the wording indicated above.

Source: Laws 1957, c. 1, § 54, p. 75; Laws 1997, LB 114, § 49; Laws 2009, LB31, § 31.

1-160 Public accountant; absence of permit; requirement to so state; exceptions.

No person, partnership, limited liability company, or corporation not holding a permit issued under section 1-136 which is not revoked or suspended shall hold himself, herself, or itself out to the public as an accountant or auditor by use of either or both of such words on any sign, card, or letterhead or in any advertisement or directory without indicating thereon or therein that such person, partnership, limited liability company, or corporation does not hold such a permit. This section shall not prohibit any officer, employee, partner, member, or principal of any organization from describing himself or herself by the position, title, or office he or she holds in such organization nor any act of any public official or public employee in the performance of his or her duties as such.

Source: Laws 1957, c. 1, § 55, p. 75; Laws 1993, LB 121, § 56; Laws 1997, LB 114, § 50.

1-161 Certified public accountant; public accountant; false use of partnership or limited liability company designation; prohibition.

No person shall assume or use the title or designation certified public accountant or public accountant in conjunction with names indicating or implying that there is a partnership or a limited liability company or in conjunction with the designation ''and company'' or ''and Co.'' or a similar designation if, in any such case, there is in fact no bona fide partnership or limited liability company registered under section 1-126.

Source: Laws 1957, c. 1, § 56, p. 75; Laws 1993, LB 121, § 57; Laws 1997, LB 114, § 51; Laws 2009, LB31, § 32.

1-162 Certified public accountant; employees and assistants; not prohibited.

Nothing contained in the Public Accountancy Act shall prohibit any person not a certified public accountant from serving as an employee of, or an assistant to, a certified public accountant or partnership or limited liability company of certified public accountants holding a permit issued under section 1-136 or a foreign accountant exercising the temporary practice privilege under section 1-125.02, except that such employee or assistant shall not issue any accounting or financial statement over his or her name.

Source: Laws 1957, c. 1, § 57, p. 76; Laws 1993, LB 121, § 58; Laws 1997, LB 114, § 52; Laws 2009, LB31, § 33.

1-162.01 Firms; owners permitted; conditions; rules and regulations.

(1) Notwithstanding the Nebraska Professional Corporation Act or the Public Accountancy Act or any other provision of law inconsistent with this section, firms may have owners who are not certified public accountants if the following conditions are met:

(a) Such owners shall be:

(i) Natural persons;

(ii) An employee stock ownership plan as described and defined in 26 U.S.C. 401(a) and 26 U.S.C. 4975(e)(7), as such subsections existed on January 1, 2019;

(iii) A partnership or limited liability company; or

(iv) A corporation;

(b) Such owners shall not hold, in the aggregate, directly or beneficially, more than forty-nine percent of such firm's equity capital or voting rights or receive, in the aggregate, directly or beneficially, more than forty-nine percent of such firm's profits or losses;

(c)(i) Such owners who are not natural persons shall not, in the aggregate, directly or beneficially, comprise a majority of the total number of owners of a firm; and

(ii) Such owners who are natural persons may, in the aggregate, directly or beneficially, comprise a majority of the total number of owners of a firm;

(d) Such owners, whether direct or beneficial, who are natural persons shall not hold themselves out as certified public accountants;

(e) Such owners, whether direct or beneficial, who are natural persons shall not hold themselves out to the general public or to any client as an owner, partner, shareholder, limited liability company member, director, officer, or other official of the firm except in a manner specifically permitted by the rules and regulations of the board;

(f) Such owners, whether direct or beneficial, who are natural persons shall not have ultimate responsibility for the performance of any audit, review, or compilation of financial statements or other forms of attestation related to financial information;

(g) Such owners who are natural persons shall not be direct or beneficial owners of a firm engaged in the practice of public accountancy without board approval if such natural persons (i) have been convicted of any felony under the laws of any state, of the United States, or of any other jurisdiction, (ii) have been convicted of any crime, an element of which is dishonesty or fraud, under the laws of any state, of the United States, or of any other jurisdiction, (iii) have had their professional or vocational licenses, if any, suspended or revoked by a licensing agency of any state of the United States or of any other jurisdiction or such persons have otherwise been the subject of other final disciplinary action by any such agency, or (iv) are in violation of any rule or regulation regarding character or conduct adopted and promulgated by the board relating to owners who are not certified public accountants;

(h) Such owners, if a partnership, limited liability company, or corporation: (i) Hold a permit under section 1-136; (ii) do not have the ultimate responsibility for the firm's performance of audits, reviews, or compilations of financial statements or other forms of attestation relating to financial information; and (iii) have their owners comply with this section, so long as any natural persons who have an ownership or beneficial interest in such partnership, limited liability company, or corporation, directly or beneficially, meet, as if such natural persons or entities were direct owners in the firm, the requirements of subdivisions (1)(b) through (g) of this section;

(i) Such beneficial owners under an employee stock ownership plan shall be natural persons actively participating in the business of the firm or an entity

controlled by the firm. All of the trustees of such employee stock ownership plans shall be natural persons who are certified public accountants, except in the event that a conflict of interest exists for one or more trustees with respect to a specific issue or transaction, such trustees may appoint a special independent trustee or special fiduciary, who is not a certified public accountant or otherwise legally authorized to render professional services in public accountancy, which special independent trustee or special fiduciary shall be authorized to make decisions only with respect to the specific issue or transaction that is the subject of the conflict; and

(j) Such owners who are natural persons shall actively participate in the firm if such owners are direct owners, or shall actively participate in the partnership, limited liability company, or corporation through which the natural person has beneficial ownership of the firm.

(2) The issuance or transfer of any shares of stock or equity interests in a firm in violation of this section is void. No shareholder or equity owner of a firm shall enter into a voting trust agreement or any other type of agreement vesting in another person the authority to exercise the voting power of any of the stock or equity of a firm.

(3) The board shall adopt and promulgate rules and regulations for purposes of interpretation and enforcement of compliance with this section.

Source: Laws 1994, LB 957, § 1; Laws 1997, LB 114, § 53; Laws 1999, LB 346, § 2; Laws 2009, LB31, § 34; Laws 2019, LB49, § 1; Laws 2022, LB707, § 5.
Operative date July 21, 2022.

Cross References

Nebraska Professional Corporation Act, see section 21-2201.

1-163 Repealed. Laws 2009, LB 31, § 43.

1-164 Banking, law, and agricultural services; not prohibited.

Nothing contained in the Public Accountancy Act shall prohibit any person from carrying on the regular business of banking, nor prohibit any person from carrying on the regular practice of law, nor prohibit any farm organization or agricultural cooperative association, or the employees thereof, from rendering accounting, auditing, or business analysis services when such services are rendered only to its members or to other farm organizations or agricultural cooperative associations.

Source: Laws 1957, c. 1, § 59, p. 76; Laws 1997, LB 114, § 55.

1-164.01 Services related to financial statements; not prohibited.

Nothing in the Public Accountancy Act or the rules and regulations adopted and promulgated under the act shall be construed to prohibit any person who does not hold a permit issued under subdivision (1)(a) of section 1-136 from preparing, compiling, or signing financial statements if an accompanying report, letter, or other statement does not express an opinion or other form of assurance as to the fairness, accuracy, or reliability of such statements.

Source: Laws 1984, LB 473, § 22; Laws 1997, LB 114, § 56; Laws 2009, LB31, § 35.

1-164.02 Formation of business partnership or limited liability company; not prohibited.

Nothing in the Public Accountancy Act or the rules and regulations adopted and promulgated under the act shall be construed to prohibit a person holding a certificate as a certified public accountant from forming a business partnership or limited liability company with a person not holding a certificate or permit.

Source: Laws 1984, LB 473, § 23; Laws 1993, LB 121, § 59; Laws 1997, LB 114, § 57; Laws 2009, LB31, § 36.

1-164.03 Use of title accountant; not prohibited.

Nothing in the Public Accountancy Act or the rules and regulations adopted and promulgated under the act shall be construed to prohibit a person not holding a certificate or permit from using the title accountant in his or her business practices.

Source: Laws 1984, LB 473, § 24; Laws 1997, LB 114, § 58.

1-165 Board; unlawful practice; injunction.

Whenever, in the judgment of the board, any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of sections 1-151 to 1-161, the board may make application to the appropriate court for an order enjoining such acts or practices, and upon a showing by the board that such person has engaged, or is about to engage, in any such acts or practices, an injunction, a restraining order, or such other order as may be appropriate shall be granted by such court without bond.

Source: Laws 1957, c. 1, § 60, p. 76; Laws 1997, LB 114, § 59.

1-166 Unlawful use of terms; penalty.

Any person who violates sections 1-151 to 1-161 shall be guilty of a Class II misdemeanor. If a member of the board has reason to believe that any person is liable to punishment under this section, the board may certify the facts to the Attorney General of this state, who may in his or her discretion cause appropriate proceedings to be brought.

Source: Laws 1957, c. 1, § 61, p. 77; Laws 1977, LB 40, § 1; Laws 1997, LB 114, § 60.

1-167 Unlawful use of terms; advertising; prima facie evidence of violation.

The display or uttering by a person of a card, sign, advertisement, or other printed, engraved, or written instrument or device, bearing a person's name in conjunction with the words certified public accountant or any abbreviation thereof or public accountant or any abbreviation thereof shall be prima facie evidence in any action brought under section 1-165 or 1-166 that the person whose name is so displayed caused or procured the display or uttering of such card, sign, advertisement, or other printed, engraved, or written instrument or device and that such person is holding himself or herself out to be a certified public accountant holding a permit issued under section 1-136. In any such action evidence of the commission of a single act prohibited by the Public

Accountancy Act shall be sufficient to justify an injunction or a conviction without evidence of a general course of conduct.

Source: Laws 1957, c. 1, § 62, p. 77; Laws 1997, LB 114, § 61; Laws 2009, LB31, § 37.

1-168 Certified public accountant; working papers and memoranda; property rights.

All statements, records, schedules, working papers, and memoranda made by a certified public accountant incident to or in the course of professional service to clients by such accountant, except reports submitted by a certified public accountant to a client, shall be and remain the property of such accountant in the absence of an express agreement between such accountant and the client to the contrary. No such statement, record, schedule, working paper, or memorandum shall be sold, transferred, or bequeathed, without the consent of the client or his or her personal representative or assignee, to anyone other than one or more surviving partners or limited liability company members or new partners or limited liability company members of such accountant.

Source: Laws 1957, c. 1, § 63, p. 77; Laws 1993, LB 121, § 60; Laws 1994, LB 884, § 2; Laws 2009, LB31, § 38.

1-169 Transferred to section 1-105.

1-170 Audit, report, or financial statement; public agency of state; made by whom.

Whenever any statute or rule or regulation adopted and promulgated by authority of any statute requires that any audit, report, financial statement, or other document for any department, division, board, commission, agency, or officer of this state be prepared by certified public accountants, such requirement, except as provided in section 1-171, shall be construed to mean certified public accountants holding a permit issued under subdivision (1)(a) of section 1-136 or a person exercising the practice privilege or temporary practice privilege.

Source: Laws 1965, c. 1, § 1, p. 59; Laws 1997, LB 114, § 62; Laws 2009, LB31, § 39.

1-171 Audit, report, or financial statement; federal regulation; made by whom.

Whenever any federal regulation requires any audit, report, financial statement, or other document to be prepared by a certified public accountant, such requirement shall be construed to mean a certified public accountant holding a permit issued under subdivision (1)(a) of section 1-136 or a person exercising the practice privilege or temporary practice privilege.

Source: Laws 1965, c. 1, § 2, p. 59; Laws 1997, LB 114, § 63; Laws 2009, LB31, § 40.

1-172 Repealed. Laws 1992, LB 859, § 1.

CHAPTER 2
AGRICULTURE

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Cross References

Constitutional provisions:
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Agricultural and horticultural societies, property of, Legislature may exempt from taxation, see Article VIII, section 2, Constitution of Nebraska.
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Agricultural and horticultural societies, property, exemption from taxation, see section 77-202 and Article VIII, section 2, Constitution of Nebraska.
Agricultural equipment businesses, see sections 69-1501 to 69-1504 and 87-701 to 87-711.
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Captive wildlife permit, see sections 37-477 and 37-479.
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Commercial feed, see sections 54-847 to 54-863.
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Commodity Code, see section 8-1701.
Conservation and Survey Division of the University of Nebraska, see section 85-163 et seq.
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Animal Health and Disease Control Act, see section 54-2901.
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Predatory animals, tax on sheep and cattle, see section 23-361.
Security interests, farm products, see section 52-1301 et seq. and section 9-302, Uniform Commercial Code.
Seeds, see section 81-2,147 et seq.
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ARTICLE 1
NEBRASKA STATE FAIR BOARD

Cross References

Constitutional provisions:
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State fair:
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Horseracing, see Chapter 2, article 12.
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Section
2-101. Nebraska State Fair Board; purpose; meetings; state fair; location; plan to relocate.
2-101.01. Legislative findings.
2-102. Repealed. Laws 2002, LB 1236, § 23.

Section
2-103. Membership; term.
2-104. Repealed. Laws 2008, LB 1116, § 14.
2-104.01. Repealed. Laws 2008, LB 1116, § 14.
2-105. State Fair Foundation; authorized.
2-106. Repealed. Laws 2008, LB 1116, § 14.
2-107. State Fair Cash Fund; created; use; investment.
2-108. Nebraska State Fair Support and Improvement Cash Fund; created; use; investment.
2-109. Report regarding lottery revenue.
2-110. Matching fund requirements.
2-111. Annual report.
2-112. Nebraska State Fair Relocation Cash Fund; created; use; investment.
2-113. Transfer of Nebraska State Fairgrounds; conditions; Nebraska State Fair relocated to city of Grand Island; Nebraska State Fair Board; duties.
2-114. Repealed. Laws 1984, LB 641, § 1.
2-115. Repealed. Laws 2002, LB 1236, § 23.
2-116. Repealed. Laws 2002, LB 1236, § 23.
2-117. Repealed. Laws 2002, LB 1236, § 23.
2-118. Repealed. Laws 2002, LB 1236, § 23.
2-119. Repealed. Laws 1983, LB 1, § 1.
2-120. Repealed. Laws 1983, LB 1, § 1.
2-121. Repealed. Laws 1983, LB 1, § 1.
2-122. Repealed. Laws 1983, LB 1, § 1.
2-123. Repealed. Laws 1983, LB 1, § 1.
2-124. Repealed. Laws 1983, LB 1, § 1.
2-125. Repealed. Laws 2002, LB 1236, § 23.
2-126. Repealed. Laws 2002, LB 1236, § 23.
2-127. Repealed. Laws 2002, LB 1236, § 23.
2-128. Repealed. Laws 2002, LB 1236, § 23.
2-129. Repealed. Laws 1983, LB 1, § 1.
2-130. Repealed. Laws 1983, LB 1, § 1.
2-131. Repealed. Laws 2009, LB 224, § 10.

2-101 Nebraska State Fair Board; purpose; meetings; state fair; location; plan to relocate.

(1) The Nebraska State Fair Board, formerly known as the State Board of Agriculture, shall hold an annual meeting for the purpose of deliberating and consulting as to the wants, prospects, and conditions of the agricultural, horticultural, industrial, mechanical, and other interests throughout the state, as well as those interests in the encouragement and perpetuation of the arts, skilled crafts, and sciences.

(2) The Nebraska State Fair Board may provide in its constitution and bylaws for the qualification and participation of delegates at the annual meeting from such associations incorporated under the laws of the state for purposes of promoting and furthering the interests of participants in agricultural, horticultural, industrial, mechanical, or other pursuits or for the encouragement and perpetuation of the arts, skilled crafts, and sciences, and from such associations as provide for the training, encouragement, and competition of the youth of Nebraska in such endeavors. The annual meeting shall be held in every odd-numbered year at the capital of the state and in every even-numbered year at such location as the board determines. The chairperson of the board shall also have the power to call meetings of the board whenever he or she may deem it expedient. All meetings of the board shall be conducted in accordance with the Open Meetings Act.

(3) The Nebraska State Fair shall be under the direction and supervision of the Nebraska State Fair Board. The board may, at its discretion, hold or dispense with the holding of the fair, in any year.

(4)(a) It is the intent of the Legislature that no later than 2010 the Nebraska State Fair be permanently located within the city of Grand Island upon the site and tract of land owned by the Hall County Livestock Improvement Association and known as Fonner Park and, as available and necessary, upon other parcels of land adjacent to Fonner Park. The Nebraska State Fair Board shall cooperate and coordinate with the Hall County Livestock Improvement Association, the city of Grand Island, and other appropriate entities to provide for and carry out any plan of improvements to such location, including the construction of buildings and other capital facilities, the relocation of existing improvements, and other enhancements, necessary to develop the site as a location suitable for conducting the Nebraska State Fair. Such cooperation and coordination may include financial participation in the costs of site development, new construction, and other capital improvements upon such location and includes the execution of any agreement for site governance, revenue sharing, and facility utilization between and among the Nebraska State Fair Board, the Hall County Livestock Improvement Association, and other appropriate entities.

(b) The Nebraska State Fair Board, the Department of Administrative Services, and the Board of Regents of the University of Nebraska shall cooperate with each other and with other appropriate entities to provide for and carry out the plan to relocate the Nebraska State Fair and transfer the Nebraska State Fairgrounds in Lancaster County to the Board of Regents, including activities by the Board of Regents to obtain due diligence surveys, reports, and site assessments at the Nebraska State Fairgrounds in Lancaster County and by the Nebraska State Fair Board in connection with providing marketable title to the same in a form acceptable to the Board of Regents.

Source: Laws 1879, § 1, p. 396; Laws 1883, c. 1, § 1, p. 57; Laws 1899, c. 1, § 1, p. 51; R.S.1913, § 1; C.S.1922, § 1; C.S.1929, § 2-101; Laws 1937, c. 1, § 1, p. 51; C.S.Supp.,1941, § 2-101; Laws 1943, c. 2, § 1, p. 55; R.S.1943, § 2-101; Laws 1981, LB 544, § 1; Laws 1983, LB 30, § 1; Laws 2002, LB 1236, § 2; Laws 2004, LB 821, § 1; Laws 2008, LB1116, § 1; Laws 2009, LB224, § 1.

Cross References

Open Meetings Act, see section 84-1407.

The Nebraska State Board of Agriculture is essentially a private corporation possessing no exemption from suit or liability. The Crete Mills v. Nebraska State Board of Agriculture, 132 Neb. 244, 271 N.W. 684 (1937).

State Board of Agriculture has duty to provide rules and regulations agreeable to which the constitution and bylaws of county agricultural societies must be framed. State ex rel. Otoe County Agricultural Assn. v. Wallen, 117 Neb. 397, 220 N.W. 688 (1928).

2-101.01 Legislative findings.

The Legislature finds that the Nebraska State Fair has been held annually for the exhibition and dissemination of agricultural, horticultural, industrial, mechanical, and other products and innovations and for exhibitions in the arts, skilled crafts, and sciences and is a beneficial cultural and educational event for the state and its citizens. The Legislature declares it to be in the public interest that management of the Nebraska State Fair be based upon a dynamic public-private partnership that includes the active participation of the state and local

governments, the private sector, and the citizens of Nebraska. In order to achieve this goal, the Legislature finds that the Nebraska State Fair Board should endeavor to:

(1) Place a priority on the development of private funding sources, including corporate donations and sponsorships;

(2) Work with municipal officials to enhance the board's participation in local planning efforts and to create a partnership with local economic development and tourism officials;

(3) Maintain a policy of openness and accountability that allows for citizen participation in the operation of the Nebraska State Fair; and

(4) Regularly provide the Governor, the Legislature, and appropriate state agencies with information, including, but not limited to, the development of private funding sources, the use of state appropriations, the fiscal management of the Nebraska State Fair, and the activities and goals established for the Nebraska State Fair.

Source: Laws 2002, LB 1236, § 1; Laws 2008, LB1116, § 2.

2-102 Repealed. Laws 2002, LB 1236, § 23.

2-103 Membership; term.

(1) The Nebraska State Fair Board shall be a board consisting of the following members:

(a) Seven members nominated and selected by district as provided in the constitution and bylaws of the board; and

(b) Four members appointed by the Governor and confirmed by the Legislature, three members selected from the business community of the state with one such member residing in each of the three congressional districts, as such districts existed on January 1, 2009, and one member selected from the business community of the most populous city within the county in which the Nebraska State Fair is located.

(2) The term of office for members of the board shall be for three years. Members selected by gubernatorial appointment pursuant to subdivision (1)(b) of this section as it existed prior to January 1, 2009, who continue to be qualified to serve shall continue their term of appointment and shall be eligible for reappointment subject to the limit of terms served prescribed in subsection (3) of this section. In the event that the Nebraska State Fair is to be relocated to a new host community, the term of the member appointed or designated from the business community of the previous host community shall be vacated and the Governor shall appoint a new member from the business community of the most populous city within the county in which the Nebraska State Fair is located to fulfill the remainder of the term of the vacating member.

(3) No person may serve more than three consecutive terms as a member of the board. No member of the Legislature may serve on the board.

(4) The board shall annually elect from its membership a chairperson, a vice-chairperson, a secretary, and such other officers as the board deems necessary. The officers shall be elected at the annual meeting of the board, or any other meeting of the board called for such purpose, and shall hold their offices for one year and until their successors are elected and qualified.

(5) The State 4-H Program Administrator of the Cooperative Extension Service of the University of Nebraska, or his or her designee, and the Executive Director of the Nebraska FFA, or his or her designee, shall be ex officio, nonvoting members of the Nebraska State Fair Board.

Source: Laws 2002, LB 1236, § 3; Laws 2008, LB1116, § 3.

2-104 Repealed. Laws 2008, LB 1116, § 14.

2-104.01 Repealed. Laws 2008, LB 1116, § 14.

2-105 State Fair Foundation; authorized.

It is the intent of the Legislature that the Nebraska State Fair Board establish the State Fair Foundation as a nonprofit foundation operated exclusively as a corporation for charitable purposes as contemplated by sections 170(c)(2) and 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01, and organized and operated for the benefit of and to carry out the purposes of the board. The foundation may solicit, receive, hold, invest, and contribute funds and property for the use and benefit of the board in a manner consistent with the public good and primarily for capital expenditure and other needs not funded by other means.

Source: Laws 2002, LB 1236, § 5.

2-106 Repealed. Laws 2008, LB 1116, § 14.

2-107 State Fair Cash Fund; created; use; investment.

The State Fair Cash Fund is created. The Tax Commissioner may use the fund to defray the cost of implementing the check-off program under section 77-27,119.05. The Nebraska State Fair shall use the fund to carry out the public-private partnerships established to enhance the work of the Nebraska State Fair. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2003, LB 72, § 5.

Cross References

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

2-108 Nebraska State Fair Support and Improvement Cash Fund; created; use; investment.

The Nebraska State Fair Support and Improvement Cash Fund is created. The fund shall be maintained in the state accounting system as a cash fund. The State Treasurer shall credit to the fund the disbursement of state lottery proceeds designated for the Nebraska State Fair and matching funds from the most populous city within the county in which the state fair is located. The balance of any fund that is administratively created to receive lottery proceeds designated for the Nebraska State Fair and matching fund revenue prior to May 25, 2005, shall be transferred to the Nebraska State Fair Support and Improvement Cash Fund on such date. The Nebraska State Fair Support and Improvement Cash Fund shall be expended by the Nebraska State Fair Board to provide support for operating expenses and capital facility enhancements, including new construction and other capital improvements and other enhance-

ments to and upon any exhibition facility utilized as the location of the Nebraska State Fair. Expenditures from the fund shall not be limited to the amount appropriated. 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 426, § 4; Laws 2007, LB435, § 1; Laws 2008, LB1116, § 4.

Cross References

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

2-109 Report regarding lottery revenue.

The Department of Revenue shall, at the conclusion of each calendar quarter, provide to the most populous city within the county in which the Nebraska State Fair is held written notification of the amount estimated by the department to equal ten percent of the lottery revenue collected during the calendar quarter to be transferred to the Nebraska State Fair Support and Improvement Cash Fund. If the state fair is scheduled to be held in a different county from that in which the most recent state fair was held, the written notification required by this section shall be made to the most populous city within the county in which the state fair is scheduled to be held beginning with the written notification made at the conclusion of the first calendar quarter during the calendar year in which the state fair is held or scheduled to be held in such county. The department shall provide a copy of the written notification to the Department of Administrative Services.

Source: Laws 2005, LB 426, § 5; Laws 2009, LB224, § 2.

2-110 Matching fund requirements.

The most populous city within the county in which the Nebraska State Fair is held or scheduled to be held that calendar year shall remit quarterly payments to the State Treasurer in amounts equal to the matching fund requirement established by the Department of Revenue under section 2-109. The State Treasurer shall credit the matching funds to the Nebraska State Fair Support and Improvement Cash Fund. The city shall provide written notification to the Department of Administrative Services regarding its compliance with the matching fund requirement. Upon verification by the Department of Administrative Services that a quarterly transfer of lottery proceeds to the Nebraska State Fair Support and Improvement Cash Fund has been executed and that the full amount of the matching funds requirement has been received from the city, the Department of Administrative Services shall authorize the expenditure of the fund by the Nebraska State Fair Board. Matching fund requirements shall not apply to investment income accruing to the fund and investment income may be expended by the board.

Source: Laws 2005, LB 426, § 6; Laws 2009, LB224, § 3.

2-111 Annual report.

The Nebraska State Fair Board shall, no later than November 1 of each year, provide an annual report to the Governor and the Legislature regarding the use of the Nebraska State Fair Support and Improvement Cash Fund. The report submitted to the Legislature shall be submitted electronically. The report shall

include (1) a detailed listing of how the proceeds of the fund were expended in the prior fiscal year and (2) any distributions from the fund that remain unexpended and on deposit in Nebraska State Fair accounts.

Source: Laws 2005, LB 426, § 7; Laws 2007, LB435, § 2; Laws 2009, LB224, § 4; Laws 2012, LB782, § 1.

2-112 Nebraska State Fair Relocation Cash Fund; created; use; investment.

The Nebraska State Fair Relocation Cash Fund is created. The State Treasurer shall credit to the fund such money as is transferred to the fund by the Legislature or donated as gifts, bequests, or other contributions to such fund from public or private entities. The fund shall be expended by the Nebraska State Fair Board to provide funding to assist in the construction and improvement of capital facilities necessary to develop a location suitable for the operation of the Nebraska State Fair. Expenditures from the fund shall not be limited to the amount appropriated. The money in the fund shall not be subject to any fiscal year or biennium limitation requiring reappropriation of the unexpended balance at the end of the fiscal year or biennium. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2008, LB1116, § 5.

Cross References

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

2-113 Transfer of Nebraska State Fairgrounds; conditions; Nebraska State Fair relocated to city of Grand Island; Nebraska State Fair Board; duties.

(1) Upon completion of the conditions specified in subsection (2) of this section, the Director of Administrative Services shall, on or before December 31, 2009, transfer by warranty deed the site and tract of land in Lancaster County known as the Nebraska State Fairgrounds, to the Board of Regents of the University of Nebraska. Such transfer shall occur notwithstanding sections 72-811 to 72-818 or any other provision of law.

(2) The transfer described in subsection (1) of this section shall be contingent upon:

(a) Funds for the purpose of carrying out subsection (4) of section 2-101 having been provided by or on behalf of the University of Nebraska in a total amount of no less than twenty-one million five hundred thousand dollars in cash or legally binding commitments. Such funds may be provided over time, but they shall in cumulative increments equal at least seven million five hundred thousand dollars by October 1, 2008, fourteen million five hundred thousand dollars by February 1, 2009, and twenty-one million five hundred thousand dollars by July 1, 2009;

(b) The University of Nebraska providing a master plan and business plan to carry out the master plan for the Innovation Campus to the Department of Administrative Services and to the Clerk of the Legislature on or before December 1, 2009, and a commitment to provide on or before December 1 of each year thereafter an annual update of the master plan and business plan to the Clerk of the Legislature; and

(c) Funds for the purpose of carrying out subsection (4) of section 2-101 having been provided by or on behalf of the city of Grand Island in a total amount of no less than eight million five hundred thousand dollars in cash or legally binding commitments. Up to one million five hundred thousand dollars in cash or legally binding commitments provided by or on behalf of the city of Grand Island for the purpose of relocating and reconstructing recreational facilities displaced by the relocation of the Nebraska State Fair to Grand Island may be considered part of the eight-million-five-hundred-thousand-dollar contribution required by this subdivision. Such funds may be provided over time, but they shall in cumulative increments equal at least three million dollars by October 1, 2008, six million dollars by February 1, 2009, and eight million five hundred thousand dollars by July 1, 2009.

(3) The University of Nebraska and the city of Grand Island shall provide certification to the Department of Administrative Services on October 1, 2008, February 1, 2009, and July 1, 2009, of all funds provided to carry out subsection (4) of section 2-101. All amounts as certified in subdivisions (2)(a) and (c) of this section shall be held and expended as determined by agreement between the Hall County Livestock Improvement Association and the Nebraska State Fair Board.

(4)(a) The Nebraska State Fair shall be relocated to the city of Grand Island pursuant to subsection (4) of section 2-101 contingent upon completion of the conditions specified in subdivisions (2)(a) and (c) of this section.

(b) The Nebraska State Fair Board shall be responsible for any remaining costs associated with site improvements for relocating the Nebraska State Fair, not to exceed seven million dollars.

(c) On or before December 31, 2009, the Nebraska State Fair Board shall provide written release or other written instrument acceptable to the State Building Administrator in consultation with the President of the University of Nebraska in connection with the transfer of the Nebraska State Fairgrounds to the Board of Regents.

Source: Laws 2008, LB1116, § 6; Laws 2009, LB224, § 5.

2-114 Repealed. Laws 1984, LB 641, § 1.

2-115 Repealed. Laws 2002, LB 1236, § 23.

2-116 Repealed. Laws 2002, LB 1236, § 23.

2-117 Repealed. Laws 2002, LB 1236, § 23.

2-118 Repealed. Laws 2002, LB 1236, § 23.

2-119 Repealed. Laws 1983, LB 1, § 1.

2-120 Repealed. Laws 1983, LB 1, § 1.

2-121 Repealed. Laws 1983, LB 1, § 1.

2-122 Repealed. Laws 1983, LB 1, § 1.

2-123 Repealed. Laws 1983, LB 1, § 1.

2-124 Repealed. Laws 1983, LB 1, § 1.

2-125 Repealed. Laws 2002, LB 1236, § 23.

2-126 Repealed. Laws 2002, LB 1236, § 23.

2-127 Repealed. Laws 2002, LB 1236, § 23.

2-128 Repealed. Laws 2002, LB 1236, § 23.

2-129 Repealed. Laws 1983, LB 1, § 1.

2-130 Repealed. Laws 1983, LB 1, § 1.

2-131 Repealed. Laws 2009, LB 224, § 10.

ARTICLE 2
STATE AND COUNTY FAIRS

Cross References

County Horseracing Facility Bond Act, see sections 23-389 to 23-392.
Sales tax exemption, see section 77-2704.15.
School exhibits at county fairs, see section 79-709.

(a) MISCELLANEOUS

Section
2-201. Repealed. Laws 1997, LB 469, § 35.
2-202. Transferred to section 2-258.
2-203. Repealed. Laws 1997, LB 469, § 35.
2-203.01. Transferred to section 2-257.
2-203.02. Repealed. Laws 1997, LB 469, § 35.
2-203.03. Repealed. Laws 1997, LB 469, § 35.
2-203.04. Repealed. Laws 1997, LB 469, § 35.
2-203.05. Repealed. Laws 1997, LB 469, § 35.
2-203.06. Transferred to section 2-259.
2-204. Transferred to section 2-260.
2-205. Repealed. Laws 1997, LB 469, § 35.
2-206. Transferred to section 2-261.
2-207. Transferred to section 2-262.
2-208. Repealed. Laws 1997, LB 469, § 35.
2-209. Transferred to section 2-263.
2-210. Transferred to section 2-264.
2-211. Repealed. Laws 1997, LB 469, § 35.
2-212. Repealed. Laws 1997, LB 469, § 35.
2-213. Repealed. Laws 1997, LB 469, § 35.
2-214. Repealed. Laws 1997, LB 469, § 35.
2-215. Repealed. Laws 1997, LB 469, § 35.
2-216. Repealed. Laws 1997, LB 469, § 35.
2-217. Repealed. Laws 1997, LB 469, § 35.
2-218. Repealed. Laws 1997, LB 469, § 35.

(b) PROHIBITED ACTS

2-219. State, district, and county fairs; prohibited activities; penalty; exceptions; sale of liquor, when.
2-220. State, district, and county fairs; offenders; illegal devices; obstructions; penalties.

(c) CARNIVAL CONTRACT REQUIREMENTS

2-220.01. State and county fairs; carnival companies, booking agencies, and shows; contracts; security required.
2-220.02. State and county fairs; carnival companies, booking agencies, and shows; security; action for damages.

Section
2-220.03. State and county fairs; carnival companies, booking agencies, and shows; security; failure to execute and file; violation; penalty.
2-220.04. State and county fairs; carnival companies, booking agencies, and shows; cash deposit; certified check; return; when.

(d) COUNTY FAIR BOARDS

2-221. County fairs; county powers.
2-221.01. County fairs; joint fairs; permitted.
2-222. County fair; election to establish.
2-223. County fair; bonds; special tax.
2-224. County fair board; membership.
2-225. County fair board; officers; employees.
2-226. County fair board; expenses of members; compensation of secretary.
2-227. County fair board; rules and regulations; fair management; duties.
2-228. County fair board; report.
2-229. County fair; tax levy; amount; collection; budget statement.
2-229.01. County fair; additional tax levy; amount.
2-230. County fair; county aid; restriction.
2-231. County fair board; claims filed with county board; payment.
2-232. County fair; dissolution; sale of property.
2-233. County fair; dissolution; procedure.
2-234. County fair; dissolution; submission to voters.
2-235. County fair; dissolution; duty of county board.
2-236. County fair; dissolution; disposition of property.
2-237. County fair; dissolution; final report.
2-237.01. Reformation; procedure.
2-238. County fair board; compliance with Open Meetings Act and Records Management Act.
2-239. County fair board; budget; requirements.
2-240. County fair board; internal election; proxy vote prohibited.

(e) GENERAL PROVISIONS

2-241. Transferred to section 2-267.
2-242. Transferred to section 2-268.
2-243. Transferred to section 2-269.
2-244. Transferred to section 2-270.
2-245. Transferred to section 2-271.
2-246. Repealed. Laws 1997, LB 469, § 35.
2-247. Repealed. Laws 1997, LB 469, § 35.
2-248. Transferred to section 2-272.
2-249. Transferred to section 2-273.

(f) COUNTY AGRICULTURAL SOCIETY ACT

2-250. Act, how cited.
2-251. County agricultural societies; compliance with act required.
2-252. Formation; constitution; bylaws.
2-253. Annual meeting; notice; voting.
2-254. Organization of county agricultural society; petition.
2-255. Petition; signature verification; organizational meeting; notice.
2-256. Board of directors; officers; members.
2-257. Tax levy.
2-258. Use of tax money.
2-259. County fairgrounds; equipment purchase; additional tax levy.
2-260. Failure to hold fair; effect.
2-261. County agricultural society; budget; meetings; records.
2-262. County agricultural society; right of eminent domain; procedure.
2-263. County agricultural society; neglect of duties; cease to exist; effect.
2-264. County agricultural society; powers relating to real estate.
2-265. County agricultural society; dissolution; procedure.
2-266. County agricultural society; dissolution; effect.
2-266.01. County agricultural society; dissolution; reformation; procedure.

Section
2-267. County agricultural society; reinstatement authorized.
2-268. County agricultural society; reinstatement; certificate; contents; filing.
2-269. County agricultural society; reinstatement; effect.
2-270. County agricultural society; reinstatement; name change; when.
2-271. County agricultural society; reinstatement; reformation of board.
2-272. County agricultural society; reinstatement; certificate; recording; requirements; effect.
2-273. County agricultural society; reinstatement; effect.

(a) MISCELLANEOUS

2-201 Repealed. Laws 1997, LB 469, § 35.

2-202 Transferred to section 2-258.

2-203 Repealed. Laws 1997, LB 469, § 35.

2-203.01 Transferred to section 2-257.

2-203.02 Repealed. Laws 1997, LB 469, § 35.

2-203.03 Repealed. Laws 1997, LB 469, § 35.

2-203.04 Repealed. Laws 1997, LB 469, § 35.

2-203.05 Repealed. Laws 1997, LB 469, § 35.

2-203.06 Transferred to section 2-259.

2-204 Transferred to section 2-260.

2-205 Repealed. Laws 1997, LB 469, § 35.

2-206 Transferred to section 2-261.

2-207 Transferred to section 2-262.

2-208 Repealed. Laws 1997, LB 469, § 35.

2-209 Transferred to section 2-263.

2-210 Transferred to section 2-264.

2-211 Repealed. Laws 1997, LB 469, § 35.

2-212 Repealed. Laws 1997, LB 469, § 35.

2-213 Repealed. Laws 1997, LB 469, § 35.

2-214 Repealed. Laws 1997, LB 469, § 35.

2-215 Repealed. Laws 1997, LB 469, § 35.

2-216 Repealed. Laws 1997, LB 469, § 35.

2-217 Repealed. Laws 1997, LB 469, § 35.

2-218 Repealed. Laws 1997, LB 469, § 35.

(b) PROHIBITED ACTS

2-219 State, district, and county fairs; prohibited activities; penalty; exceptions; sale of liquor, when.

No person shall be permitted to exhibit or conduct indecent shows or dances or to engage in any gambling or other games of chance or horseracing, either inside the enclosure where any state fair or district or county agricultural society fair is being held or within forty rods thereof, during the time of holding such fairs. Nothing in this section shall be construed to prohibit wagering on the results of horseraces by the parimutuel or certificate method when conducted by licensees within the racetrack enclosure at licensed horserace meetings, to prohibit the operation of bingo games as provided in the Nebraska Bingo Act, to prohibit the conduct of lotteries pursuant to the Nebraska County and City Lottery Act, to prohibit the conduct of lotteries or raffles pursuant to the Nebraska Lottery and Raffle Act or the Nebraska Small Lottery and Raffle Act, to prohibit the sale of pickle cards pursuant to the Nebraska Pickle Card Lottery Act, or to prohibit the conduct of games of chance pursuant to the Nebraska Racetrack Gaming Act. Nothing in this section shall be construed to prohibit the sale of intoxicating liquors, wine, or beer by a person properly licensed pursuant to Chapter 53 on premises under the control of the Nebraska State Fair Board or any county agricultural society. Any person who violates this section shall be guilty of a Class V misdemeanor. The trial of speed of horses under direction of the society shall not be included in the term horseracing. Upon the filing of proof with the State Treasurer of a violation of this section inside the enclosure of such fair, the amount of money appropriated shall be withheld from any money appropriated for the ensuing year.

Source: Laws 1879, § 16, p. 401; Laws 1901, c. 2, § 2, p. 44; R.S.1913, § 13; C.S.1922, § 13; C.S.1929, § 2-208; Laws 1935, c. 173, § 16, p. 636; C.S.Supp.,1941, § 2-208; R.S.1943, § 2-219; Laws 1963, c. 4, § 2, p. 63; Laws 1969, c. 12, § 1, p. 150; Laws 1977, LB 40, § 2; Laws 1978, LB 386, § 1; Laws 1983, LB 213, § 1; Laws 1986, LB 1027, § 1; Laws 1992, LB 398, § 5; Laws 2000, LB 1086, § 1; Laws 2002, LB 1236, § 7; Laws 2021, LB371, § 1.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Racetrack Gaming Act, see section 9-1101.
Nebraska Small Lottery and Raffle Act, see section 9-501.

Amendment of this section in 1935 was made to show legislative intent that nothing therein should prohibit parimutuel wagering on horse races. State ex rel. Hunter v. The Araho, 137 Neb. 389, 289 N.W. 545 (1940).

Prior to amendment of Constitution of Nebraska in 1934, parimutuel system of betting on horse races was not authorized by this section. State ex rel. Sorensen v. Ak-Sar-Ben Exposition Co., 121 Neb. 248, 236 N.W. 736 (1931), affirming 118 Neb. 851, 226 N.W. 705 (1929).

2-220 State, district, and county fairs; offenders; illegal devices; obstructions; penalties.

The president of any district or county agricultural society, a marshal, or any police officer appointed by the Nebraska State Fair Board shall be empowered to arrest, or cause to be arrested, any person or persons engaged in violating section 2-219. He or she may seize, or cause to be seized, all intoxicating

liquors, wine, or beer, of any kind, with the vessels containing the same, and all tools or other implements used in any gambling or other game of chance, and may remove, or cause to be removed, all shows, swings, booths, tents, carriages, wagons, vessels, boats, or any other nuisance that may obstruct, or cause to be obstructed, by collecting persons around or otherwise, any thoroughfare leading to the enclosure in which such fair is being held. Any person owning or occupying any of such causes of obstruction, who may refuse or fail to remove such obstruction or nuisance when ordered to do so by the president or officer, shall be guilty of a Class V misdemeanor.

Source: Laws 1879, § 18, p. 402; R.S.1913, § 14; C.S.1922, § 14; C.S. 1929, § 2-209; R.S.1943, § 2-220; Laws 1972, LB 1032, § 91; Laws 1977, LB 40, § 3; Laws 2002, LB 1236, § 8.

(c) CARNIVAL CONTRACT REQUIREMENTS

2-220.01 State and county fairs; carnival companies, booking agencies, and shows; contracts; security required.

All carnival companies, booking agencies, or shows that enter into any contract with the Nebraska State Fair Board, any county agricultural society, or any county fair board may be required, within thirty days after the execution of the contract, to either deposit cash or a certified check payable to the State of Nebraska, the county agricultural society, or the county fair board, as appropriate, or execute and file with the chairperson of the Nebraska State Fair Board, the county agricultural society, or the county fair board, as appropriate, a good and sufficient bond with a corporate surety. The Nebraska State Fair Board, the county agricultural society, or the county fair board, as appropriate, shall determine the amount of the deposit or bond required. Such security shall run to the State of Nebraska, the county agricultural society, or the county fair board, as appropriate, on the condition that the carnival company, booking agency, or show will faithfully perform any contract entered into by it during a period of one year from the date of execution of the contract and shall, at the time of the filing of the cash, certified check, or bond, file a sworn statement giving the names and addresses of the owners of the carnival company, booking agency, or show. Further cash, certified check, or bond shall not be required on signing any subsequent contract during the year such bond is in force.

Source: Laws 1949, c. 3, § 1, p. 59; Laws 1951, c. 5, § 1, p. 67; Laws 1992, LB 398, § 6; Laws 1997, LB 469, § 25; Laws 2002, LB 1236, § 9.

2-220.02 State and county fairs; carnival companies, booking agencies, and shows; security; action for damages.

The Nebraska State Fair Board, county agricultural society, or county fair board may bring suit upon the deposit or bond required by section 2-220.01 in the county where such contract was to have been performed to recover any damages sustained by reason of breach of contract or failure to carry out the terms thereof.

Source: Laws 1949, c. 3, § 2, p. 59; Laws 1951, c. 5, § 2, p. 68; Laws 1963, c. 4, § 3, p. 64; Laws 1997, LB 469, § 26; Laws 2002, LB 1236, § 10.

2-220.03 State and county fairs; carnival companies, booking agencies, and shows; security; failure to execute and file; violation; penalty.

Each officer, owner, or manager of any carnival company, booking agency, or show who willfully fails to cause cash, certified check, or bond to be executed and filed as required by section 2-220.01, or who willfully fails to cause the receipt or certificate to be filed as provided by section 2-220.01, shall be guilty of a Class IV misdemeanor.

Source: Laws 1949, c. 3, § 3, p. 60; Laws 1951, c. 5, § 3, p. 68; Laws 1977, LB 40, § 4.

2-220.04 State and county fairs; carnival companies, booking agencies, and shows; cash deposit; certified check; return; when.

If cash or certified check is deposited with the Nebraska State Fair Board, a county agricultural society, or a county fair board under section 2-220.01, such deposit shall be returned to the person or company making the deposit within sixty days after the completion of the last performance of the contract unless a written, signed, and verified complaint has been filed within such time.

Source: Laws 1951, c. 5, § 4, p. 68; Laws 1997, LB 469, § 27; Laws 2002, LB 1236, § 11.

(d) COUNTY FAIR BOARDS

2-221 County fairs; county powers.

Counties in the State of Nebraska are hereby authorized to establish and maintain county fair boards, to purchase, hold, and improve real estate for the purpose of holding county fairs, to convey the same, to levy and collect taxes for such purposes, and to do all other things necessary for the proper management of such county fairs. Property acquired for such purpose by an elected county fair board shall be held in the name of the (name of county) County Fair.

Source: Laws 1917, c. 168, § 1, p. 377; C.S.1922, § 57; C.S.1929, § 2-210; R.S.1943, § 2-221; Laws 1999, LB 437, § 1.

A county which has not accepted in the manner prescribed statute authorizing it to establish and maintain county fair is without authority to levy taxes therefor. Richardson v. Kildow, 116 Neb. 648, 218 N.W. 429 (1928).

Under this section, counties may establish and maintain county fairs by going through certain procedure and by vote of the people as provided in subsequent sections. Wilson v. Thayer County Agricultural Society, 115 Neb. 579, 213 N.W. 966 (1927), 52 A.L.R. 1393 (1927).

2-221.01 County fairs; joint fairs; permitted.

The boards of county agricultural societies and county fair boards of two or more adjoining counties may hold joint fairs at one location. Such authority shall not disturb their right to purchase, hold, and improve real estate for that purpose, to convey the same, to levy and collect taxes for such purposes, and to do all things necessary for the proper management of such joint county fairs.

Source: Laws 1965, c. 5, § 1, p. 75; Laws 1999, LB 437, § 2.

2-222 County fair; election to establish.

Any county may accept the provisions of and proceed under sections 2-221 to 2-231 by resolution duly adopted by the county board. The resolution shall

indicate whether the membership of the county fair board to be established under such sections would be elected or appointed pursuant to section 2-224. If, after the adoption of a resolution for such purpose, fifteen percent of the registered voters of the county file with the county board a petition requesting that the acceptance of the provisions of such sections be submitted to the voters of the county, the county board shall submit the same to a vote of the people in like manner as the question of voting courthouse bonds may be submitted. During the time such question is pending for the vote of the people, no further proceedings shall be had for the establishment of a county fair board. If ten percent of the registered voters of the county file a petition with the county board asking that the question of the acceptance of the provisions of such sections and specifying whether the membership of the county fair board to be established under such sections would be elected or appointed pursuant to section 2-224 be submitted to a vote of the people, the county board shall submit such question to the voters in like manner as the question of voting courthouse bonds may be submitted. If a majority of the votes cast upon the question are in favor of such proposition, the county board shall immediately proceed to establish a county fair board.

Source: Laws 1917, c. 168, § 2, p. 377; C.S.1922, § 58; C.S.1929, § 2-211; R.S.1943, § 2-222; Laws 1999, LB 437, § 3.

Cross References

Issuance of courthouse bonds, see section 23-120.

Under this section, two methods are provided by which a county may accept the provisions of the County Fair Act, and when proceeding under the second method, publication of notice required herein is mandatory. Richardson v. Kildow, 116 Neb. 648, 218 N.W. 429 (1928).

2-223 County fair; bonds; special tax.

In any county accepting the provisions of sections 2-221 to 2-231, an elected county fair board or the county board for an appointed county fair board may propose the issuance of bonds or levy a special tax for the purchase and improvement of real estate for county fair purposes in like manner as for the building of a courthouse.

Source: Laws 1917, c. 168, § 4, p. 378; C.S.1922, § 60; C.S.1929, § 2-213; R.S.1943, § 2-223; Laws 1999, LB 437, § 4.

Cross References

Issuance of courthouse bonds, see section 23-120.

Levy of special tax under this section cannot be made where county is not authorized to carry on a county fair. Richardson v. Kildow, 116 Neb. 648, 218 N.W. 429 (1928).

2-224 County fair board; membership.

(1) If the membership of the county fair board to be established under sections 2-221 to 2-231 is to be appointed, the county board shall appoint from the residents of the county a county fair board, consisting of nine members who shall in the first instance be appointed as follows: Three for a term of one year, three for a term of two years, and three for a term of three years. Thereafter there shall be appointed each year three members for a term of three years. Vacancies occurring upon such board shall be filled by the county board. No person while a member of the county board shall be a member of the county fair board, nor shall more than two members of the county fair board be

residents of the same township, precinct, or incorporated city or village at the time of appointment. An appointed county fair board is a division of the county.

(2)(a) If the membership of the county fair board to be established under sections 2-221 to 2-231 is to be elected, the procedures of this subsection shall be followed.

(b) The county board shall by resolution provide for the election of a nine-member county fair board at a public meeting. The resolution shall designate a time and place for the meeting and shall provide for a notice of the meeting to be published twice in a newspaper of general circulation in the county, the last publication to appear at least five days prior to the meeting. The notice shall be addressed to all registered voters of the county. The registered voters present at the meeting shall elect by majority vote persons who reside in the county as members of the county fair board. The election commissioner or county clerk shall administer the initial election.

(c) At the first meeting of the county fair board, the member receiving the highest number of votes shall preside until officers have been selected as provided in section 2-225. The three persons receiving the highest number of votes shall serve for terms of three years. The three persons receiving the next highest number of votes shall serve for terms of two years. The three persons receiving the next highest number of votes shall serve for terms of one year. As the terms expire, their successors shall be elected for three-year terms at an annual meeting of the registered voters of the county held for that purpose and shall hold office until their successors have been elected.

(d) The county fair board may increase its membership by up to six additional members after the initial election and organization by adoption of a resolution stating the number of additional members and designating the applicable election cycles. The new members shall be elected for three-year terms beginning as provided in the resolution.

(e) If any person offering to vote at any meeting is challenged as unqualified by any voter of such county, the person administering the election or presiding at the meeting shall explain to the person challenged the qualifications of a registered voter. If such person states that he or she is qualified and the challenge is not withdrawn, the person shall take an oath, reduced to writing, in substance as follows: ''I do solemnly swear (or affirm) that I am a citizen of the United States, that I am of the constitutionally prescribed age of an elector or upwards, that I am domiciled in this county, and that I am registered to vote in this county, so help me God.'' Every person taking such oath and signing his or her name to it shall be permitted to vote on all questions proposed at the meeting.

(f) Notice of the annual meeting shall be published once in a newspaper of general circulation in the county, such publication to appear at least five days prior to the meeting. A vacancy occurring due to resignation, death, or removal of a member because of malfeasance or nonfeasance shall be elected by the remaining board members for the unexpired term.

(g) An elected county fair board constitutes a body politic and corporate and is a political subdivision of the state.

Source: Laws 1917, c. 168, § 5, p. 378; C.S.1922, § 61; C.S.1929, § 2-214; R.S.1943, § 2-224; Laws 1999, LB 437, § 5.

2-225 County fair board; officers; employees.

The county fair board shall select a president, vice president, and treasurer from its own number. The county fair board shall select a county fair secretary who may be a member of the county fair board or may be selected from among other persons. The county fair board may employ such persons as it deems necessary for the proper management of the fair and shall have complete charge and supervision of the real estate and other property. All actions of an elected county fair board shall be taken in the name of the (name of county) County Fair. Actions by an appointed county fair board shall be taken in the name of the county.

Source: Laws 1917, c. 168, § 6, p. 378; C.S.1922, § 62; C.S.1929, § 2-215; R.S.1943, § 2-225; Laws 1999, LB 437, § 6.

2-226 County fair board; expenses of members; compensation of secretary.

The members of the county fair board, other than the secretary if he or she is selected from the board members, shall receive no pay for their services but shall be paid all necessary expenses. The secretary shall receive such salary payable at such times as the county fair board may provide.

Source: Laws 1917, c. 168, § 7, p. 378; C.S.1922, § 63; C.S.1929, § 2-216; R.S.1943, § 2-226; Laws 1999, LB 437, § 7.

2-227 County fair board; rules and regulations; fair management; duties.

The county fair board may adopt from time to time, and when adopted shall publish, such bylaws, rules and regulations as it may deem necessary, and shall publish a premium list, and shall do all things necessary and proper for the successful management of the fair.

Source: Laws 1917, c. 168, § 8, p. 379; C.S.1922, § 64; C.S.1929, § 2-217; R.S.1943, § 2-227.

2-228 County fair board; report.

If the county fair board is appointed by the county board, the county fair board shall report in writing to the county board as directed by the county board showing a complete statement and report of its actions. The report shall be kept in the office of the county clerk and shall be open to public inspection.

Source: Laws 1917, c. 168, § 9, p. 379; C.S.1922, § 65; C.S.1929, § 2-218; R.S.1943, § 2-228; Laws 1999, LB 437, § 8.

2-229 County fair; tax levy; amount; collection; budget statement.

(1) During the month of November each year, each appointed county fair board shall prepare and submit to the county board an estimate, itemized as far as possible, of the amount of money which is necessary to be collected by taxation for the support and management of the fair for the ensuing year. The county board may, subject to section 77-3442, levy such amount of taxes as may be necessary but not to exceed the amount actually required for county fair purposes, including capital construction on and renovation, repair, improvement, and maintenance of county fairgrounds. Such tax shall be levied and collected in like manner as general taxes for the county.

(2) Each elected county fair board shall annually prepare a budget statement setting forth the amount of money necessary for the operation of the county fair board. On or before August 1, the president and the secretary of the board shall

certify the amount of tax to be levied upon all the taxable property within the county for the operation of the county fair board for the ensuing year subject to allocation under section 77-3443. The tax shall be assessed, levied, and collected as other county taxes. The proceeds of such tax shall be paid by the county treasurer to the treasurer of the county fair board. The county fair board may act to exceed the allocation provided by the county board under section 77-3444, but if the county fair board acts to exceed the allocation, the total levy shall not exceed three and one-half cents per one hundred dollars of valuation.

Source: Laws 1917, c. 168, § 10, p. 379; C.S.1922, § 66; C.S.1929, § 2-219; R.S.1943, § 2-229; Laws 1992, LB 398, § 7; Laws 1996, LB 1085, § 6; Laws 1996, LB 1114, § 10; Laws 1999, LB 437, § 9.

2-229.01 County fair; additional tax levy; amount.

Pursuant to a request by an elected county fair board, the county board of any county may levy an additional levy of three and five-tenths cents on each one hundred dollars of taxable valuation, or any part thereof, for the purpose of capital construction on and renovation, repair, improvement, and maintenance of the county fairgrounds, over and above the operational tax levy authorized in section 2-229. Such levy shall not exceed the amount actually required for such work. In counties having a population of more than sixty thousand inhabitants but not more than three hundred fifty thousand inhabitants and also containing a city of the primary class, such additional levy or any part thereof may be levied for the purpose of capital construction on and renovation, repair, improvement, and maintenance of the county fairgrounds. The additional levy shall be subject to section 77-3443.

Source: Laws 1999, LB 437, § 18.

2-230 County fair; county aid; restriction.

Whenever any county shall have established a county fair under the provisions of sections 2-221 to 2-231, no money shall be paid by the county to any other society or association maintaining a fair within the county.

Source: Laws 1917, c. 168, § 11, p. 379; C.S.1922, § 67; C.S.1929, § 2-220; R.S.1943, § 2-230.

2-231 County fair board; claims filed with county board; payment.

Each appointed county fair board shall cause to be filed with the county board from time to time all claims to be paid from money raised by taxation, and such claims shall be allowed and paid in like manner as general claims against the county.

Source: Laws 1917, c. 168, § 12, p. 379; C.S.1922, § 68; C.S.1929, § 2-221; R.S.1943, § 2-231; Laws 1999, LB 437, § 10.

2-232 County fair; dissolution; sale of property.

Any county in this state which has established a county fair board pursuant to sections 2-221 to 2-231, or which has taken any steps or made any expenditures or investments to establish and maintain a county fair under the terms and provisions of such sections, may dissolve such county fair board and may

dispose in whole or in part of the property, real and personal, purchased by the county or county fair board for the purpose of such county fair.

Source: Laws 1927, c. 51, § 1, p. 205; C.S.1929, § 2-222; R.S.1943, § 2-232; Laws 1999, LB 437, § 11.

2-233 County fair; dissolution; procedure.

Whenever it is deemed expedient to dissolve any county fair board established in any county with less than one hundred twenty-five thousand people in this state under sections 2-221 to 2-231 as determined by (1) the county board upon its own motion in counties with appointed county fair boards, (2) the county fair board upon its own motion in counties with elected county fair boards, or (3) petition of not less than twenty-five percent of the registered voters of the county as shown by the list of registered voters of the last general election, the county board shall submit to the people of the county, to be voted upon at a general or special election called by the county board for that purpose, a proposition to dissolve such county fair board. The question of dissolving any such county fair shall not be submitted until the expiration of three years after the vote to establish such fair has been taken.

Source: Laws 1927, c. 51, § 2, p. 205; C.S.1929, § 2-223; R.S.1943, § 2-233; Laws 1997, LB 764, § 1; Laws 1999, LB 437, § 12.

2-234 County fair; dissolution; submission to voters.

The manner of submitting such proposition shall be governed by the provisions of section 23-126.

Source: Laws 1927, c. 51, § 3, p. 206; C.S.1929, § 2-224; R.S.1943, § 2-234.

2-235 County fair; dissolution; duty of county board.

(1) Upon being satisfied that sections 2-232 to 2-234 have been substantially complied with and that sixty percent of all the votes cast on the proposition are in favor of the dissolution, the county board shall cause such proposition and all the proceedings had thereon to be entered upon the records of the county board and shall notify the county fair board of the results of the election.

(2) Upon receiving such notice, an elected county fair board shall transfer by deed all real property and by bill of sale all personal property to the county for disposition pursuant to section 2-236.

Source: Laws 1927, c. 51, § 4, p. 206; C.S.1929, § 2-225; R.S.1943, § 2-235; Laws 1999, LB 437, § 13.

2-236 County fair; dissolution; disposition of property.

Upon the dissolution of such appointed county fair board, all the property, both real and personal, which had been purchased by such county or county fair board or transferred to the county board under subsection (2) of section 2-235 for such county fair purposes may be sold or disposed of by the county board in whole or in part and from time to time in the same manner as other properties of the county may lawfully be sold or disposed of. If any of such

property is appropriate for any other lawful use or purpose of such county, such property may be held for or transferred to the county.

Source: Laws 1927, c. 51, § 5, p. 206; C.S.1929, § 2-226; R.S.1943, § 2-236; Laws 1999, LB 437, § 14.

2-237 County fair; dissolution; final report.

Upon the dissolution of any such county fair board in the manner provided in sections 2-232 to 2-236, the county fair board in such county shall cease to exist as an official body of such county, except for the purpose of making its final report and accounting and returning its records. An appointed county fair board shall make its report and accounting and return its records to the county board. An elected county fair board shall publish its final report and accounting one time in a newspaper of general circulation in the county and shall file such report and accounting and its records with the county clerk for inspection by the public.

Source: Laws 1927, c. 51, § 6, p. 206; C.S.1929, § 2-227; R.S.1943, § 2-237; Laws 1999, LB 437, § 15.

2-237.01 Reformation; procedure.

(1) An elected county fair board may be dissolved and reformed as either a county agricultural society or an appointed county fair board as provided in this section. An appointed county fair board may be dissolved and reformed as either a county agricultural society or an elected county fair board as provided in this section.

(2) An elected county fair board may by resolution request the county board to place the question of reformation of the county fair board before the registered voters of the county. The county board may on its own resolution place the question of reformation of an appointed county fair board before the registered voters of the county.

(3) Upon the adoption of a resolution under subsection (2) of this section, the county board shall call a general or special election on the question of reformation. If a majority of those voting on the question vote for reformation, the county board or the county fair board shall proceed with the statutory requirements to form the new entity.

(4) Any contract, action, rule, regulation, resolution, or other matter made, done, or performed by and within the scope of the previous board's authority shall remain in force and effect. Any real or personal property, rights, or credits and any duty, debt, or liability of the previous board shall automatically transfer to the new entity on the date of the entity's first meeting. Upon such transfer, the previous board shall automatically be dissolved. The previous board shall file notice of transfers and dissolutions with the register of deeds.

Source: Laws 1999, LB 437, § 19.

2-238 County fair board; compliance with Open Meetings Act and Records Management Act.

County fair boards established under sections 2-221 to 2-231 shall comply with the Open Meetings Act and the Records Management Act.

Source: Laws 1992, LB 398, § 1; Laws 1997, LB 469, § 28; Laws 1999, LB 437, § 16; Laws 2004, LB 821, § 2.

Cross References

Open Meetings Act, see section 84-1407.
Records Management Act, see section 84-1220.

2-239 County fair board; budget; requirements.

(1) The budget of each appointed county fair board shall be subject to annual review, audit, and approval by the county board of the county in which such fair board is located.

(2) The budget of each elected county fair board shall be subject to the Nebraska Budget Act.

Source: Laws 1992, LB 398, § 2; Laws 1997, LB 469, § 29; Laws 1999, LB 437, § 17.

Cross References

Nebraska Budget Act, see section 13-501.

2-240 County fair board; internal election; proxy vote prohibited.

The vote of a member of a county fair board for any election held within such board shall be cast by the member personally and shall not be cast by a proxy vote.

Source: Laws 1992, LB 398, § 3; Laws 1997, LB 469, § 30.

(e) GENERAL PROVISIONS

2-241 Transferred to section 2-267.

2-242 Transferred to section 2-268.

2-243 Transferred to section 2-269.

2-244 Transferred to section 2-270.

2-245 Transferred to section 2-271.

2-246 Repealed. Laws 1997, LB 469, § 35.

2-247 Repealed. Laws 1997, LB 469, § 35.

2-248 Transferred to section 2-272.

2-249 Transferred to section 2-273.

(f) COUNTY AGRICULTURAL SOCIETY ACT

2-250 Act, how cited.

Sections 2-250 to 2-273 shall be known and may be cited as the County Agricultural Society Act.

Source: Laws 1997, LB 469, § 1; Laws 1999, LB 437, § 20.

2-251 County agricultural societies; compliance with act required.

All county agricultural societies existing, organized, or reinstated on or after January 1, 1998, shall comply with the County Agricultural Society Act and shall annually offer and award premiums and perform such other acts which

such society deems will be for the improvement of agriculture, industry, homes, and communities of the state. For purposes of the act, county agricultural society means all county agricultural societies existing, organized, or reinstated on or after January 1, 1998.

Source: Laws 1997, LB 469, § 2.

2-252 Formation; constitution; bylaws.

A county agricultural society shall adopt a constitution and bylaws and may, upon approval of its board of directors, file articles of incorporation with the Secretary of State pursuant to the Nebraska Nonprofit Corporation Act. Any agricultural society forming itself as a nonprofit corporation shall incorporate as a public benefit corporation as defined in section 21-1914.

Source: Laws 1997, LB 469, § 3.

Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.

2-253 Annual meeting; notice; voting.

A county agricultural society shall hold an annual meeting open to all registered voters of the county for the purpose of electing a board of directors and conducting any other business of the county agricultural society. Only registered voters of the county are eligible to participate and vote at the annual meeting of the county agricultural society. The board of directors of the county agricultural society shall give notice of the annual meeting in a newspaper of general circulation within the county once at least five days before the scheduled annual meeting. The notice shall state the time and place of the annual meeting and that all registered voters of the county are eligible to participate and vote at the annual meeting. The vote for any election held in connection with the county agricultural society shall be cast personally and not by proxy vote. At the annual meeting of the county agricultural society, all questions upon motions made at the annual meeting shall be determined by a majority of the registered voters voting and the presiding officer shall ascertain and declare the result of the votes upon each question. If the result of a vote is questioned, the presiding officer shall make the vote certain by recount. If any person offering to vote at the annual meeting is challenged as an unqualified voter, the presiding officer shall explain to the person challenged the qualifications of a registered voter. If such person states that he or she is qualified and the challenge is not withdrawn, the person shall take an oath, reduced to writing, in substance as follows: ''I do solemnly swear (or affirm) that I am a citizen of the United States, that I am of the constitutionally prescribed age of an elector or upwards, that I am domiciled in this county, and that I am registered to vote in this county, so help me God.'' Every person taking such oath and signing his or her name to it shall be permitted to vote on all questions proposed at the meeting.

Source: Laws 1997, LB 469, § 4; Laws 1999, LB 437, § 22.

Cross References

False swearing, see section 32-1508.
Illegal voting, see section 32-1531.

2-254 Organization of county agricultural society; petition.

Subject to sections 2-267 to 2-273, the registered voters of a county may petition the county board to organize a county agricultural society in a county where a county agricultural society has not already been organized. The petition shall be signed by registered voters of the county equal in number to fifteen percent of the whole number of registered voters of the county who cast votes for Governor at the statewide general election next preceding the submission of the petition to the county board. The petition shall be in the form required by section 32-628 and the Secretary of State shall provide such forms upon request.

Source: Laws 1997, LB 469, § 5.

2-255 Petition; signature verification; organizational meeting; notice.

Upon receipt of a petition to create a county agricultural society, the county board shall have the signatures verified by the election commissioner or county clerk pursuant to section 32-631. The election commissioner or county clerk shall return the verified petition within fifteen days after receipt of the petition from the county board. If the number of signatures required under section 2-254 are verified, the county board shall declare the petition approved at the next regularly scheduled meeting following the submission of the petition by the petitioners to the county board. If the petition is approved, the county board shall schedule an organizational meeting for the county agricultural society and shall give notice of the organizational meeting in a newspaper of general circulation within the county once each week for three weeks before the scheduled organizational meeting. The notice shall state the time and place of the organizational meeting and that all registered voters of the county are eligible to participate and vote at the organizational meeting. At the organizational meeting, the registered voters present shall, by majority vote, (1) determine the size of the board of directors for the county agricultural society, an odd number not less than five and not larger than nineteen, and (2) elect the board members.

Source: Laws 1997, LB 469, § 6.

2-256 Board of directors; officers; members.

(1) The board of directors shall annually elect from its membership a chairperson and such other officers as may be necessary. The term of office for members of the board shall be for three years, except that the term of the members of the board first taking office shall be for one, two, or three years as determined by lot.

(2) The bylaws adopted by a county agricultural society shall state whether the board of directors of the county agricultural society will nominate candidates for membership on the board from districts or from the county at large. The members of the board shall be elected by the registered voters of the entire county whether the candidates are nominated from districts or from the county at large. If nominating districts are used, the board of directors shall divide the county into districts of substantially equal population. Such districts shall be consecutively numbered. The boundaries and numbering of such districts shall be designated at least three months prior to the annual meeting.

(3) If the county agricultural society replaces an existing county fair board as provided in section 2-237.01, the county fair board shall remain in existence until the county agricultural society has its first annual meeting. After the first

annual meeting of the county agricultural society, any existing county fair board shall cease to exist.

Source: Laws 1997, LB 469, § 7; Laws 1999, LB 437, § 23.

2-257 Tax levy.

(1) The county board may, at the time other levies and assessments for taxation are made and subject to section 77-3443, levy a tax upon all of the taxable property within the county for the operation of the county agricultural society. The tax shall be assessed, levied, and collected as other county taxes. The proceeds of such tax shall be paid by the county treasurer to the treasurer of the board of directors of such county agricultural society on or before the fifteenth day of each month or more frequently as provided in section 77-1759.

(2) The county agricultural society may act to exceed the allocation provided by the county board under section 77-3444, but if the county agricultural society acts to exceed the allocation, the total levy shall not exceed three and one-half cents per one hundred dollars of valuation.

Source: Laws 1921, c. 5, § 1, p. 66; C.S.1922, § 6; Laws 1925, c. 10, § 1, p. 77; Laws 1927, c. 13, § 1, p. 96; Laws 1929, c. 5, § 1, p. 70; C.S.1929, § 2-201; R.S.1943, § 2-203; Laws 1949, c. 4, § 1(2), p. 60; Laws 1969, c. 11, § 3, p. 148; Laws 1975, LB 378, § 2; Laws 1979, LB 187, § 3; Laws 1992, LB 719A, § 2; Laws 1996, LB 1085, § 3; Laws 1996, LB 1114, § 7; Laws 1997, LB 269, § 2; R.S.Supp.,1996, § 2-203.01; Laws 1997, LB 469, § 8; Laws 2007, LB334, § 1.

2-258 Use of tax money.

The money raised by the operational tax levy authorized in section 2-257 shall be used for the purpose of paying premiums and for permanent improvements for such fair, for the purpose of purchasing the necessary fair supplies, advertising, and the paying of necessary labor in connection therewith, and for other necessary expenses for the operation of the fair. In the county in which the Nebraska State Fair is located, the money so raised may be used for permanent improvements on the state and county fairgrounds or for leasing, contracting for, or in any manner acquiring use of fairground facilities for such fairs.

Source: Laws 1921, c. 5, § 1, p. 66; C.S.1922, § 6; Laws 1925, c. 10, § 1, p. 77; Laws 1927, c. 13, § 1, p. 96; Laws 1929, c. 5, § 1, p. 70; C.S.1929, § 2-201; R.S.1943, § 2-202; Laws 1977, LB 484, § 1; R.S.1943, (1991), § 2-202; Laws 1997, LB 469, § 9; Laws 2008, LB1116, § 7.

2-259 County fairgrounds; equipment purchase; additional tax levy.

Pursuant to a request by a county agricultural society, the county board of any county may levy an additional levy of three and five-tenths cents on each one hundred dollars of taxable valuation, or any part thereof, for the purpose of acquiring an interest in real property to comprise a portion or all of the county fairgrounds, for the purpose of capital construction on and renovation, repair, improvement, and maintenance of the county fairgrounds, over and above the operational tax levy authorized in section 2-257, or for the purpose of purchas-

ing equipment. Such levy shall not exceed the amount actually required for such acquisition or work and shall be subject to section 77-3443.

Source: Laws 1969, c. 11, § 7, p. 149; Laws 1977, LB 484, § 2; Laws 1979, LB 187, § 7; Laws 1988, LB 977, § 1; Laws 1992, LB 398, § 4; Laws 1992, LB 719A, § 4; R.S.Supp.,1996, § 2-203.06; Laws 1997, LB 469, § 10; Laws 1999, LB 437, § 24; Laws 2000, LB 1190, § 1; Laws 2014, LB597, § 1.

2-260 Failure to hold fair; effect.

If an existing county agricultural society fails to hold a fair for at least three successive days, no money so levied for that year shall be paid to the use of such levy, but the same shall be paid into the general fund of the county and expended as other funds therein. Such money shall be paid by the county treasurer to the board of directors of such county agricultural society only after a sworn statement has been filed with the county clerk of such county, which statement shall be signed by the chairperson of the county agricultural society and shall set out when and where such county fair is to be held.

Source: Laws 1881, c. 1, § 1, p. 64; Laws 1889, c. 74, § 1, p. 535; Laws 1901, c. 2, § 1, p. 44; Laws 1905, c. 2, § 1, p. 53; Laws 1913, c. 165, § 1, p. 509; R.S.1913, § 6; Laws 1915, c. 7, § 1, p. 56; Laws 1917, c. 63, § 1, p. 164; Laws 1921, c. 5, § 1, p. 67; C.S.1922, § 6; Laws 1925, c. 10, § 1, p. 78; Laws 1927, c. 13, § 1, p. 97; Laws 1929, c. 5, § 1, p. 72; C.S.1929, § 2-201; R.S.1943, § 2-204; R.S.1943, (1991), § 2-204; Laws 1997, LB 469, § 11.

2-261 County agricultural society; budget; meetings; records.

(1) County agricultural societies are subject to the Nebraska Budget Act. County agricultural societies shall comply with the Open Meetings Act and the Records Management Act.

(2) The budget of each county agricultural society is subject to annual review, audit, and approval by the county board of the county in which such society is located.

Source: Laws 1879, § 12, p. 400; R.S.1913, § 8; C.S.1922, § 8; C.S.1929, § 2-203; R.S.1943, § 2-206; Laws 1996, LB 299, § 8; R.S.Supp.,1996, § 2-206; Laws 1997, LB 469, § 12; Laws 2004, LB 821, § 3.

Cross References

Nebraska Budget Act, see section 13-501.
Open Meetings Act, see section 84-1407.
Records Management Act, see section 84-1220.

Nebraska State Board of Agriculture is still authorized to adopt rules and regulations which county agricultural societies must comply with and obey to entitle them to financial support from county board. State ex rel. Otoe County Agr. Assn. v. Wallen, 117 Neb. 397, 220 N.W. 688 (1928).

2-262 County agricultural society; right of eminent domain; procedure.

Each county agricultural society may acquire, take, hold, and appropriate so much real estate as may be necessary for the purpose of holding county fairs. No appropriation of private property for the use of such society shall be made until full and just compensation therefor be first made to the owner thereof, and not more than forty acres shall be taken without the consent of the owner.

The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1879, § 13, p. 400; R.S.1913, § 9; Laws 1915, c. 9, § 1, p. 57; C.S.1922, § 9; C.S.1929, § 2-204; R.S.1943, § 2-207; Laws 1951, c. 101, § 25, p. 458; R.S.1943, (1991), § 2-207; Laws 1997, LB 469, § 13.

Section quoted in tracing history of act. Owen v. Main, 92 Neb. 258, 138 N.W. 154 (1912).

2-263 County agricultural society; neglect of duties; cease to exist; effect.

In all cases when county agricultural societies neglect for two years to hold a county fair or cease to exist, in any county where payments have been made for real estate or improvements upon such real estate for the use of a county agricultural society, then all such real estate and improvements shall vest in fee simple in the county, and the district court of the county, upon proof thereof, shall, upon petition of the county board, make a proper decree vesting the title of such property in the county.

Source: Laws 1879, § 15, p. 401; Laws 1905, c. 1, § 1, p. 51; R.S.1913, § 11; C.S.1922, § 11; C.S.1929, § 2-206; Laws 1931, c. 2, § 1, p. 58; C.S.Supp.,1941, § 2-206; R.S.1943, § 2-209; R.S.1943, (1991), § 2-209; Laws 1997, LB 469, § 14.

Upon dissolution of society under this section, only the real estate purchased and improvements made by money paid out of county treasury vest in the county. Owen v. Main, 92 Neb. 258, 138 N.W. 154 (1912).

2-264 County agricultural society; powers relating to real estate.

With the consent of the county board of the county within which the real estate is located, a county agricultural society may exchange its real estate and improvements for other real estate and improvements or may lease or sell its real estate and improvements and may make, execute, deliver, and accept all proper or necessary conveyances relating to such exchange, lease, sale, or purchase. County board approval is not required for leases having a term of less than ninety days. The right of the county to real estate and improvements as provided in section 2-263 shall extend to real estate, improvements, or proceeds derived from any exchange, sale, or purchase of real estate or improvements acquired with the additional tax levy provided in section 2-259.

A county agricultural society may purchase real estate and improve the same. The payment of the purchase price may be secured by mortgage or deed of trust.

Source: Laws 1879, § 15, p. 401; Laws 1905, c. 1, § 1, p. 52; R.S.1913, § 11; C.S.1922, § 11; C.S.1929, § 2-206; Laws 1931, c. 2, § 1, p. 58; C.S.Supp.,1941, § 2-206; R.S.1943, § 2-210; Laws 1967, c. 3, § 1, p. 71; R.S.1943, (1991), § 2-210; Laws 1997, LB 469, § 15; Laws 2014, LB597, § 2.

2-265 County agricultural society; dissolution; procedure.

(1) To dissolve a county agricultural society established or sought to be established under the County Agricultural Society Act, the county board shall, upon petition of not less than fifteen percent of the registered voters of the county as shown by the poll books of the last previous general election, submit to the people of the county to be voted upon at a general or special election

called by the county board for that purpose, a proposition to dissolve such county agricultural society. Such proposition shall be submitted as provided in section 23-126.

(2) If a majority of all the votes cast on the proposition are in favor of the dissolution, the county board shall cause the record of such proposition and all the proceedings thereon to be entered upon the records of the county agricultural society and shall make an order that such county agricultural society is dissolved.

Source: Laws 1997, LB 469, § 16.

2-266 County agricultural society; dissolution; effect.

Upon the dissolution and the abandonment under section 2-265:

(1) All the real and personal property which has been purchased for or by the county agricultural society may be sold or disposed of by the county board in whole or in part and from time to time in the same manner as other properties of the county may lawfully be sold or disposed of. If any of such property is appropriate or available for any other lawful use or purpose of such county, the county board may appropriate, use, and apply any of such property to any such other lawful use or purpose; and

(2) Such county agricultural society shall cease to exist as an official body of such county except for the purpose of making its final report and accounting and returning its records to the county board.

Source: Laws 1997, LB 469, § 17.

2-266.01 County agricultural society; dissolution; reformation; procedure.

(1) A county agricultural society may be dissolved and reformed as either an elected or appointed county fair board as provided in this section in addition to any other procedure for dissolution provided by law.

(2) A county agricultural society board may by resolution request the county board to place the question of reformation of the society before the registered voters of the county.

(3) Upon the adoption of a resolution under subsection (2) of this section, the county board shall place the question of reformation on the ballot at any primary, general, or special election. If a majority of those voting on the question vote for reformation, the county board shall proceed with the statutory requirements to form the new entity.

(4) Any contract, action, rule, regulation, resolution, or other matter made, done, or performed by and within the scope of the county agricultural society's authority shall remain in force and effect. Any real or personal property, rights, or credits and any duty, debt, or liability of the society shall automatically transfer to the new entity on the date of the entity's first meeting. Upon such transfer, the society shall automatically be dissolved. The county agricultural society shall file the notice of transfers and dissolutions with the register of deeds.

Source: Laws 1999, LB 437, § 21.

2-267 County agricultural society; reinstatement authorized.

A county agricultural society operating or organized under the County Agricultural Society Act, which has become inoperative because of neglect in the discharge of its duties devolved upon it by law, or for any other reason, may at any time procure an extension, restoration, renewal, or revival of its corporate existence, together with all the rights, franchises, privileges, and immunities and subject to all of its duties, debts, and liabilities which had been secured or imposed by its original articles of incorporation and its amendments, by filing with the Secretary of State a certificate of its last acting president and secretary or treasurer, chairperson and other officers, or officers elected or appointed as provided in section 2-271.

Source: Laws 1995, LB 671, § 1; R.S.Supp.,1996, § 2-241; Laws 1997, LB 469, § 18.

2-268 County agricultural society; reinstatement; certificate; contents; filing.

The certificate filed pursuant to section 2-267 shall set forth (1) the name of the county agricultural society, which name shall be the existing name of the society or the name it bore when its corporate existence expired, except as otherwise provided in sections 2-267 to 2-271, (2) whether the renewal, restoration, or revival is to be perpetual and if not the time for which the renewal, restoration, or revival is to continue, (3) that the society desiring to be renewed or revived and so renewing or reviving its corporate existence was duly organized under the laws of the State of Nebraska, and (4) the date when the society became inoperative and that this certificate for renewal or revival is filed by authority of those who were directors or managers of the society at the time its corporate existence expired or who were elected or appointed directors of the society as provided in section 2-271. A copy of the certificate, certified by the Secretary of State, shall be recorded in the office of the clerk in and for the county in which the original articles of incorporation of the society are recorded. Upon filing and recording the original of the certificate of revival in the office of the Secretary of State, the society shall be renewed and revived with the same force and effect as if its corporate existence had not become inoperative.

Source: Laws 1995, LB 671, § 2; R.S.Supp.,1996, § 2-242; Laws 1997, LB 469, § 19.

2-269 County agricultural society; reinstatement; effect.

The reinstatement of a county agricultural society shall validate all contracts, acts, matters, and things made, done, and performed within the scope of its articles of incorporation, its officers, and its agents during the time when the corporate existence was inoperative with the same force and effect and to all intents and purposes as if the corporate existence had at all times remained in full force and effect. All real and personal property, rights, and credits which were of the county agricultural society at the time its corporate existence became inoperative and which were not disposed of prior to the time of the revival or renewal shall be vested in the society, after the revival and renewal, as fully and completely as they were held by the society at and before the time its corporate existence became inoperative. The corporation, after such renewal and revival, shall be as exclusively liable for all contracts, acts, matters, and things made, done, or performed in its name and on its behalf by its officers

and agents prior to the reinstatement as if its corporate existence had at all times remained in full force and effect.

Source: Laws 1995, LB 671, § 3; R.S.Supp.,1996, § 2-243; Laws 1997, LB 469, § 20.

2-270 County agricultural society; reinstatement; name change; when.

If, since the corporate existence of a county agricultural society became inoperative, any other county agricultural society organized under the laws of the State of Nebraska adopted the same name as the society sought to be renewed or revived or shall have adopted a name so nearly similar to it as not to distinguish it from the society renewed or revived under the provisions of sections 2-267 to 2-271, then, in such case, the renewed or revived society shall not be renewed under the same name which it bore when its corporate existence became inoperative, but shall adopt and be renewed under a new name which, under existing law, could be adopted by a society formed and organized under the County Agricultural Society Act, and in such case the certificate to be filed under section 2-272 shall set forth the name borne by such society at the time its existence became inoperative and the new name under which the society is to be renewed or revived.

Source: Laws 1995, LB 671, § 4; R.S.Supp.,1996, § 2-244; Laws 1997, LB 469, § 21.

2-271 County agricultural society; reinstatement; reformation of board.

If the last president and secretary or treasurer, chairperson and other officers, or the officers performing the functions of the offices, or any of them, of the county agricultural society renewing or reviving its corporate existence are dead at the time of the renewal or refuse or neglect to act pursuant to section 2-267, the directors of the society or the successors of them, if not less than two, may elect a successor to the officer or officers who are dead or who refuse or neglect to act pursuant to section 2-267. In any case where there are less than two directors of the society living or if any of them refuse or neglect to act for the purpose of renewing or reviving the corporate existence, the county board may appoint as many directors as necessary, together with the surviving director who is ready and willing to act, to constitute a board of five directors to conduct necessary business until, within ninety days, an annual meeting is held and new directors are elected pursuant to the County Agricultural Society Act.

Source: Laws 1995, LB 671, § 5; R.S.Supp.,1996, § 2-245; Laws 1997, LB 469, § 22.

2-272 County agricultural society; reinstatement; certificate; recording; requirements; effect.

The certificate for the renewal and continuance of the existence of a county agricultural society shall be filed in the office of the Secretary of State, who shall furnish a certified copy of the certificate under his or her hand and seal of office. The certified copy shall be recorded in the office of the clerk of the county in which the principal office of the society is located in this state in a book kept for the purpose. The certificate or a certified copy of the certificate duly certified under the hand of the Secretary of State and his or her seal of office, accompanied with the certificate of the clerk of the county where it is

recorded under the clerk's hand and seal of his or her office, stating that it had been recorded, the record of the same in the office of the clerk, or a copy of such record duly certified by the clerk, or the record of such certified copy, recorded in the county clerk's office, is evidence in all courts of law and equity of this state.

Source: Laws 1995, LB 671, § 8; R.S.Supp.,1996, § 2-248; Laws 1997, LB 469, § 23.

2-273 County agricultural society; reinstatement; effect.

A county agricultural society renewing, extending, and continuing its corporate existence shall, upon complying with sections 2-267 to 2-272, be a corporation and continue its existence for the time stated in its certificate of renewal and shall, in addition to the rights, privileges, and immunities conferred by its original articles of incorporation, possess and enjoy all of the benefits of the laws of this state which are applicable to the nature of its business and shall be subject to the restrictions and liabilities imposed on such societies by the laws of this state.

Source: Laws 1995, LB 671, § 9; R.S.Supp.,1996, § 2-249; Laws 1997, LB 469, § 24.

ARTICLE 3
COMMUNITY GARDENS ACT

Section
2-301. Act, how cited.
2-302. Legislative findings and declarations; legislative intent; purpose of act.
2-303. Terms, defined.
2-304. Use of vacant public land; conditions; application; response.
2-305. Repealed. Laws 2017, LB644, § 21.

2-301 Act, how cited.

Sections 2-301 to 2-304 shall be known and may be cited as the Community Gardens Act.

Source: Laws 2015, LB175, § 11; Laws 2017, LB644, § 1.

2-302 Legislative findings and declarations; legislative intent; purpose of act.

(1) The Legislature finds and declares that:

(a) Community gardens provide significant health, educational, and social benefits to the general public, especially for those who reside in urban and suburban areas of this state;

(b) The community garden movement (i) continues to provide low-cost food that is fresh and nutritious for those who may be unable to readily afford fresh fruits and vegetables for themselves or their families, (ii) promotes public health and healthier individual lifestyles by encouraging better eating habits and increased physical activity by growing food, (iii) fosters the retention and expansion of open spaces, particularly in urban environments, (iv) enhances urban and suburban environmental quality and community beautification, (v) provides inexpensive community building activities, recreation, and physical exercise for all age groups, (vi) establishes a safe place for community involvement and helps to reduce the incidence of crime, (vii) engenders a closer

relationship between urban residents, nature, and the local environment, and (viii) fosters green job training and ecological education at all levels; and

(c) It is the public policy of this state to promote and foster growth in the number of community gardens and the acreage of such gardens.

(2) It is the intent of the Legislature and the purpose of the Community Gardens Act to foster growth in the number, size, and scope of community gardens in this state by encouraging state agencies, municipalities, and private parties in their efforts to promote community gardens.

Source: Laws 2015, LB175, § 12.

2-303 Terms, defined.

For purposes of the Community Gardens Act:

(1) Community garden means public or private land upon which individuals have the opportunity to raise a garden on land which they do not themselves own;

(2) Garden means a piece or parcel of land appropriate for cultivation of herbs, fruits, flowers, nuts, honey, poultry for egg production, maple syrup, ornamental or vegetable plants, nursery products, or vegetables;

(3) Municipality means any county, village, or city or any office or agency of a county, village, or city;

(4) State agency means any department or other agency of the State of Nebraska;

(5) Use means to avail oneself of or to employ without conveyance of title gardens on vacant public land by any individual or organization; and

(6) Vacant public land means any land owned by the state or another governmental subdivision, including a municipality, that is not in use for a public purpose, is otherwise unoccupied, idle, or not being actively utilized for a period of at least six months, and is suitable for garden use.

Source: Laws 2015, LB175, § 13.

2-304 Use of vacant public land; conditions; application; response.

(1) A state agency or municipality having title to vacant public land may permit community organizations to use such lands for community garden purposes. Such use of vacant public land may be conditioned on the community organization having liability insurance and accepting liability for injury or damage resulting from use of the vacant public land for community garden purposes. State agencies and municipalities may adopt and promulgate rules, regulations, ordinances, or resolutions to establish an application process for a community garden. The applicant may include a request for access to a fire hydrant or other source of water owned or operated by the state agency or municipality or by a utility district in order to provide water to the community garden. The state agency, municipality, or utility district shall consider whether to supply the water to the applicant at a reduced or fixed rate.

(2) A state agency or municipality which receives an application pursuant to this section shall respond to the applicant within sixty days from the date on which the application is received and shall make a final determination within one hundred eighty days from such date.

Source: Laws 2015, LB175, § 14.

2-305 Repealed. Laws 2017, LB644, § 21.

ARTICLE 4

HEALTHY SOIL MANAGEMENT AND WATER QUALITY PRACTICES

(a) HEALTHY SOILS TASK FORCE

Section
2-401. Legislative findings.
2-402. Healthy Soils Task Force; created; members; meetings.
2-403. Healthy Soils Task Force; duties.
2-404. Comprehensive action plan and report; task force; termination.

(b) RESILIENT SOILS AND WATER QUALITY ACT

2-405. Act, how cited.
2-406. Legislative findings.
2-407. Purposes of act.
2-408. Terms, defined.
2-409. Producer learning community; department; powers and duties; regions, established; demonstration and research farms; report.
2-410. Legislative intent to appropriate.

(a) HEALTHY SOILS TASK FORCE

2-401 Legislative findings.

The Legislature finds that:

(1) Healthy soils are a limited natural resource and fundamental for healthy and sustainable food production. Improving soil health means increasing soil's organic matter and diversifying its microbial activity to enhance agricultural productivity and environmental resilience. A commitment to healthy and productive soils and clean water is critical as world population and food production demands rise;

(2) Nebraska is a powerhouse agricultural state because of its productive soils and abundant water. However, through the years there has been a depletion of organic matter and trace minerals, making the soil less fertile than it was;

(3) There is a significant opportunity for Nebraska farmers and ranchers to capitalize on the economic and production benefits of improved soil health, while simultaneously improving surface and ground water quality;

(4) Improving the health of Nebraska's soil is the most effective way for agricultural producers to increase crop and forage productivity and profitability while also protecting the environment;

(5) Appropriate planning and coordination is needed to speed up and coordinate the adoption of conservation practices that rebuild and protect soil carbon to increase water holding capacity and enhance the vitality of the subsurface microbiome for landowners to capitalize on the economic and production benefits of soil health, while simultaneously enhancing water quality, capturing carbon, building resilience to drought and pests, reducing greenhouse gas emissions, expanding pollinator and other wildlife habitat, and protecting fragile ecosystems for a more sustainable future; and

(6) A number of states have initiated formal soil health programs either through the establishment of new entities or collaborations between existing entities.

Source: Laws 2019, LB243, § 1.

2-402 Healthy Soils Task Force; created; members; meetings.

(1) The Healthy Soils Task Force is created.

(2) The task force shall consist of the following voting members:

(a) The Director of Agriculture or his or her designee;

(b) Two representatives of natural resources districts in Nebraska, appointed by the Governor;

(c) Two academic experts in agriculture and natural resources in Nebraska, appointed by the Governor;

(d) Six representatives from production agriculture, including at least two producers that are using healthy soil practices, appointed by the Governor;

(e) Two representatives from agribusiness, appointed by the Governor; and

(f) Two representatives from environmental organizations in Nebraska, appointed by the Governor.

(3) The task force shall consist of the following nonvoting members:

(a) The chairperson of the Natural Resources Committee of the Legislature, or his or her designee; and

(b) The chairperson of the Agriculture Committee of the Legislature, or his or her designee.

(4) In selecting membership for appointment to the task force, the Governor shall seek to appoint members with relevant expertise regarding methods for incorporating healthy soil stewardship practices into working agricultural operations and for optimizing environmental services provided through such practices. Appointments to the task force shall be made within sixty days after April 18, 2019, and appointed members shall begin serving immediately following notice of appointment. Members shall be reimbursed for their actual and necessary expenses incurred in carrying out their duties as members, as provided in sections 81-1174 to 81-1177.

(5) The task force shall hold its first meeting no later than September 1, 2019. At its first meeting, the members shall elect a chairperson. Subsequent to the initial meeting, the task force may meet as necessary at the call of the chairperson.

(6) For administrative and budgetary purposes, the task force shall be housed within the Department of Agriculture. Additional support to facilitate the work of the task force may be requested from appropriate federal and state agencies.

Source: Laws 2019, LB243, § 2.

2-403 Healthy Soils Task Force; duties.

(1) The Healthy Soils Task Force shall:

(a) Develop a comprehensive healthy soils initiative for the State of Nebraska;

(b) Develop a comprehensive action plan to coordinate efforts to carry out such healthy soils initiative using standards for organic matter, biological activity, biological diversity, and soil structure as measures to assess improved soil health. The action plan shall set goals, formulate timelines for task completion, and determine resources required and resource availability. In developing the action plan, the task force shall examine:

(i) Issues related to providing farmers and ranchers with research, education, technical assistance, and demonstration projects;

(ii) Options for financial incentives to improve soil health; and

(iii) The contribution of livestock to soil health;

(c) Identify realistic and achievable goals and timelines for improvement of soil health in Nebraska through voluntary partnerships among agricultural producers and relevant state and local agencies and other public and private entities; and

(d) Review provisions of the federal Agriculture Improvement Act of 2018, Public Law 115-334, and any implementing rules, regulations, and guidelines of the United States Department of Agriculture and identify opportunities to leverage state, local, or private funds under the Regional Conservation Partnership Program of the United States Department of Agriculture and other conservation programs for the purposes of the healthy soils initiative. Such information shall be included in the report issued pursuant to section 2-404.

(2) To carry out its duties, the Healthy Soils Task Force may consult other agencies or organizations, including, but not limited to, the University of Nebraska, the Natural Resources Conservation Service, the Farm Service Agency, and the Agricultural Research Service of the United States Department of Agriculture, the Soil Health Institute, the Soil Health Partnership, and other state and federal agencies or public or private organizations with responsibility or expertise in research, demonstration, education, advising, funding, or promotion relating to agronomic and other agricultural land management practices consistent with the purpose of the task force.

Source: Laws 2019, LB243, § 3.

2-404 Comprehensive action plan and report; task force; termination.

On or before January 1, 2021, the Healthy Soils Task Force shall submit the comprehensive action plan and report its findings and recommendations to the Governor and electronically to the Agriculture Committee of the Legislature. The task force shall terminate on January 1, 2021.

Source: Laws 2019, LB243, § 4.

(b) RESILIENT SOILS AND WATER QUALITY ACT

2-405 Act, how cited.

Sections 2-405 to 2-409 shall be known and may be cited as the Resilient Soils and Water Quality Act.

Source: Laws 2022, LB925, § 1.
Effective date July 21, 2022.

2-406 Legislative findings.

The Legislature finds that:

(1) With over ninety percent of Nebraska's land base in cropland and rangeland agricultural production, its agricultural sector is foundational to the state's economy. Nebraska agricultural producers face many challenges, from shrinking profit margins, depletion of natural resources, and extreme weather events, to increased public interest concerning the impact of current agricultural practices on the environment;

(2) Since the prairie was plowed for farming, Nebraska has lost topsoil and organic matter to both water and wind erosion. Soil erosion reduces soil productivity and deteriorates water quality. Organic matter is vital to soil fertility, structure, and water retention ability and is only at one-half of its original level;

(3) This state's soil and abundant water are Nebraska's most critical natural resources. The quality of both is vital for productive and profitable agricultural production, rural and urban economic viability, long-term food security, natural resource resiliency, and the associated influences on human health and quality of life. The relative quality and availability of the state's ground water and surface waters are directly impacted by the health of the land, particularly its agricultural soil;

(4) It is not uncommon to find nitrate levels in excess of federal drinking water standards in wells across the state. Elevated levels of nitrates in Nebraska's ground water are alarming as approximately eighty-five percent of Nebraska residents rely on drinking water pumped from the ground. While nitrate levels in Nebraska's ground water are gradually improving in some areas, they remain at troublesome levels elsewhere, particularly in the central and northeastern parts of Nebraska;

(5) The Healthy Soils Task Force created under section 2-402 concluded that healthier soils produced through best soil management practices improve yield stability, produce greater financial returns over time, reduce the need for chemical inputs, increase water infiltration rates and water storage capacity making soil more resilient to drought, flooding, and erosion, and protect and improve water quality. The task force also concluded that two significant barriers to adoption of healthy soil management practices by agricultural producers are uncertainty of the positive economic return on investment in healthy soil management practices and the lack of education and information available to a broader audience; and

(6) With the general public's growing interest in how food is grown relative to human health and long-term resiliency of our natural resources, greater adoption of healthy soil management practices is beneficial to both rural and urban contingencies. A voluntary grassroots effort to accelerate the means to protect and enhance Nebraska's soil and receive the benefits described in the task force report should be encouraged and supported.

Source: Laws 2022, LB925, § 2.
Effective date July 21, 2022.

2-407 Purposes of act.

The purposes of the Resilient Soils and Water Quality Act are to (1) initiate first steps to accelerate the use and scope of best practices for healthy soil management, (2) protect and improve soil and water quality throughout the state, (3) protect the public's health and enhance agricultural production and profitability, (4) address soil health economics, resource stewardship, and managerial and environmental issues, (5) increase awareness, education, and promotion of healthy soil best practices through producer-to-producer, peer-to-peer, and mentoring relationships, networking, and sharing of technical infor-

mation, and (6) provide observational proof of healthy soil benefits through access to demonstration and research farms and data.

Source: Laws 2022, LB925, § 3.
Effective date July 21, 2022.

2-408 Terms, defined.

For purposes of the Resilient Soils and Water Quality Act:

(1) Demonstration and research farms means large-scale field and pasture settings located across the state that provide a demonstration of healthy soil practices in support of the educational and research programs of the producer learning community;

(2) Department means the Department of Natural Resources; and

(3) Producer learning community means an agricultural producer-led, nonprofit, voluntary membership organization dedicated to fostering learning, skills, and abilities and the gathering and sharing of knowledge for the purpose of carrying out the Resilient Soils and Water Quality Act.

Source: Laws 2022, LB925, § 4.
Effective date July 21, 2022.

2-409 Producer learning community; department; powers and duties; regions, established; demonstration and research farms; report.

(1) The department shall provide technical and legal assistance in the formation of a producer learning community comprised of active agricultural producers, landowners, and others who have an interest in soil health and water quality. The department shall assist the producer learning community in building awareness and knowledge relating to soil health and water quality to guide agricultural producers and landowners in making informed decisions in order to bring about a more rapid and widespread adoption of best management practices. The department shall hire a facilitator to lead a collaborative effort to organize the producer learning community and assist the producer learning community in acquiring gifts, grants, and sponsorships. The department shall authorize the facilitator to serve as an ex officio member of the producer learning community and may locate the facilitator outside of the city of Lincoln.

(2) The department may partner or contract with any entity or entities that have resources that would assist in the formation of the producer learning community, including, but not limited to, the University of Nebraska and any association of natural resources districts. The department may also collaborate with the Corn Development, Utilization, and Marketing Board, the Soybean Development, Utilization, and Marketing Board, the Grain Sorghum Development, Utilization, and Marketing Board, the Nebraska Wheat Development, Utilization, and Marketing Board, and any private farm and ranch associations or membership organization.

(3) Because of the state's diversity of soils, topography, rainfall, cropping systems, and other environmental factors, one set of healthy soil management practices will not fit the entire state and such practices will differ by region. The department shall divide the state into different regions in which to establish demonstration and research farms that are representative of each region's particular agricultural diversity. In establishing such regions, the department

may use the land management areas of the Natural Resources Conservation Service of the United States Department of Agriculture, the state's natural resources district boundaries, and the Nebraska Extension Engagement Zones of the University of Nebraska Institute of Agriculture and Natural Resources as guidance in establishing boundaries. The department may enter into lease agreements with private landowners for the purpose of establishing demonstration and research farms.

(4) Beginning in 2022 and through 2027, the department shall submit an annual report on or before December 31 to the Governor and electronically to the Agriculture Committee of the Legislature and the Natural Resources Committee of the Legislature to report on the status and progress of implementing the Resilient Soils and Water Quality Act and any impacts and accomplishments made in protecting and improving soil and water quality across the state.

Source: Laws 2022, LB925, § 5.
Effective date July 21, 2022.

2-410 Legislative intent to appropriate.

It is the intent of the Legislature to appropriate two hundred fifty thousand dollars beginning in FY2022-23 through FY2026-27 to carry out the Resilient Soils and Water Quality Act.

Source: Laws 2022, LB925, § 6.
Effective date July 21, 2022.

Cross References

Resilient Soils and Water Quality Act, see section 2-405.

ARTICLE 5
NEBRASKA HEMP FARMING ACT

Section
2-501. Act, how cited.
2-502. Statement of policy; purpose of act.
2-503. Terms, defined.
2-504. Authorized activities; department; duties; rules and regulations.
2-505. Cultivation of hemp; application; form; contents; application fee; site registration fee; cultivator license; expiration; renewal; change in ownership or location; effect.
2-506. Processor-handler or broker; license; required, when; application; form; contents; application fee; site registration fee; processor-handler or broker license; expiration; renewal; change in ownership or location; effect.
2-507. Cultivator, processor-handler, and broker license applications; issuance; minimum qualifications; denial of license; hearing.
2-508. License fees; delinquent fee; administrative fee; waiver by department; grounds.
2-509. Nebraska Hemp Program Fund; established; use; investment.
2-510. Cultivator, processor-handler, or broker; consent to certain actions; acknowledge risk of financial loss under act.
2-511. Negligent violations; director; powers; criminal enforcement; ineligibility to obtain license; corrective action plan; contents; administrative fine; recovery.
2-512. Violations of act, state plan, or other provisions; director; duties; ineligibility to obtain license; hearing.
2-513. Order of director; hearing; request; decision; appeal.
2-514. Sample; testing; department; powers; list of approved testing facilities; report.
2-515. Cultivator or processor-handler transporting hemp; duties; record of shipments; licensee; duties.

Section
2-516. State plan; director; duties; contents; disapproval; amended plan; alteration or amendment authorized.
2-517. Nebraska Hemp Commission; members; qualifications; terms; quorum; expenses; powers and duties; report; contents.
2-518. Hemp Promotion Fund; established; use; investment.
2-519. Fees; records; violations; penalty.

2-501 Act, how cited.

Sections 2-501 to 2-519 shall be known and may be cited as the Nebraska Hemp Farming Act.

Source: Laws 2019, LB657, § 1.

2-502 Statement of policy; purpose of act.

It is the policy of this state that hemp is recognized as a viable agricultural crop. The purpose of the Nebraska Hemp Farming Act is to:

(1) Align state law with federal law regarding the cultivation, handling, marketing, and processing of hemp and hemp products;

(2) Promote the cultivation and processing of hemp and open up new commercial markets for farmers and businesses through the sale of hemp products;

(3) Establish testing and compliance procedures;

(4) Promote the expansion of Nebraska's hemp industry to the maximum extent permitted by law and allow farmers and businesses to cultivate, handle, and process hemp and sell hemp products for commercial purposes;

(5) Encourage and empower research into hemp cultivation and the processing of hemp products at postsecondary institutions in the state and in the private sector;

(6) Facilitate interstate commerce by not impeding the shipment of hemp into and out of this state; and

(7) Return Nebraska to the forefront of the hemp industry.

Source: Laws 2019, LB657, § 2.

2-503 Terms, defined.

For purposes of the Nebraska Hemp Farming Act:

(1) Acceptable hemp THC level has the same meaning as in 7 C.F.R. 990.1, as such section existed on January 1, 2020;

(2) Agriculture Improvement Act of 2018 means section 10113 of the federal Agriculture Improvement Act of 2018, Public Law 115-334, and any regulations adopted and promulgated under such section, as such section, act, and regulations existed on January 1, 2020;

(3) Approved testing facility means a testing facility approved by the department;

(4) Broker means a person who engages or participates in the marketing of hemp by acting as an intermediary or negotiator between prospective buyers and sellers;

(5) Commercial sale means the sale of products in the stream of commerce, at retail, wholesale, and online;

(6) Commission means the Nebraska Hemp Commission;

(7) Cultivate or cultivating means planting, watering, growing, and harvesting a hemp plant or crop. The presence of plants of the plant Cannabis sativa L. growing as uncultivated, naturalized plants in the environment is not cultivating hemp for purposes of the Nebraska Hemp Farming Act;

(8) Cultivator means a person who cultivates hemp;

(9) Department means the Department of Agriculture;

(10) Director means the Director of Agriculture or his or her designee;

(11) GPS coordinates means latitude and longitude coordinates derived from a global positioning system;

(12) Handle or handling means possessing or storing hemp plants or hemp plant parts prior to cultivation, in the process of cultivation, or after being harvested or dried but before processing. Handle or handling also includes possessing or storing such hemp plants or hemp plant parts in a vehicle for any period of time other than during its actual transport from the premises of a person licensed to cultivate or process hemp to the premises of another licensee. Handle or handling does not include possessing, storing, or transporting finished hemp products or hemp seeds;

(13) Hemp means the plant Cannabis sativa L. and any part of such plant, including the viable seeds of such plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. Hemp shall be considered an agricultural commodity. Notwithstanding any other provision of law, hemp shall not be considered a controlled substance under the Uniform Controlled Substances Act;

(14) Licensee means an individual or a business entity possessing a license issued by the department under the Nebraska Hemp Farming Act, including authorized employees or agents of such licensee, to cultivate, handle, process, or broker hemp;

(15) Location ID means the unique identifier established by a licensee for each unique set of GPS coordinates where hemp is cultivated, handled, or processed;

(16) Lot means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of hemp throughout such area;

(17) Measurement of uncertainty has the same meaning as in 7 C.F.R. 990.1, as such section existed on January 1, 2020;

(18) Person means an individual, partnership, corporation, limited liability company, association, postsecondary institution, or other legal entity;

(19) Postsecondary institution means a postsecondary institution as defined in section 85-2403 that also meets the requirements of 20 U.S.C. 1001, as such section existed on January 1, 2019;

(20) Process or processing means converting hemp plants or plant parts into a marketable form;

(21) Processor-handler means a person who handles or processes hemp;

(22) Site means an area defined by the same legal description in a field, greenhouse, or other outdoor area or indoor structure, or for a mobile processor, such processor's primary place of business;

(23) THC means tetrahydrocannabinol; and

(24) USDA-licensed hemp producer means a person licensed by the United States Department of Agriculture to produce hemp as provided in 7 C.F.R. part 990, subpart C, as such regulations existed on January 1, 2020.

Source: Laws 2019, LB657, § 3; Laws 2020, LB1152, § 1.

Cross References

Uniform Controlled Substances Act, see section 28-401.01.

2-504 Authorized activities; department; duties; rules and regulations.

(1) Subject to the Nebraska Hemp Farming Act, it shall be lawful:

(a) For a licensee or his or her employee or agent to cultivate, handle, process, or broker hemp in Nebraska and to transport hemp outside of Nebraska; and

(b) To possess, transport, sell, and purchase lawfully produced hemp products.

(2) The department shall establish, operate, and administer a program to license and regulate cultivators, processor-handlers, and brokers that meets the requirements of the federal Agriculture Improvement Act of 2018 and the Nebraska Hemp Farming Act.

(3) The department may adopt and promulgate rules and regulations to implement the Nebraska Hemp Farming Act and administer programs, including, but not limited to, the following:

(a) Practices to maintain relevant information regarding land where hemp is cultivated, handled, or processed in the state, including a legal description of such land, for a period of not less than three calendar years;

(b) Procedures governing the sampling, chain of custody, and testing of hemp cultivated, handled, or processed in the state;

(c) Procedures for the effective destruction of plants cultivated, handled, or processed in violation of the Nebraska Hemp Farming Act and hemp products made from those plants;

(d) Procedures implementing enforcement provisions outlined in the Nebraska Hemp Farming Act, including factors to be considered when issuing administrative fines;

(e) A procedure for conducting, at a minimum, annual inspections of a random sample of hemp cultivators and processor-handlers to verify that hemp is not cultivated, processed, or handled in violation of the Nebraska Hemp Farming Act or the state plan as described in section 2-516. The department may, at its discretion, conduct other inspections of a cultivator's or processor-handler's operation, including all sites registered with the department;

(f) A procedure for submitting required information to the United States Secretary of Agriculture not more than thirty days after the information is received;

(g) Standards governing the approval and denial of license applications by cultivators, processor-handlers, and brokers;

(h) Developing a bill of lading form for use by a person transporting hemp as provided in section 28-476. Such bill of lading shall, at a minimum:

(i) Identify the transporting person;

(ii) List a traceable reference, in accordance with the federal Agriculture Improvement Act of 2018, to the lot in which the hemp was grown, matching the lot listed on the test results or other documentation required by section 2-515 or section 28-476; and

(iii) Indicate the owner, shipping point of origin, and destination of the hemp;

(i) In consultation with the Nebraska State Patrol, standards for transporting hemp in this state to ensure that marijuana or any other controlled substance is not disguised as hemp and transported into, within, or through this state;

(j) Record-keeping requirements and procedures; and

(k) Any other standard, practice, or procedure required by the Nebraska Hemp Farming Act or the federal Agriculture Improvement Act of 2018.

Source: Laws 2019, LB657, § 4; Laws 2020, LB1152, § 2.

2-505 Cultivation of hemp; application; form; contents; application fee; site registration fee; cultivator license; expiration; renewal; change in ownership or location; effect.

(1) Hemp may only be cultivated by a USDA-licensed hemp producer or a person meeting the requirements of section 2-5701 or in compliance with this section.

(2) Before a person may be licensed to cultivate hemp under the Nebraska Hemp Farming Act, such person shall submit an application on a form prescribed by the department that includes, but is not limited to, the following:

(a) If the applicant is an individual, the applicant's full name, birthdate, mailing address, telephone number, and valid email address;

(b) If the applicant is an entity and not an individual, (i) the name of the applicant, mailing address, telephone number, and valid email address, (ii) the full name of each officer, director, partner, member, or owner owning in excess of ten percent of equity or stock in such entity, (iii) the full name of each key participant as defined in 7 C.F.R. 990.1, and (iv) the birthdate, title, mailing address, telephone number, and valid email address of each such person or key participant;

(c) The proposed acreage to be cultivated or the square footage of a greenhouse or other indoor space to be cultivated;

(d) The street address, legal description, location ID, and GPS coordinates for each field, greenhouse, building, or other site where hemp will be cultivated. The site information may be verified by the department; and

(e) Maps depicting each site where hemp will be cultivated, with appropriate indications for entrances, field boundaries, and specific locations corresponding to the GPS coordinates provided under subdivision (d) of this subsection.

(3) Before a person may be licensed to cultivate hemp under the Nebraska Hemp Farming Act, such person shall submit with the application a nonrefundable application fee as set by the department pursuant to section 2-508.

(4) Before a person may be licensed to cultivate hemp under the Nebraska Hemp Farming Act, such person shall submit a site registration fee as set by the department pursuant to section 2-508. The site registration fee shall be paid for each separate site where the applicant will cultivate hemp. Subsequent modifications to the sites listed in the application shall be submitted on forms prescribed by the department along with a site modification fee and shall only

take effect upon written approval of the department. The applicant must certify that all sites where hemp is to be cultivated are under the control of the applicant and that the department shall have unlimited access to all such sites.

(5) After the department receives approval by the United States Secretary of Agriculture for the state plan described in section 2-516, an initial cultivator license application may be submitted at any time, except that the department may set a cutoff date for applications ahead of the growing season. An initial cultivator license issued by the department expires on December 31 in the calendar year for which it was issued.

(6) A renewal application for a license to cultivate hemp shall be submitted on forms prescribed by the department. A renewal application is due by December 31 and shall be accompanied by the cultivator license fee and the site registration fee for all sites listed in the renewal application. The renewal cultivator license is valid from January 1 or when the license is granted, whichever is later, through December 31 next following.

(7) A cultivator license shall lapse automatically upon a change of ownership or location, and a new license must be obtained. The licensee shall promptly provide notice of change in ownership or location to the department.

(8) An application and supporting documents submitted to the department under this section are not public records subject to disclosure pursuant to sections 84-712 to 84-712.09. Such information may be submitted to the United States Department of Agriculture pursuant to the requirements of the federal Agriculture Improvement Act of 2018 or any other federal statute, rule, or regulation, and may be submitted to law enforcement.

Source: Laws 2019, LB657, § 5; Laws 2020, LB1152, § 3.

2-506 Processor-handler or broker; license; required, when; application; form; contents; application fee; site registration fee; processor-handler or broker license; expiration; renewal; change in ownership or location; effect.

(1) Except for handling by an approved testing facility, a USDA-licensed hemp producer, or a cultivator licensed under section 2-505, a person shall not process, handle, or broker hemp plants or plant parts in this state unless the person meets the requirements of section 2-5701 or is in compliance with this section and licensed as a processor-handler or broker under the Nebraska Hemp Farming Act.

(2) Before a person may be licensed to process, handle, or broker hemp in this state, such person shall submit an application on a form prescribed by the department that includes, but is not limited to, the following:

(a) If the applicant is an individual, the applicant's full name, birthdate, mailing address, telephone number, and valid email address;

(b) If the applicant is an entity and not an individual, the name of the applicant, mailing address, telephone number, and valid email address, the full name of each officer and director, partner, member, or owner owning in excess of ten percent of equity or stock in such entity, and the birthdate, title, mailing address, telephone number, and valid email address of each such person;

(c) The street address, legal description, location ID, and GPS coordinates for the site where hemp will be processed or handled, if applicable; and

(d) Maps depicting the site where hemp will be processed or handled, if applicable, with appropriate indications for entrances and specific locations

corresponding to the GPS coordinates provided under subdivision (c) of this subsection.

(3) Before a person may be licensed to process, handle, or broker hemp, such person shall submit with the application a nonrefundable application fee as set by the department pursuant to section 2-508.

(4) Before a person may be licensed to process or handle hemp, such person shall submit a site registration fee as set by the department pursuant to section 2-508. The site registration fee shall be paid for each separate site where hemp is processed or handled. Subsequent modifications to the sites listed in the application shall be submitted on forms prescribed by the department along with the site modification fee and shall only take effect upon written approval of the department. The applicant must certify that all sites where hemp is to be processed or handled are under the control of the applicant and that the department shall have unlimited access to all such sites.

(5) An initial processor-handler or broker license application may be submitted at any time. An initial processor-handler or broker license issued by the department expires on December 31 in the calendar year for which it was issued.

(6) A renewal application for a processor-handler or broker license shall be submitted on forms prescribed by the department. A renewal application is due by December 31 and shall be accompanied by the processor-handler or broker license fee and, if applicable, the site registration fee for all sites listed in the renewal application. The renewal processor-handler or broker license is valid from January 1 or when the license is granted, whichever is later, through December 31 next following.

(7) A processor-handler or broker license shall lapse automatically upon a change of ownership or location, and a new license must be obtained. The licensee shall promptly provide notice of change in ownership or location to the department.

(8) A processor-handler licensee who also brokers hemp shall not be required to also obtain a broker license under this section.

(9) An application and supporting documents submitted to the department under this section are not public records subject to disclosure pursuant to sections 84-712 to 84-712.09. Such information may be submitted to the United States Department of Agriculture pursuant to the requirements of the federal Agriculture Improvement Act of 2018 or any other federal statute, rule, or regulation, and may be submitted to law enforcement.

Source: Laws 2019, LB657, § 6; Laws 2020, LB1152, § 4.

2-507 Cultivator, processor-handler, and broker license applications; issuance; minimum qualifications; denial of license; hearing.

(1) The department shall receive and process all completed license applications and issue licenses to all qualified applicants. The department shall deny cultivator, processor-handler, and broker license applications if they are incomplete or deficient or if the applicant does not meet minimum qualifications, including, but not limited to:

(a) The applicant, if an individual, is at least eighteen years of age;

(b) The site registered by the applicant is located in this state;

(c) The applicant has no unpaid fees or fines owed to the state under the Nebraska Hemp Farming Act;

(d) The applicant has not had a cultivator, processor-handler, or broker license revoked in the five years preceding the date of application;

(e) The applicant has not been deemed ineligible:

(i) At any time under this section;

(ii) In the five years preceding the date of application under section 2-511; or

(iii) In the ten years preceding the date of application under section 2-512; or

(f) Any individual listed in the application for a cultivator, processor-handler, or broker license has not been convicted of a felony related to a controlled substance under either state or federal law within the preceding ten years.

(2) If an application is incomplete or deficient, the department shall, in a timely manner, notify the applicant in writing describing the reason or reasons and request additional information. If such application is not corrected or supplemented within thirty days after the department's request, the department shall deny the application.

(3) Any person who intentionally and materially falsifies any information contained in an application under the Nebraska Hemp Farming Act shall be ineligible to obtain a license to operate as a cultivator, processor-handler, or broker.

(4) A person aggrieved by the denial of a license may request a hearing pursuant to section 2-513.

Source: Laws 2019, LB657, § 7; Laws 2020, LB1152, § 5.

2-508 License fees; delinquent fee; administrative fee; waiver by department; grounds.

(1) License fees under the Nebraska Hemp Farming Act are due on or before December 31 and shall be in the amount listed in column A of subsection (2) of this section. The fees due on or before December 31, 2019, and by each December 31 thereafter shall be set by the director on or before July 1 of each year. The director may raise or lower such fees each year to meet the criteria in this subsection, but the fee shall not be greater than the amount in column B of subsection (2) of this section. The same percentage shall be applied to each category for all fee increases or decreases. The director shall use the fees in column A of subsection (2) of this section as a base for future fee increases or decreases. The director shall determine the fees based on estimated annual revenue and fiscal year-end cash fund balances as follows:

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

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

(2) Fees.

Fees	A	B
Cultivator, processor-handler, and broker license application fee	$100	$150
Cultivator site registration fee	$400 per site	$600 per site
Processor-handler site registration fee	$800 per site	$1,200 per site
Site modification fee	$50	$75

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

Source: Laws 2019, LB657, § 8.

2-509 Nebraska Hemp Program Fund; established; use; investment.

The Nebraska Hemp Program Fund is established. The fund shall be administered by the department for the purpose of covering the costs of the department in administering sections 2-504 to 2-516 and 2-5701. The fund may receive appropriations by the Legislature, gifts, grants, federal funds, and any other funds both public and private. All fees collected by the department under sections 2-508 and 2-5701 shall be remitted to the State Treasurer for credit to the fund. Transfers from the Nebraska Hemp Program Fund to the Noxious Weed Cash Fund may be made as provided in section 2-958. Transfers from the Nebraska Hemp Program Fund to the Fertilizers and Soil Conditioners Administrative Fund may be made as provided in section 81-2,162.27. 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 2019, LB657, § 9.

Cross References

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

2-510 Cultivator, processor-handler, or broker; consent to certain actions; acknowledge risk of financial loss under act.

(1) A cultivator, processor-handler, or broker consents to all of the following:

(a) A background check for any felony controlled substance charge in the ten years prior to the time of application completed by the department or a law enforcement agency at the direction of the department, at any time, for all of the individuals listed on the cultivator's, processor-handler's, or broker's application at the applicant's expense, which shall be in addition to the application and registration fees;

(b) Entry onto, and inspection of, all registered sites by the department or by persons at the direction of the department, with or without cause, and with reasonable advance notice;

(c) Reimbursement of the department for expenses relating to sampling and testing of any hemp or hemp material;

(d) Destruction of any of the following:

(i) Hemp found to have a measured delta-9 tetrahydrocannabinol concentration greater than the acceptable hemp THC level. Only hemp from lots found to

have a measured delta-9 tetrahydrocannabinol concentration greater than the acceptable hemp THC level shall be subject to destruction;

(ii) Hemp intended for commercial purposes that is present at a location not included in a cultivator's or processor-handler's application; and

(iii) Hemp that is cultivated, processed, handled, or brokered in a manner that violates the Nebraska Hemp Farming Act or the rules and regulations adopted and promulgated thereunder; and

(e) Inspections by the department, at least annually, of cultivators and processor-handlers to verify that hemp is not cultivated, processed, or handled in violation of the Nebraska Hemp Farming Act.

(2) A cultivator, processor-handler, or broker acknowledges that all risk of financial loss under the Nebraska Hemp Farming Act is borne by such person. No compensation shall be paid by the department or the State of Nebraska for destruction of any hemp under this section.

Source: Laws 2019, LB657, § 10; Laws 2020, LB1152, § 6.

2-511 Negligent violations; director; powers; criminal enforcement; ineligibility to obtain license; corrective action plan; contents; administrative fine; recovery.

(1) For purposes of this section, a negligent violation shall include, but not be limited to:

(a) Failure to provide an accurate legal description of land on which a person cultivates hemp;

(b) Failure to obtain a license or other required authorization from the department; or

(c) Production of cannabis with a delta-9 tetrahydrocannabinol concentration exceeding the acceptable hemp THC level. A cultivator does not commit a negligent violation under this subsection if the cultivator has made reasonable efforts to grow hemp and the cannabis does not have a delta-9 tetrahydrocannabinol concentration of more than 0.5 percent on a dry weight basis.

(2) Upon a determination by the director that any person in the state has negligently violated the Nebraska Hemp Farming Act, a state plan as described in section 2-516 approved by the United States Department of Agriculture, any rules and regulations adopted and promulgated under the act, a corrective action plan issued pursuant to this section, or an order of the director, the director may:

(a) Issue an order specifying the provisions of the act, state plan, rule or regulation, corrective action plan, or order alleged to have been violated and the facts alleged to constitute a violation;

(b) Issue a cease and desist order to the violator; and

(c) Issue an order for a corrective action plan in accordance with this section.

(3) Any person who commits a negligent violation under this section shall not be subject to any additional criminal enforcement by state or local government authorities other than authorized under this section.

(4) Any person who negligently violates the Nebraska Hemp Farming Act, a state plan as described in section 2-516 approved by the United States Department of Agriculture, any rules and regulations adopted and promulgated under the act, a corrective action plan issued pursuant to this section, or an order of

the director three times in a five-year period shall be ineligible to obtain a license to cultivate, handle, process, or broker hemp for a period of five years beginning on the date of the third violation.

(5) If the director orders issuance of a corrective action plan, such plan may include:

(a) A reasonable date by which the licensee shall correct the negligent violation;

(b) A requirement that the licensee shall periodically report to the department on the compliance of the licensee with the corrective action plan for a period of not less than the next two calendar years;

(c) An administrative fine of up to five hundred dollars per day; and

(d) Temporary suspension of a license to operate as a cultivator, processor-handler, or broker.

(6) Upon violation of a corrective action plan, the director may issue an amended corrective action plan.

(7) A person aggrieved by an order of the director may request a hearing pursuant to section 2-513.

(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 Lancaster County district court to recover the fine.

(9) Any administrative fine collected under 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 2019, LB657, § 11; Laws 2020, LB1152, § 7.

2-512 Violations of act, state plan, or other provisions; director; duties; ineligibility to obtain license; hearing.

(1) Upon a determination by the director that any person in the state has, with a culpable mental state greater than negligence, violated the Nebraska Hemp Farming Act, a state plan approved by the United States Department of Agriculture, any rules and regulations adopted and promulgated under the act, or an order of the director, the director shall:

(a) Notify the United States Attorney General;

(b) Notify the Attorney General; and

(c) Notify the county attorney for the county in which the violation occurred.

(2) Any person who, with a culpable mental state greater than negligence, violates the Nebraska Hemp Farming Act, a state plan as described in section 2-516 approved by the United States Department of Agriculture, any rules and regulations adopted and promulgated under the act, a corrective action plan issued pursuant to this section, or an order of the director three times in a five-year period shall be ineligible to obtain a license to cultivate, handle, process, or broker hemp for a period of ten years beginning on the date of the third violation.

(3) A person aggrieved by an order of the director may request a hearing pursuant to section 2-513.

(4) For purposes of this section, culpable mental state greater than negligence means to act intentionally, knowingly, willfully, or recklessly.

Source: Laws 2019, LB657, § 12; Laws 2020, LB1152, § 8.

2-513 Order of director; hearing; request; decision; appeal.

(1) Any person aggrieved by an order of the director pursuant to the Nebraska Hemp Farming Act for which a hearing was not held may request a hearing by contacting the department in writing within thirty days after the date the order was issued, and a hearing shall thereafter be held. Hearings shall be in accordance with the Administrative Procedure Act. At such hearing the department shall receive any relevant evidence and the burden of the proof shall be upon the person aggrieved by the director's order. After such hearing the department shall render a decision in writing and shall issue such order or orders duly certified as deemed necessary.

(2) Appeals of final orders issued after a hearing held pursuant to subsection (1) of this section shall be in accordance with the Administrative Procedure Act. The district court for Lancaster County shall have exclusive jurisdiction for appeals taken under the Nebraska Hemp Farming Act.

Source: Laws 2019, LB657, § 13.

Cross References

Administrative Procedure Act, see section 84-920.

2-514 Sample; testing; department; powers; list of approved testing facilities; report.

(1) At the licensee's expense, hemp from each lot grown at each cultivation site registered with the department shall be sampled for compliance with the acceptable hemp THC level prior to harvest and tested by an approved testing facility. After such lot sample is taken, the lot represented by the sample shall be harvested within fifteen days. The results of such tests shall be certified directly to the department by the approved testing facility prior to harvest. The test results shall identify the lot for the hemp represented by the sample.

(2) The department may, at its discretion, conduct sampling and testing of any hemp from any licensee at any time.

(3) The department may adopt and promulgate rules and regulations governing the sampling and testing of hemp, including, but not limited to, the number of samples required, the procedure for gathering samples, and certification of the test results to the department.

(4) Testing of hemp required under this section shall be conducted pursuant to standards adopted by the department using post-decarboxylation or other similarly reliable methods for the testing of delta-9 tetrahydrocannabinol concentration. The testing methodology shall consider the potential conversion of delta-9 tetrahydrocannabinolic acid in hemp into THC and the test results shall measure total available THC derived from the sum of the THC and delta-9 tetrahydrocannabinolic acid content.

(5) Testing of hemp shall be conducted by an approved testing facility.

(6) The department shall create and maintain a list of approved testing facilities.

(7) The entire hemp plant is not required to be submitted for testing.

(8) The test sample shall be obtained in compliance with the federal Agriculture Improvement Act of 2018.

(9) The requirements of this section shall be sufficient for both dioecious and monoecious cultivars.

(10) The approved testing facility shall provide a report giving the results of the potency analysis of each sample. Measurement of uncertainty shall be estimated and reported with test results. Laboratories shall use appropriate validated methods and procedures for all testing activities and evaluation of measurement of uncertainty. For tests directed by the department, the report shall be provided to the licensee and a copy of the report shall be issued to the department. The report shall be provided before the harvest date, if applicable.

(11) When a test result is adverse, the department may require a licensee to have further tests done and may require harvesting and destruction of any plants in any portions of the site containing noncompliant plants.

Source: Laws 2019, LB657, § 14; Laws 2020, LB1152, § 9.

2-515 Cultivator or processor-handler transporting hemp; duties; record of shipments; licensee; duties.

(1) Except as provided in subsection (4) of this section, any cultivator transporting hemp cultivated under the Nebraska Hemp Farming Act shall carry with the hemp being transported a copy of the cultivator license under which it was cultivated and a copy of the test results pertaining to each lot of hemp being transported.

(2) Except as provided in subsection (4) of this section, any processor-handler transporting hemp processed under the Nebraska Hemp Farming Act shall carry with the hemp being transported a copy of the processor-handler license under which the hemp is being transported and a copy of the test results pertaining to such hemp.

(3)(a) A licensee shall maintain a record of shipments of hemp shipped from or received by the licensee. Such record shall, for each shipment of hemp, indicate the date of shipment, identify the point of origin and destination, identify the name of the person sending and receiving the shipment, and include the vehicle identification number of the vehicle transporting the hemp. Each shipment of hemp shall be entered on the record of shipments kept by the licensee by the close of the business day the shipment is shipped from or received by the licensee.

(b) A licensee may give notice to the Nebraska State Patrol up to seven days prior to a shipment of hemp to be shipped from or received by the licensee. Such notification shall be given in a manner and form prescribed by the Nebraska State Patrol and shall not be considered a public record for purposes of sections 84-712 to 84-712.09.

(4) Any licensee transporting hemp cultivated or processed under the Nebraska Hemp Farming Act shall not be required to carry a copy of the test results relating to such hemp as provided in subsection (1) or (2) of this section if such licensee carries with the hemp being transported a copy of the applicable license and is transporting:

(a) Hemp between two registered sites listed on the licensee's license application;

(b) Samples of hemp for testing to determine the THC level for private testing purposes prior to testing pursuant to section 2-514; or

(c) Live hemp plants to a registered site listed on the licensee's license application prior to cultivating such hemp plants.

Source: Laws 2019, LB657, § 15; Laws 2020, LB1152, § 10.

2-516 State plan; director; duties; contents; disapproval; amended plan; alteration or amendment authorized.

(1) No later than December 31, 2019, the director, in consultation with the Governor and the Attorney General, shall submit to the United States Secretary of Agriculture for approval a state plan by which the department shall regulate the cultivation, handling, and processing of hemp. Such state plan shall include, at a minimum:

(a) A practice to maintain relevant information regarding land on which hemp is cultivated, handled, or processed in Nebraska, including a legal description of the land, for a period of not less than three calendar years;

(b) A procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration of hemp cultivated in Nebraska;

(c) A procedure for the effective destruction of hemp that is cultivated, processed, or handled in violation of the Nebraska Hemp Farming Act;

(d) A procedure to implement enforcement procedures under the act;

(e) A procedure for conducting, at a minimum, annual inspections of a random sample of hemp cultivators and processor-handlers to verify that hemp is not being cultivated, processed, or handled in violation of state or federal law;

(f) A procedure for submitting required information to the United States Department of Agriculture, as required; and

(g) A certification that the state has the resources and personnel needed to carry out the practices and procedures required by the act and federal law.

(2) If the United States Secretary of Agriculture disapproves the plan, the director, in consultation with the Governor and the Attorney General, shall submit an amended state plan to the secretary within ninety days after such disapproval.

(3) The director shall have the authority to alter or amend the state plan as required, consistent with the Nebraska Hemp Farming Act and federal law.

(4) Nothing in the Nebraska Hemp Farming Act shall be construed to be less restrictive than the federal Agriculture Improvement Act of 2018.

Source: Laws 2019, LB657, § 16; Laws 2020, LB1152, § 11.

2-517 Nebraska Hemp Commission; members; qualifications; terms; quorum; expenses; powers and duties; report; contents.

(1) The Nebraska Hemp Commission is created. The commission shall consist of the following members:

(a) The dean of the University of Nebraska College of Agricultural Sciences and Natural Resources or his or her designee;

(b) One member representing postsecondary institutions other than the University of Nebraska; and

(c) Three members appointed by the Governor representing the following interests:

(i) Two Nebraska farmers with an interest in cultivating hemp; and

(ii) A manufacturer of hemp products.

(2) Members appointed pursuant to subdivisions (1)(b) and (c) of this section shall serve a term of four years and may be reappointed. A majority of the members of the commission shall constitute a quorum. The commission shall annually elect one member from among the remaining members to serve as chairperson. The commission shall meet quarterly and may meet more often upon the call of the chairperson or by request of a majority of the members. The commission shall be appointed no later than sixty days after July 1, 2021, and conduct its first meeting no later than thirty days after appointment of the commission. The members of the commission shall serve without pay but shall receive expenses incurred while on official business as provided in sections 81-1174 to 81-1177.

(3) The commission shall have primary responsibility for promoting the Nebraska hemp industry and shall have the following powers and duties:

(a) To appoint and fix the salary of such support staff and employees, who shall serve at the pleasure of the commission, as may be required for the proper discharge of the functions of the commission;

(b) To prepare and approve a budget;

(c) To adopt and promulgate reasonable rules and regulations necessary to carry out this section and section 2-519;

(d) To contract for services and authorize the expenditure of funds which are necessary for the proper operation of this section and section 2-519;

(e) To keep minutes of its meetings and other books and records which will clearly reflect all of the acts and transactions of the commission and to keep such records open to public examination by any person during normal business hours;

(f) To prohibit using any funds collected by the commission to directly or indirectly support or oppose any candidate for public office or to influence state legislation; and

(g) To establish an administrative office at such place in the state as may be suitable for the proper discharge of commission functions.

(4) The commission shall periodically report to the Governor and to the Legislature on hemp policies and practices that will result in the proper and legal growth, management, marketing, and use of the state's hemp industry. Any report submitted to the Legislature shall be submitted electronically. Such policies and practices shall, at a minimum, address the following:

(a) Federal laws and regulatory constraints;

(b) The economic and financial feasibility of a hemp market in Nebraska;

(c) Nebraska businesses that may potentially utilize hemp;

(d) Examination of research on hemp production and utilization;

(e) The potential for globally marketing Nebraska hemp;

(f) The feasibility of private funding for a Nebraska hemp research program;

(g) Law enforcement concerns;

(h) Statutory and regulatory schemes for the cultivation of hemp by private producers; and

(i) Technical support and education about hemp.

(5) The commission is authorized to develop and coordinate programs to research and promote hemp, including, but not limited to, cultivating, handling, processing, transporting, marketing, and selling hemp and preserving and developing Nebraska heirloom hemp varieties that possess characteristics of a unique and specialized cannabis sativa L. seed variety that exist as uncultivated, naturalized plants in the environment or historically have been commercially cultivated in Nebraska.

(6) The commission shall establish such programs with the goal of securing at least twenty percent participation by small and emerging businesses in the Nebraska hemp industry, including, but not limited to, cultivating, handling, processing, transporting, marketing, and selling hemp.

Source: Laws 2019, LB657, § 17; Laws 2020, LB1152, § 12.

2-518 Hemp Promotion Fund; established; use; investment.

The Hemp Promotion Fund is established. The fund shall be administered by the commission for the purposes set forth in section 2-517. The fund may receive appropriations by the Legislature and gifts, grants, federal funds, and any other funds both public and private. All fees collected as set forth in section 2-519 shall be remitted to the State Treasurer for credit to the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2019, LB657, § 18.

Cross References

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

2-519 Fees; records; violations; penalty.

(1) For purposes of this section:

(a) Commercial channels means the sale or delivery of hemp for any use to any commercial buyer, dealer, processor, or cooperative or to any person, public or private, who resells any hemp or hemp product;

(b) Delivered or delivery means receiving hemp for utilization or as a result of its sale in the State of Nebraska but excludes receiving hemp for storage; and

(c) First purchaser means any person, public or private corporation, association, partnership, limited liability company, or other entity buying, accepting for shipment, or otherwise acquiring hemp from a cultivator.

(2) A fee of one cent per pound is levied upon all hemp seed and a fee of one dollar per ton is levied upon all hemp fiber sold through commercial channels in Nebraska or delivered in Nebraska. Two-thirds of the fee levied under this section shall be paid by the cultivator at the time of sale or delivery and shall be collected by the first purchaser. The first purchaser shall pay the remaining one-third of the fee. Hemp seed and hemp fiber shall not be subject to the fees imposed by this section more than once.

(3) The first purchaser, at the time of settlement with the cultivator, shall deduct the fees imposed by this section. The fees shall be deducted whether the hemp is stored in this state or any other state. The first purchaser shall maintain the necessary records of the fees for each purchase or delivery of hemp on the settlement form or check stub showing payment to the cultivator for each purchase or delivery. Such records maintained by the first purchaser shall be open for inspection during normal business hours and provide the following information:

(a) The name and address of the cultivator and first purchaser;

(b) The date of the purchase or delivery;

(c) The number of pounds of hemp seed or pounds or tons of hemp fiber purchased; and

(d) The amount of fees collected on each purchase or delivery.

(4) The first purchaser shall render and have on file with the department by the last day of January and July of each year, on forms prescribed by the commission, a statement of the number of pounds of hemp seed or pounds or tons of hemp fiber purchased in Nebraska. At the time the statement is filed, such first purchaser shall pay and remit to the commission the fees imposed by this section.

(5) All fees collected by the commission pursuant to this section shall be remitted to the State Treasurer for credit to the Hemp Promotion Fund. The commission shall remit the fees collected to the State Treasurer within ten days after receipt.

(6) Any person intentionally violating this section shall be guilty of a Class III misdemeanor.

Source: Laws 2019, LB657, § 19.

ARTICLE 6
NEBRASKA CORN IMPROVERS' ASSOCIATION

Section
2-601. Repealed. Laws 1969, c. 2, § 14.
2-602. Repealed. Laws 1969, c. 2, § 14.
2-603. Repealed. Laws 1969, c. 2, § 14.

2-601 Repealed. Laws 1969, c. 2, § 14.

2-602 Repealed. Laws 1969, c. 2, § 14.

2-603 Repealed. Laws 1969, c. 2, § 14.

ARTICLE 7
NEBRASKA STATE POULTRY ASSOCIATION

Section
2-701. Repealed. Laws 1969, c. 2, § 14.
2-702. Repealed. Laws 1969, c. 2, § 14.
2-703. Repealed. Laws 1969, c. 2, § 14.
2-704. Repealed. Laws 1969, c. 2, § 14.
2-705. Repealed. Laws 1969, c. 2, § 14.

2-701 Repealed. Laws 1969, c. 2, § 14.

2-702 Repealed. Laws 1969, c. 2, § 14.

2-703 Repealed. Laws 1969, c. 2, § 14.

2-704 Repealed. Laws 1969, c. 2, § 14.

2-705 Repealed. Laws 1969, c. 2, § 14.

ARTICLE 8
NEBRASKA POTATO IMPROVEMENT ASSOCIATION

Section
2-801. Repealed. Laws 1969, c. 2, § 14.
2-802. Repealed. Laws 1969, c. 2, § 14.
2-803. Repealed. Laws 1969, c. 2, § 14.
2-804. Repealed. Laws 1969, c. 2, § 14.

2-801 Repealed. Laws 1969, c. 2, § 14.

2-802 Repealed. Laws 1969, c. 2, § 14.

2-803 Repealed. Laws 1969, c. 2, § 14.

2-804 Repealed. Laws 1969, c. 2, § 14.

ARTICLE 9
NOXIOUS WEED CONTROL

Section
2-901. Repealed. Laws 1965, c. 7, § 15.
2-902. Repealed. Laws 1965, c. 7, § 15.
2-903. Repealed. Laws 1965, c. 7, § 15.
2-904. Repealed. Laws 1965, c. 7, § 15.
2-905. Repealed. Laws 1965, c. 7, § 15.
2-906. Repealed. Laws 1965, c. 7, § 15.
2-907. Repealed. Laws 1945, c. 2, § 24.
2-908. Repealed. Laws 1945, c. 2, § 24.
2-909. Repealed. Laws 1945, c. 2, § 24.
2-910. Repealed. Laws 1965, c. 7, § 15.
2-911. Repealed. Laws 1965, c. 7, § 15.
2-912. Repealed. Laws 1965, c. 7, § 15.
2-913. Repealed. Laws 1965, c. 7, § 15.
2-914. Repealed. Laws 1965, c. 7, § 15.
2-915. Repealed. Laws 1965, c. 7, § 15.
2-916. Repealed. Laws 1965, c. 7, § 15.
2-917. Repealed. Laws 1965, c. 7, § 15.
2-918. Repealed. Laws 1965, c. 7, § 15.
2-919. Repealed. Laws 1965, c. 7, § 15.
2-920. Repealed. Laws 1965, c. 7, § 15.
2-920.01. Repealed. Laws 1965, c. 7, § 15.
2-921. Repealed. Laws 1965, c. 7, § 15.
2-922. Repealed. Laws 1965, c. 7, § 15.
2-923. Repealed. Laws 1965, c. 7, § 15.
2-924. Repealed. Laws 1965, c. 7, § 15.
2-925. Repealed. Laws 1965, c. 7, § 15.
2-926. Repealed. Laws 1965, c. 7, § 15.
2-927. Repealed. Laws 1965, c. 7, § 15.
2-928. Repealed. Laws 1965, c. 7, § 15.
2-929. Repealed. Laws 1959, c. 3, § 5.
2-930. Repealed. Laws 1959, c. 3, § 5.

Section
2-931. Repealed. Laws 1959, c. 3, § 5.
2-932. Repealed. Laws 1959, c. 3, § 5.
2-933. Repealed. Laws 1959, c. 3, § 5.
2-934. Repealed. Laws 1959, c. 3, § 5.
2-935. Repealed. Laws 1959, c. 3, § 5.
2-936. Repealed. Laws 1965, c. 7, § 15.
2-937. Repealed. Laws 1959, c. 3, § 5.
2-938. Repealed. Laws 1959, c. 3, § 5.
2-939. Repealed. Laws 1959, c. 3, § 5.
2-940. Repealed. Laws 1965, c. 7, § 15.
2-941. Repealed. Laws 1965, c. 7, § 15.
2-942. Repealed. Laws 1965, c. 7, § 15.
2-943. Repealed. Laws 1965, c. 7, § 15.
2-943.01. Repealed. Laws 1965, c. 7, § 15.
2-944. Repealed. Laws 1965, c. 7, § 15.
2-945. Repealed. Laws 1965, c. 7, § 15.
2-945.01. Act, how cited.
2-945.02. Legislative findings and declarations.
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2-959. Control authorities; equipment and machinery; purchase; use; record.
2-960. Charges; protest; hearing; appeal.
2-961. Entry upon land.
2-962. Notices; how served.
2-963. Violations; penalty; county attorney; duties.
2-964. Repealed. Laws 1987, LB 138, § 14.
2-964.01. Action for failure to comply; authorized.
2-965. Project of control without individual notice; control authority; powers.
2-965.01. Advisory committee; membership.
2-966. Certain noxious weed control districts; dissolution; title to real estate.
2-967. Repealed. Laws 2016, LB1038, § 19.
2-968. Repealed. Laws 2016, LB1038, § 19.
2-969. Riparian Vegetation Management Task Force; created; members.
2-970. Riparian Vegetation Management Task Force; duties; meetings; report.

2-901 Repealed. Laws 1965, c. 7, § 15.

2-902 Repealed. Laws 1965, c. 7, § 15.

2-903 Repealed. Laws 1965, c. 7, § 15.

2-904 Repealed. Laws 1965, c. 7, § 15.

2-905 Repealed. Laws 1965, c. 7, § 15.

2-906 Repealed. Laws 1965, c. 7, § 15.

2-907 Repealed. Laws 1945, c. 2, § 24.

2-908 Repealed. Laws 1945, c. 2, § 24.

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2-910 Repealed. Laws 1965, c. 7, § 15.

2-911 Repealed. Laws 1965, c. 7, § 15.

2-912 Repealed. Laws 1965, c. 7, § 15.

2-913 Repealed. Laws 1965, c. 7, § 15.

2-914 Repealed. Laws 1965, c. 7, § 15.

2-915 Repealed. Laws 1965, c. 7, § 15.

2-916 Repealed. Laws 1965, c. 7, § 15.

2-917 Repealed. Laws 1965, c. 7, § 15.

2-918 Repealed. Laws 1965, c. 7, § 15.

2-919 Repealed. Laws 1965, c. 7, § 15.

2-920 Repealed. Laws 1965, c. 7, § 15.

2-920.01 Repealed. Laws 1965, c. 7, § 15.

2-921 Repealed. Laws 1965, c. 7, § 15.

2-922 Repealed. Laws 1965, c. 7, § 15.

2-923 Repealed. Laws 1965, c. 7, § 15.

2-924 Repealed. Laws 1965, c. 7, § 15.

2-925 Repealed. Laws 1965, c. 7, § 15.

2-926 Repealed. Laws 1965, c. 7, § 15.

2-927 Repealed. Laws 1965, c. 7, § 15.

2-928 Repealed. Laws 1965, c. 7, § 15.

2-929 Repealed. Laws 1959, c. 3, § 5.

2-930 Repealed. Laws 1959, c. 3, § 5.

2-931 Repealed. Laws 1959, c. 3, § 5.

2-932 Repealed. Laws 1959, c. 3, § 5.

2-933 Repealed. Laws 1959, c. 3, § 5.

2-934 Repealed. Laws 1959, c. 3, § 5.

2-935 Repealed. Laws 1959, c. 3, § 5.

2-936 Repealed. Laws 1965, c. 7, § 15.

2-937 Repealed. Laws 1959, c. 3, § 5.

2-938 Repealed. Laws 1959, c. 3, § 5.

2-939 Repealed. Laws 1959, c. 3, § 5.

2-940 Repealed. Laws 1965, c. 7, § 15.

2-941 Repealed. Laws 1965, c. 7, § 15.

2-942 Repealed. Laws 1965, c. 7, § 15.

2-943 Repealed. Laws 1965, c. 7, § 15.

2-943.01 Repealed. Laws 1965, c. 7, § 15.

2-944 Repealed. Laws 1965, c. 7, § 15.

2-945 Repealed. Laws 1965, c. 7, § 15.

2-945.01 Act, how cited.

Sections 2-945.01 to 2-970 shall be known and may be cited as the Noxious Weed Control Act.

Source: Laws 1989, LB 49, § 1; Laws 1994, LB 76, § 450; Laws 2004, LB 869, § 1; Laws 2006, LB 1226, § 2; Laws 2007, LB701, § 3; Laws 2016, LB1038, § 1.

2-945.02 Legislative findings and declarations.

The Legislature finds and declares that:

(1) The failure to control noxious weeds on lands in this state is a serious problem which is detrimental to the production of crops and livestock and to the welfare of residents of this state and which may devalue land and reduce tax revenue;

(2) It is the purpose of the Noxious Weed Control Act to establish a workable framework, delineate responsibilities, encourage education of the public concerning noxious weeds, and provide the necessary authority to effectively control noxious weeds;

(3) It is the duty of each person who owns or controls land to effectively control noxious weeds on such land. County boards or control authorities are responsible for administration of noxious weed control laws at the county level;

(4) The Department of Agriculture should have responsibility for (a) establishing basic standards such as designating which plants are to be considered noxious weeds and which control measures are to be used in particular situations and (b) monitoring implementation of the act by the control authorities; and

(5) A state noxious weed advisory committee shall be convened by the director with broad representation to advise the director.

Source: Laws 1989, LB 49, § 2.

2-946 Repealed. Laws 1965, c. 8, § 58.

2-946.01 Counties; appropriate funds.

Counties may appropriate and expend funds for the purchase of materials, machinery and equipment to assist the districts organized under this section and section 2-946.02. Cities or villages may appropriate and expend funds for the purchase of materials, machinery and equipment to assist districts organized within their corporate limits.

Source: Laws 1945, c. 2, § 22, p. 66.

2-946.02 Noxious weed control; cities and villages; provide funds.

All cities and villages in this state shall provide for the control of noxious weeds within their jurisdiction and may appropriate money for and make the necessary expenditures for noxious weed control. The director shall advise cities and villages concerning noxious weed control.

Source: Laws 1945, c. 2, § 23, p. 66; Laws 1975, LB 14, § 1; Laws 1987, LB 138, § 1; Laws 1989, LB 49, § 3.

2-947 Repealed. Laws 1965, c. 7, § 15.

2-948 Repealed. Laws 1965, c. 7, § 15.

2-949 Repealed. Laws 1965, c. 7, § 15.

2-950 Repealed. Laws 1965, c. 7, § 15.

2-951 Repealed. Laws 1965, c. 7, § 15.

2-952 Methods.

It shall be the duty of every person to control the spread of noxious weeds on lands owned or controlled by him or her and to use such methods for that purpose as are specified in rules and regulations adopted and promulgated by the director.

Source: Laws 1965, c. 7, § 1, p. 78; Laws 1975, LB 14, § 2; Laws 1987, LB 138, § 2; Laws 1989, LB 49, § 4.

2-953 Terms, defined.

For purposes of the Noxious Weed Control Act:

(1) Person means any individual, partnership, firm, limited liability company, corporation, company, society, or association, the state or any department, agency, or subdivision thereof, or any other public or private entity;

(2)(a) Control, with respect to land, means the authority to operate, manage, supervise, or exercise jurisdiction over or any similar power. The state or federal government or a political subdivision shall not be deemed to control land on which it has an easement as long as it does not otherwise operate, manage, supervise, or exercise jurisdiction over the land; and

(b) Control, with respect to weeds, means the prevention, suppression, or limitation of the growth, spread, propagation, or development or the eradication of weeds;

(3) County board means the county board of commissioners or supervisors;

(4) Noxious weeds means and includes any weeds designated and listed as noxious in rules and regulations adopted and promulgated by the director;

(5) Control authority means the county weed district board or the county board if it is designated as the control authority pursuant to section 2-953.01, which board shall represent all rural areas and cities, villages, and townships within the county boundaries;

(6) Director means the Director of Agriculture or his or her designated representative; and

(7) Weed management entity means an entity recognized by the director as being established by and consisting of local stakeholders, including tribal governments, for the purpose of controlling or eradicating harmful, invasive weeds and increasing public knowledge and education concerning the need to control or eradicate harmful, invasive weeds.

Source: Laws 1965, c. 7, § 2, p. 78; Laws 1969, c. 13, § 1, p. 151; Laws 1975, LB 14, § 3; Laws 1981, LB 204, § 2; Laws 1987, LB 1, § 1; Laws 1987, LB 138, § 3; Laws 1989, LB 49, § 5; Laws 1993, LB 121, § 61; Laws 1994, LB 76, § 453; Laws 2004, LB 869, § 2.

2-953.01 County weed district board; elections; membership.

The county board may, following an election in which a majority of the votes cast are in favor of such action, function as and exercise the authority and carry out the duties of the county weed district board. To initiate such an election, the county board may, by resolution, require the county clerk of such county to have placed upon the ballot at the election next following such resolution, the question, Shall the county weed district board be dissolved and its duties and authority be exercised by the county board?

Yes .... No ....

If a majority of the votes cast on this question are opposed to dissolution of the county weed district board, the county shall remain subject to the direction and authority of the elected county weed district board. If a majority of the votes cast on this question are in favor of the dissolution of the county weed district board, the county board shall function as and exercise the authority and carry out the duties of the county weed district board. If, at any time following the dissolution of the county weed district board, county residents, representing at least ten percent of the votes cast in the preceding general election in such county, submit a petition to the county clerk for reestablishment of the county weed district board as an independent elected body, the clerk shall place the following question on the next general election ballot: Shall the county weed district board be reestablished and elected independent of other county officials?

Yes .... No ....

If a majority of the ballots favor reestablishment of the independent board, the county board shall appoint an initial county weed district board and thereafter the county weed district board members shall be elected in conformity with section 32-531.

When the county board does not function as the county weed district board, such board shall be composed of five members, three of whom shall be from rural areas and two of whom shall be from cities, villages, or townships.

Source: Laws 1994, LB 76, § 451.

Cross References

Election of county weed district board members, see section 32-531.

2-953.02 County weed district board; per diem; expenses; ex officio member; appointment; when.

The members of the county weed district board shall be paid a per diem of not less than twelve dollars for each day actually and necessarily engaged in the performance of their official duties as members of such board and shall be allowed mileage reimbursement on the same basis as provided in section 81-1176. The chairperson of the county board may appoint one additional member from the county board to serve as an ex officio member of the county weed district board to provide coordination between such boards, except that the county board member or commissioner so appointed shall not be entitled to the expense reimbursement allowed county weed district board members. The ex officio member shall possess the same authority as other members, including the right to vote.

Source: Laws 1994, LB 76, § 452; Laws 1996, LB 1011, § 1.

2-954 Act; enforcement; director, control authorities, and superintendents; powers and duties; expenses.

(1)(a) The duty of enforcing and carrying out the Noxious Weed Control Act shall be vested in the director and the control authorities as designated in the act. The director shall determine what weeds are noxious for purposes of the act. A list of such noxious weeds shall be included in the rules and regulations adopted and promulgated by the director. The director shall prepare, publish, and revise as necessary a list of noxious weeds. The list shall be distributed to the public by the director, the Cooperative Extension Service, the control authorities, and any other body the director deems appropriate. The director shall, from time to time, adopt and promulgate rules and regulations on methods for control of noxious weeds and adopt and promulgate such rules and regulations as are necessary to carry out the act. Whenever special weed control problems exist in a county involving weeds not included in the rules and regulations, the control authority may petition the director to bring such weeds under the county control program. The petition shall contain the approval of the county board. Prior to petitioning the director, the control authority, in cooperation with the county board, shall hold a public hearing and take testimony upon the petition. Such hearing and the notice thereof shall be in the manner prescribed by the Administrative Procedure Act. A copy of the transcript of the public hearing shall accompany the petition filed with the director. The director may approve or disapprove the request. If approval is granted, the control authority may proceed under the forced control provisions of sections 2-953 to 2-955 and 2-958.

(b) The director shall (i) investigate the subject of noxious weeds, (ii) require information and reports from any control authority as to the presence of noxious weeds and other information relative to noxious weeds and the control thereof in localities where such control authority has jurisdiction, (iii) cooper-

ate with control authorities in carrying out other laws administered by him or her, (iv) cooperate with agencies of federal and state governments and other persons in carrying out his or her duties under the Noxious Weed Control Act, (v) with the consent of the Governor, conduct investigations outside this state to protect the interest of the agricultural industry of this state from noxious weeds not generally distributed therein, (vi) with the consent of the federal agency involved, control noxious weeds on federal lands within this state, with reimbursement, when deemed by the director to be necessary to an effective weed control program, (vii) advise and confer as to the extent of noxious weed infestations and the methods determined best suited to the control thereof, (viii) call and attend meetings and conferences dealing with the subject of noxious weeds, (ix) disseminate information and conduct educational campaigns with respect to control of noxious weeds, (x) procure materials and equipment and employ personnel necessary to carry out the director's duties and responsibilities, and (xi) perform such other acts as may be necessary or appropriate to the administration of the act.

(c) The director may (i) temporarily designate a weed as a noxious weed for up to eighteen months if the director, in consultation with the advisory committee created under section 2-965.01, has adopted criteria for making temporary designations and (ii) apply for and accept any gift, grant, contract, or other funds or grants-in-aid from the federal government or other public and private sources for noxious weed control purposes and account for such funds as prescribed by the Auditor of Public Accounts.

(d) When the director determines that a control authority has substantively failed to carry out its duties and responsibilities as a control authority or has substantively failed to implement a county weed control program, he or she shall instruct the control authority regarding the measures necessary to fulfill such duties and responsibilities. The director shall establish a reasonable date by which the control authority shall fulfill such duties and responsibilities. If the control authority fails or refuses to comply with instructions by such date, the Attorney General shall file an action as provided by law against the control authority for such failure or refusal.

(2)(a) Each control authority shall carry out the duties and responsibilities vested in it under the act with respect to land under its jurisdiction in accordance with rules and regulations adopted and promulgated by the director. Such duties shall include the establishment of a coordinated program for control of noxious weeds within the county.

(b) A control authority may cooperate with any person in carrying out its duties and responsibilities under the act.

(3)(a) Each county board shall employ one or more weed control superintendents. Each such superintendent shall, as a condition precedent to employment, be certified in writing by the federal Environmental Protection Agency as a commercial applicator under the Federal Insecticide, Fungicide, and Rodenticide Act. Each superintendent shall be bonded for such sum as the county board shall prescribe. The same person may be a weed control superintendent for more than one county. Such employment may be for such tenure and at such rates of compensation and reimbursement for travel expenses as the county board may prescribe. Such superintendent shall be reimbursed for mileage at a rate equal to or greater than the rate provided in section 81-1176.

(b) Under the direction of the control authority, it shall be the duty of every weed control superintendent to examine all land under the jurisdiction of the control authority for the purpose of determining whether the Noxious Weed Control Act and the rules and regulations adopted and promulgated by the director have been complied with. The weed control superintendent shall: (i) Compile such data on infested areas and controlled areas and such other reports as the director or the control authority may require; (ii) consult and advise upon matters pertaining to the best and most practical methods of noxious weed control and render assistance and direction for the most effective control; (iii) investigate or aid in the investigation and prosecution of any violation of the act; and (iv) perform such other duties as required by the control authority in the performance of its duties. Weed control superintendents shall cooperate and assist one another to the extent practicable and shall supervise the carrying out of the coordinated control program within the county.

(c) In cases involving counties in which municipalities have ordinances for weed control, the control authority may enter into agreements with municipal authorities for the enforcement of local weed ordinances and may follow collection procedures established by such ordinances. All money received shall be deposited in the noxious weed control fund or, if no noxious weed control fund exists, in the county general fund.

Source: Laws 1965, c. 7, § 3, p. 79; Laws 1969, c. 13, § 2, p. 153; Laws 1975, LB 14, § 4; Laws 1981, LB 204, § 3; Laws 1987, LB 1, § 2; Laws 1987, LB 138, § 4; Laws 1988, LB 807, § 1; Laws 1989, LB 49, § 6; Laws 1991, LB 663, § 24; Laws 1996, LB 1011, § 2; Laws 2004, LB 869, § 3; Laws 2010, LB731, § 1.

Cross References

Administrative Procedure Act, see section 84-920.

2-954.01 Repealed. Laws 1975, LB 14, § 13.

2-954.02 Superintendent; continuing education.

Beginning January 1, 1988, each county weed control superintendent shall be required to complete twenty hours of annual continuing education. The cost of continuing education shall be included in the annual budget of the weed control authority. Such continuing education shall focus on the use of equipment, drift control, calibration, proper selection of pesticides, legal responsibilities, and duties of office. Any statewide association of county weed control superintendents or of local governments responsible for weed control may sponsor the required continuing education program. All continuing education programs shall be submitted to the director for review and approval. The sponsoring organization shall maintain records of attendance and notify each county board of the hours completed by its weed control superintendent by January 1 of each year. Failure to complete the required number of hours of continuing education shall subject such weed control superintendent to removal from office by the county board.

Source: Laws 1987, LB 138, § 5.

2-955 Notice; kinds; effect; failure to comply; powers of control authority.

(1) Notices for control of noxious weeds shall consist of two kinds: General notices, as prescribed by rules and regulations adopted and promulgated by the

director, which notices shall be on a form prescribed by the director; and individual notices, which notices shall be on a form prescribed by this section. Failure to publish general weed notices or to serve individual notices as provided in this section shall not relieve any person from the necessity of full compliance with the Noxious Weed Control Act and rules and regulations adopted and promulgated pursuant to the act.

(a) General notice shall be published by each control authority, in one or more newspapers of general circulation throughout the area over which the control authority has jurisdiction, on or before May 1 of each year and at such other times as the director may require or the control authority may determine.

(b) Whenever any control authority finds it necessary to secure more prompt or definite control of weeds on particular land than is accomplished by the general published notice, it shall cause to be served individual notice upon the owner of record of such land at his or her last-known address, giving specific instructions and methods when and how certain named weeds are to be controlled. Such methods may include definite systems of tillage, cropping, management, and use of livestock.

Each control authority shall use one or both of the following forms for all individual notices: (i)

. . . . County Weed Control Authority

OFFICIAL NOTICE

Section 2-952, Reissue Revised Statutes of Nebraska, places an affirmative duty upon every person to control noxious weeds on land under such person's ownership or control. Information received by the control authority, including an onsite investigation by the county weed control superintendent or a deputy, indicated the existence of an uncontrolled noxious weed infestation on property owned by you at: . . . .

The noxious weed or weeds are . . . . The method of control recommended by the control authority is as follows: . . . .

Other appropriate control methods are acceptable if approved by the county weed control superintendent.

Because the stage of growth of the noxious weed infestation on the above-specified property warrants immediate control, if such infestation remains uncontrolled after ten days from the date specified at the bottom of this notice, the control authority may enter upon such property for the purpose of taking the appropriate weed control measures. Costs for the control activities of the control authority shall be at the expense of the owner of the property and shall become a lien on the property as a special assessment levied on the date of control.

. . . .

Weed Control Superintendent Dated;

or (ii)

. . . . County Weed Control Authority

OFFICIAL NOTICE

Section 2-952, Reissue Revised Statutes of Nebraska, places an affirmative duty upon every person to control noxious weeds on land under such person's ownership or control. Information received by the control authority, including an onsite investigation by the county weed control superintendent or a deputy, indicates the existence of an uncontrolled noxious weed infestation on property owned by you at: . . . .

The noxious weed or weeds are . . . . The method of control recommended by the control authority is as follows:

. . . .

Other appropriate control methods are acceptable if approved by the county weed control superintendent. If, within fifteen days from the date specified at the bottom of this notice, the noxious weed infestation on such property, as specified above, has not been brought under control, you may, upon conviction, be subject to a fine of $100.00 per day for each day of noncompliance beginning on . . . ., up to a maximum of fifteen days of noncompliance (maximum $1,500).

Upon request to the control authority, within fifteen days from the date specified at the bottom of this notice, you are entitled to a hearing before the control authority to challenge the existence of a noxious weed infestation on property owned by you at . . . .

. . . .

Weed Control Superintendent Dated.

In all counties having a population of four hundred thousand or more inhabitants as determined by the most recent federal decennial census, the control authority may dispense with the individual notices and may publish general notices if published in one or more newspapers of general circulation throughout the area over which such control authority has jurisdiction. Such notice shall be published weekly for four successive weeks prior to May 1 of each year or at such other times as the control authority deems necessary. In no event shall a fine be assessed against a landowner as prescribed in subdivision (3)(a) of this section unless the control authority has caused individual notice to be served upon the landowner as specified in this subdivision.

(2) At the request of any owner served with an individual notice pursuant to subdivision (1)(b)(ii) of this section, the control authority shall hold an informal public hearing to allow such landowner an opportunity to be heard on the question of the existence of an uncontrolled noxious weed infestation on such landowner's property.

(3) Whenever the owner of the land on which noxious weeds are present has neglected or failed to control them as required pursuant to the act and any notice given pursuant to subsection (1) of this section, the control authority having jurisdiction shall proceed as follows:

(a) If, within fifteen days from the date specified on the notice required by subdivision (1)(b)(ii) of this section, the owner has not taken action to control the noxious weeds on the specified property and has not requested a hearing pursuant to subsection (2) of this section, the control authority shall notify the county attorney who shall proceed against such owner as prescribed in this subdivision. A person who is responsible for an infestation of noxious weeds on particular land under his or her ownership and who refuses or fails to control the weeds on the infested area within the time designated in the notice

delivered by the control authority shall, upon conviction, be guilty of an infraction pursuant to sections 29-431 to 29-438, except that the penalty shall be a fine of one hundred dollars per day for each day of violation up to a total of one thousand five hundred dollars for fifteen days of noncompliance; or

(b) If, within ten days from the date specified in the notice required by subdivision (1)(b)(i) of this section, the owner has not taken action to control the noxious weeds on the specified property and the stage of growth of such noxious weeds warrants immediate control to prevent spread of the infestation to neighboring property, the control authority may cause proper control methods to be used on such infested land, including necessary destruction of growing crops, and shall advise the record owner of the cost incurred in connection with such operation. The cost of any such control shall be at the expense of the owner. In addition the control authority shall immediately cause notice to be filed of possible unpaid weed control assessments against the property upon which the control measures were used in the register of deeds office in the county where the property is located. If unpaid for two months, the control authority shall certify to the county treasurer the amount of such expense and such expense shall become a lien on the property upon which the control measures were taken as a special assessment levied on the date of control. The county treasurer shall add such expense to and it shall become and form a part of the taxes upon such land and shall bear interest at the same rate as taxes.

Nothing contained in this section shall be construed to limit satisfaction of the obligation imposed hereby in whole or in part by tax foreclosure proceedings. The expense may be collected by suit instituted for that purpose as a debt due the county or by any other or additional remedy otherwise available. Amounts collected under subdivision (3)(b) of this section shall be deposited to the noxious weed control fund of the control authority or, if no noxious weed control fund exists, to the county general fund.

Source: Laws 1965, c. 7, § 4, p. 82; Laws 1969, c. 13, § 4, p. 158; Laws 1974, LB 694, § 1; Laws 1975, LB 14, § 5; Laws 1983, LB 154, § 1; Laws 1987, LB 1, § 3; Laws 1987, LB 138, § 6; Laws 1989, LB 49, § 7; Laws 1995, LB 589, § 1; Laws 2010, LB731, § 2; Laws 2016, LB742, § 1.

Pursuant to subsection (3)(a) of this section, proof of proper notice is an element of the State's prima facie case. Pursuant to subsection (3)(a) of this section, in order to prove notice, it must be shown that the county control authority made a finding of uncontrolled noxious weeds and issued proper notice to defendant or delegated its statutory duty to the weed control superintendent to make such findings and to give such notice. State v. Beethe, 249 Neb. 743, 545 N.W.2d 108 (1996); State v. Brozovsky, 249 Neb. 723, 545 N.W.2d 98 (1996).

A court may not impose probation upon a defendant convicted under subsection (3)(a) of this section. State v. Martin, 3 Neb. App. 555, 529 N.W.2d 545 (1995).

2-956 Public lands; cost of control.

The cost of controlling noxious weeds on all land, including highways, roadways, streets, alleys, and rights-of-way, owned or controlled by a state department, agency, commission, or board or a political subdivision shall be paid by the state department, agency, commission, or board in control thereof or the political subdivision out of funds appropriated to the state department, agency, commission, or board or budgeted by the political subdivision for its use.

Source: Laws 1965, c. 7, § 5, p. 84; Laws 1975, LB 14, § 6; Laws 1989, LB 49, § 8.

2-957 List; publication; equipment; treatment; disposition; violation; penalty.

To prevent the dissemination of noxious weeds through any article, including machinery, equipment, plants, materials, and other things, the director shall, from time to time, adopt and promulgate rules and regulations which shall include a list of noxious weeds which may be disseminated through articles and a list of articles capable of disseminating such weeds and shall designate in such rules and regulations treatment of such articles as, in the director's opinion, would prevent such dissemination. Until any such article is treated in accordance with the applicable rules and regulations, it shall not be moved from such premises except under and in accordance with the written permission of the control authority having jurisdiction of the area in which such article is located, and the control authority may hold or prevent its movement from such premises. The movement of any such article which has not been so decontaminated, except in accordance with such written permission, may be stopped by the control authority having jurisdiction over the place in which such movement is taking place and further movement and disposition shall only be in accordance with such control authority's direction. Any further movement of any such article not in accordance with the control authority's direction shall constitute a Class IV misdemeanor.

Source: Laws 1965, c. 7, § 6, p. 84; Laws 1987, LB 138, § 7; Laws 1989, LB 49, § 9.

2-958 Noxious weed control fund; authorized; Noxious Weed Cash Fund; created; use; investment.

(1) A noxious weed control fund may be established for each control authority, which fund shall be available for expenses authorized to be paid from such fund, including necessary expenses of the control authority in carrying out its duties and responsibilities under the Noxious Weed Control Act. The weed control superintendent within the county shall (a) ascertain and tabulate each year the approximate amount of land infested with noxious weeds and its location in the county, (b) ascertain and prepare all information required by the county board in the preparation of the county budget, including actual and expected revenue from all sources, cash balances, expenditures, amounts proposed to be expended during the year, and working capital, and (c) transmit such information tabulated by the control authority to the county board not later than June 1 of each year.

(2) The Noxious Weed Cash Fund is created. The fund shall consist of proceeds raised from fees imposed for the registration of pesticides and earmarked for the fund pursuant to section 2-2634, funds credited or transferred pursuant to sections 81-201 and 81-201.05, any gifts, grants, or donations from any source, and any reimbursement funds for control work done pursuant to subdivision (1)(b)(vi) of section 2-954. An amount from the General Fund may be appropriated annually for the Noxious Weed Control Act. The fund shall be administered and used by the director to maintain the noxious weed control program and for expenses directly related to the program. Until January 1, 2020, the fund may also be used to defray all reasonable and necessary costs related to the implementation of the Nebraska Hemp Farming Act. The Department of Agriculture shall document all costs incurred for such purpose. The budget administrator of the budget division of the Department of

Administrative Services may transfer a like amount from the Nebraska Hemp Program Fund to the Noxious Weed Cash Fund no later than October 1, 2022.

(3) Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1965, c. 7, § 7, p. 84; Laws 1969, c. 13, § 5, p. 159; Laws 1969, c. 145, § 11, p. 675; Laws 1987, LB 1, § 4; Laws 1987, LB 138, § 8; Laws 1989, LB 49, § 10; Laws 1993, LB 588, § 35; Laws 1994, LB 1066, § 2; Laws 1996, LB 1114, § 11; Laws 1997, LB 269, § 1; Laws 2001, LB 541, § 1; Laws 2004, LB 869, § 6; Laws 2019, LB657, § 20.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska Hemp Farming Act, see section 2-501.
Nebraska State Funds Investment Act, see section 72-1260.

2-958.01 Noxious Weed and Invasive Plant Species Assistance Fund; created; use; investment.

The Noxious Weed and Invasive Plant Species Assistance Fund is created. The fund may be used to carry out the purposes of section 2-958.02. 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 set forth in section 2-958.02. 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 2004, LB 869, § 4; Laws 2008, LB961, § 1; Laws 2009, LB98, § 1.

Cross References

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

2-958.02 Grant program; applications; selection; considerations; priority; section, how construed; director; duties.

(1) From funds available in the Noxious Weed and Invasive Plant Species Assistance Fund, the director may administer a grant program to assist local control authorities and other weed management entities in the cost of implementing and maintaining noxious weed control programs and in addressing special weed control problems as provided in this section.

(2) The director shall receive applications by local control authorities and weed management entities for assistance under this subsection and, in consultation with the advisory committee created under section 2-965.01, award grants for any of the following eligible purposes:

(a) To conduct applied research to solve locally significant weed management problems;

(b) To demonstrate innovative control methods or land management practices which have the potential to reduce landowner costs to control noxious weeds or improve the effectiveness of noxious weed control;

(c) To encourage the formation of weed management entities;

(d) To respond to introductions or infestations of invasive plants that threaten or potentially threaten the productivity of cropland and rangeland over a wide area;

(e) To respond to introductions and infestations of invasive plant species that threaten or potentially threaten the productivity and biodiversity of wildlife and fishery habitats on public and private lands;

(f) To respond to special weed control problems involving weeds not included in the list of noxious weeds promulgated by rule and regulation of the director if the director has approved a petition to bring such weeds under the county control program;

(g) To conduct monitoring or surveillance activities to detect, map, or determine the distribution of invasive plant species and to determine susceptible locations for the introduction or spread of invasive plant species; and

(h) To conduct educational activities.

(3) The director shall select and prioritize applications for assistance under subsection (2) of this section based on the following considerations:

(a) The seriousness of the noxious weed or invasive plant problem or potential problem addressed by the project;

(b) The ability of the project to provide timely intervention to save current and future costs of control and eradication;

(c) The likelihood that the project will prevent or resolve the problem or increase knowledge about resolving similar problems in the future;

(d) The extent to which the project will leverage federal funds and other nonstate funds;

(e) The extent to which the applicant has made progress in addressing noxious weed or invasive plant problems;

(f) The extent to which the project will provide a comprehensive approach to the control or eradication of noxious weeds or invasive plant species as identified and listed by the Nebraska Invasive Species Council;

(g) The extent to which the project will reduce or prevent the total population or area of infestation of a noxious weed or invasive plant species as identified and listed by the Nebraska Invasive Species Council;

(h) The extent to which the project uses the principles of integrated vegetation management and sound science; and

(i) Such other factors that the director determines to be relevant.

(4) The director shall receive applications for grants under this subsection and shall award grants to recipients and programs eligible under this subsection. Priority shall be given to grant applicants whose proposed programs are consistent with vegetation management goals and priorities and plans and policies of the Riparian Vegetation Management Task Force established under section 2-970. Beginning in fiscal year 2022-23, it is the intent of the Legislature to appropriate three million dollars annually for the management of vegetation within the banks or flood plain of a natural stream. Such funds shall only be used to pay for activities and equipment as part of vegetation management programs that have as their primary objective improving conveyance of streamflow in natural streams. Grants from funds appropriated as provided in this subsection shall be disbursed only to weed management entities, local weed control authorities, and natural resources districts whose territory includes

river basins, with priority given to river basins that are the subject of an interstate compact or decree. The Game and Parks Commission shall assist grant recipients in implementing grant projects under this subsection, and interlocal agreements under the Interlocal Cooperation Act or the Joint Public Agency Act shall be utilized whenever possible in carrying out the grant projects.

(5) Nothing in this section shall be construed to relieve control authorities of their duties and responsibilities under the Noxious Weed Control Act or the duty of a person to control the spread of noxious weeds on lands owned and controlled by him or her.

(6) The Department of Agriculture may adopt and promulgate necessary rules and regulations to carry out this section.

(7) The director may annually apply for conservation funding from the Natural Resources Conservation Service of the United States Department of Agriculture.

Source: Laws 2004, LB 869, § 5; Laws 2007, LB701, § 4; Laws 2009, LB98, § 2; Laws 2016, LB1038, § 2; Laws 2022, LB805, § 1. Effective date July 21, 2022.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

2-959 Control authorities; equipment and machinery; purchase; use; record.

Control authorities, independently or in combination, may purchase or provide for needed or necessary equipment for the control of weeds, whether or not declared noxious, on land under their jurisdiction and may make available the use of machinery and other equipment and operators at such cost as may be deemed sufficient to cover the actual cost of operations, including depreciation, of such machinery and equipment. All funds so received shall be deposited to the noxious weed control fund or, if no noxious weed control fund exists, to the county general fund. Each control authority shall keep a record showing the procurement and rental of equipment, which record shall be open to inspection by citizens of this state.

Source: Laws 1965, c. 7, § 8, p. 85; Laws 1975, LB 14, § 7; Laws 2010, LB731, § 3.

2-960 Charges; protest; hearing; appeal.

If any person is dissatisfied with the amount of any charge made against him or her by a control authority for control work or for the purchase of materials or use of equipment, he or she may, within fifteen days after being advised of the amount of the charge, file a protest with the county board. The county board shall hold a hearing to determine whether the charges were appropriate, taking into consideration whether the control measures were conducted in a timely fashion. Following the hearing, the county board shall have the power to adjust or affirm such charge. If any person is dissatisfied with the decision of the county board or with charges made by the county board for control work

performed, such person may appeal the decision, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1965, c. 7, § 9, p. 85; Laws 1975, LB 14, § 8; Laws 1982, LB 697, § 1; Laws 1987, LB 138, § 9; Laws 1988, LB 352, § 2.

Cross References

Administrative Procedure Act, see section 84-920.

2-961 Entry upon land.

The director, any control authority, any weed control superintendent, or anyone authorized thereby may enter upon all land under his, her, or its respective jurisdiction for the purpose of performing the duties and exercising the powers under the rules and regulations adopted and promulgated by the director and the Noxious Weed Control Act, including the taking of specimens of weeds or other materials, without the consent of the person owning or controlling such land and without being subject to any action for trespass or damages, including damages for destruction of growing crops, if reasonable care is exercised.

Source: Laws 1965, c. 7, § 10, p. 86; Laws 1987, LB 1, § 5; Laws 1987, LB 138, § 10; Laws 1989, LB 49, § 11.

2-962 Notices; how served.

All individual notices, service of which is provided for in the Noxious Weed Control Act, shall be in writing. Service of such notices shall be in the same manner as service of a summons in a civil action in the district court or by certified mail to the last-known address to be ascertained, if necessary, from the last tax list.

Source: Laws 1965, c. 7, § 11, p. 86; Laws 1987, LB 1, § 6; Laws 1987, LB 138, § 11; Laws 1989, LB 49, § 12.

2-963 Violations; penalty; county attorney; duties.

(1) Any person who intrudes upon any land under quarantine, who moves or causes to be moved any article covered by section 2-957 except as provided in such section, who prevents or threatens to prevent entry upon land as provided in section 2-961, or who interferes with the carrying out of the Noxious Weed Control Act shall be guilty of a Class IV misdemeanor in addition to any penalty imposed pursuant to section 2-955.

(2) It shall be the duty of the county attorney of the county in which any violation of section 2-955 or this section occurs, when notified of such violation by the county board or control authority, to cause appropriate proceedings to be instituted and pursued in the appropriate court without delay.

Source: Laws 1965, c. 7, § 12, p. 86; Laws 1974, LB 694, § 2; Laws 1975, LB 14, § 9; Laws 1977, LB 40, § 5; Laws 1983, LB 154, § 2; Laws 1987, LB 1, § 7; Laws 1987, LB 138, § 12; Laws 1989, LB 49, § 13.

2-964 Repealed. Laws 1987, LB 138, § 14.

2-964.01 Action for failure to comply; authorized.

Any person or public agency may institute legal action for the failure to comply with the Noxious Weed Control Act.

Source: Laws 1989, LB 49, § 14.

2-965 Project of control without individual notice; control authority; powers.

A control authority may direct and carry out projects of control for one or more specific noxious weeds without individual notice as prescribed in section 2-955 if the control authority has caused publication of notices of such project as provided in this section. The notice shall be published in one or more newspapers of general circulation throughout the area over which such control authority has jurisdiction and shall be published weekly for four successive weeks prior to the project commencement date specified in the notice for the control project. Such notice shall state the noxious weed or weeds to be controlled by the project, the date the project will commence, and the approximate period of time when the project will be carried out. In no event shall a fine or lien be assessed against a landowner as prescribed in section 2-955 for a project under this section unless the control authority has caused individual notice to be served upon the landowner as specified in section 2-955.

Source: Laws 2006, LB 1226, § 1.

2-965.01 Advisory committee; membership.

The director shall convene an advisory committee to advise the director concerning his or her responsibilities under the noxious weed control program. Representatives from the Nebraska Weed Control Association, the leafy spurge task force, state or federal agencies actively concerned with the control of noxious weeds, the University of Nebraska Institute of Agriculture and Natural Resources, and cities and villages of this state, persons actively involved in agriculture, and others in the public and private sector may serve on such committee at the request of the director. If an advisory committee is convened, members shall not receive any reimbursement for expenses.

Source: Laws 1989, LB 49, § 15.

2-966 Certain noxious weed control districts; dissolution; title to real estate.

Title to any real estate standing in the name of any noxious weed control district created under sections 2-910 to 2-951, which district was dissolved by the repeal of such sections by Laws 1965, chapter 7, section 15, is hereby quieted in the county in which such real estate is located. Any such real estate shall be held by the county for the use of the control authority created pursuant to sections 2-952 to 2-963 or may be sold and the proceeds from such sale deposited to the credit of the control authority.

Source: Laws 1969, c. 3, § 1, p. 66; Laws 1975, LB 14, § 11; Laws 1987, LB 1, § 9; Laws 1987, LB 138, § 13.

2-967 Repealed. Laws 2016, LB1038, § 19.

2-968 Repealed. Laws 2016, LB1038, § 19.

2-969 Riparian Vegetation Management Task Force; created; members.

The Riparian Vegetation Management Task Force is created. The Governor shall appoint the members of the task force. The members shall include one

surface water project representative from each river basin that has ever been determined to be fully appropriated pursuant to section 46-714 or 46-720 or is designated as overappropriated pursuant to section 46-713 by the Department of Natural Resources; one surface water project representative from a river basin that has not been determined to be fully appropriated pursuant to section 46-714 or 46-720 or is not designated as overappropriated pursuant to section 46-713 by the Department of Natural Resources; one representative from the Department of Agriculture, the Department of Environment and Energy, the Department of Natural Resources, the office of the State Forester, the Game and Parks Commission, and the University of Nebraska; three representatives selected from a list of at least ten individuals nominated by the Nebraska Association of Resources Districts; two representatives selected from a list of at least five individuals nominated by the Nebraska Weed Control Association; one riparian landowner from each of the state's congressional districts; and one representative from the Nebraska Environmental Trust. In addition to such members, any member of the Legislature may serve as a nonvoting, ex officio member of the task force at his or her option. For administrative and budgetary purposes only, the task force shall be housed within the Department of Agriculture.

Source: Laws 2016, LB1038, § 3; Laws 2019, LB302, § 7.

2-970 Riparian Vegetation Management Task Force; duties; meetings; report.

The Riparian Vegetation Management Task Force, in consultation with appropriate federal agencies, shall develop and prioritize vegetation management goals and objectives, analyze the cost-effectiveness of available vegetation treatment, and develop plans and policies to achieve such goals and objectives. Any plan shall utilize the principles of integrated vegetation management and sound science. The task force shall convene within thirty days after the appointment of the members is complete to elect a chairperson and conduct such other business as deemed necessary. An annual report shall be submitted to the Governor and the Legislature by June 30 each year with the first report due on June 30, 2017. The report submitted to the Legislature shall be submitted electronically. It is the intent of the Legislature that expenses of the task force not exceed twenty-five thousand dollars of the total appropriation to the program per fiscal year.

Source: Laws 2016, LB1038, § 4.

ARTICLE 10

PLANT DISEASES, INSECT PESTS, AND ANIMAL PESTS

Cross References

Plant diseases, county cooperation with other agencies, see section 23-116.

(a) QUARANTINE

Section
2-1001. Repealed. Laws 1988, LB 874, § 49.
2-1002. Repealed. Laws 1988, LB 874, § 49.
2-1003. Repealed. Laws 1988, LB 874, § 49.
2-1004. Repealed. Laws 1988, LB 874, § 49.
2-1005. Repealed. Laws 1988, LB 874, § 49.
2-1006. Repealed. Laws 1988, LB 874, § 49.
2-1007. Repealed. Laws 1988, LB 874, § 49.
2-1008. Repealed. Laws 1988, LB 874, § 49.

Section

(b) ERADICATION AND CONTROL IN GENERAL

2-1009. Repealed. Laws 1988, LB 874, § 49.
2-1010. Repealed. Laws 1988, LB 874, § 49.
2-1011. Repealed. Laws 1988, LB 874, § 49.
2-1012. Repealed. Laws 1988, LB 874, § 49.
2-1013. Repealed. Laws 1988, LB 874, § 49.
2-1014. Repealed. Laws 1988, LB 874, § 49.
2-1015. Repealed. Laws 1988, LB 874, § 49.
2-1016. Repealed. Laws 1988, LB 874, § 49.
2-1017. Repealed. Laws 1988, LB 874, § 49.
2-1018. Repealed. Laws 1979, LB 537, § 4.
2-1019. Repealed. Laws 1988, LB 874, § 49.
2-1019.01. Repealed. Laws 1988, LB 874, § 49.
2-1020. Repealed. Laws 1988, LB 874, § 49.
2-1021. Repealed. Laws 1988, LB 874, § 49.
2-1022. Repealed. Laws 1988, LB 874, § 49.
2-1023. Repealed. Laws 1988, LB 874, § 49.
2-1024. Repealed. Laws 1988, LB 874, § 49.
2-1025. Repealed. Laws 1988, LB 874, § 49.
2-1026. Repealed. Laws 1988, LB 874, § 49.
2-1027. Repealed. Laws 1988, LB 874, § 49.
2-1028. Repealed. Laws 1988, LB 874, § 49.
2-1029. Repealed. Laws 1988, LB 874, § 49.
2-1030. Repealed. Laws 1988, LB 874, § 49.
2-1031. Repealed. Laws 1988, LB 874, § 49.
2-1032. Repealed. Laws 1988, LB 874, § 49.
2-1033. Repealed. Laws 1988, LB 874, § 49.
2-1034. Repealed. Laws 1988, LB 874, § 49.
2-1035. Repealed. Laws 1988, LB 874, § 49.
2-1036. Repealed. Laws 1988, LB 874, § 49.
2-1037. Repealed. Laws 1988, LB 874, § 49.
2-1038. Repealed. Laws 1988, LB 874, § 49.

(c) ORANGE OR CEDAR RUST

2-1039. Repealed. Laws 1979, LB 537, § 4.
2-1040. Repealed. Laws 1979, LB 537, § 4.
2-1041. Repealed. Laws 1979, LB 537, § 4.
2-1042. Repealed. Laws 1979, LB 537, § 4.
2-1043. Repealed. Laws 1979, LB 537, § 4.
2-1044. Repealed. Laws 1979, LB 537, § 4.
2-1045. Repealed. Laws 1979, LB 537, § 4.

(d) STATE ENTOMOLOGIST

2-1046. Repealed. Laws 1988, LB 874, § 49.
2-1047. Repealed. Laws 1988, LB 874, § 49.

(e) EUROPEAN CORN BORER; OTHER PESTS

2-1048. Repealed. Laws 1988, LB 874, § 49.
2-1049. Repealed. Laws 1988, LB 874, § 49.
2-1050. Repealed. Laws 1988, LB 874, § 49.

(f) SUGAR BEET NEMATODE

2-1051. Repealed. Laws 1988, LB 874, § 49.
2-1052. Repealed. Laws 1988, LB 874, § 49.

(g) PEST ERADICATION DISTRICTS

2-1053. Repealed. Laws 1988, LB 874, § 49.
2-1054. Repealed. Laws 1988, LB 874, § 49.
2-1055. Repealed. Laws 1988, LB 874, § 49.
2-1056. Repealed. Laws 1988, LB 874, § 49.
2-1057. Repealed. Laws 1988, LB 874, § 49.

Section
2-1058. Repealed. Laws 1988, LB 874, § 49.
2-1059. Repealed. Laws 1988, LB 874, § 49.

(h) BUREAU OF INVESTIGATION

2-1060. Repealed. Laws 1945, c. 3, § 3.
2-1061. Repealed. Laws 1945, c. 3, § 3.

(i) PRAIRIE DOGS

2-1062. Repealed. Laws 1995, LB 87, § 1.
2-1063. Repealed. Laws 1995, LB 87, § 1.
2-1064. Repealed. Laws 1984, LB 969, § 2.
2-1065. Repealed. Laws 1984, LB 969, § 2.

(j) GRASSHOPPERS AND OTHER PESTS

2-1066. Repealed. Laws 2017, LB274, § 6.
2-1067. Repealed. Laws 2017, LB274, § 6.
2-1068. Repealed. Laws 2017, LB274, § 6.
2-1069. Repealed. Laws 2017, LB274, § 6.
2-1070. Repealed. Laws 2017, LB274, § 6.
2-1071. Repealed. Laws 2017, LB274, § 6.

(k) PLANT PROTECTION AND PLANT PEST ACT

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2-1096. Repealed. Laws 2013, LB 68, § 23.
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2-1099. Repealed. Laws 2013, LB 68, § 23.
2-10,100. Repealed. Laws 2013, LB 68, § 23.
2-10,100.01. Repealed. Laws 2013, LB 68, § 23.
2-10,100.02. Repealed. Laws 2013, LB 68, § 23.
2-10,101. Repealed. Laws 2013, LB 68, § 23.
2-10,102. Collectors; nursery stock distributor's license required; inspection.
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2-10,103.02. Administrative fine; collection; use.
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2-10,104. Foreign distributor; reciprocity; department; reciprocal agreements.
2-10,105. Optional inspections; nursery stock distributor's license; optional issuance.
2-10,106. Importation and distribution; labeling requirements; exception; department; powers.
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2-10,111. Costs; liability.
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2-10,113. Foreign nursery stock; foreign soil or plant pests for research or educational purposes; biological control agent or genetically engineered plant organism; permit requirements; trade secrets; confidentiality.
2-10,114. Agents or employees; liability of principal.
2-10,115. Violations; penalties; appeal of department order; procedure.
2-10,115.01. Political subdivision; ordinance or resolution; restrictions.
2-10,116. Rules and regulations.
2-10,116.01. Repealed. Laws 2013, LB 68, § 23.
2-10,117. Plant Protection and Plant Pest Cash Fund; created; use; investment.

(a) QUARANTINE

2-1001 Repealed. Laws 1988, LB 874, § 49.

2-1002 Repealed. Laws 1988, LB 874, § 49.

2-1003 Repealed. Laws 1988, LB 874, § 49.

2-1004 Repealed. Laws 1988, LB 874, § 49.

2-1005 Repealed. Laws 1988, LB 874, § 49.

2-1006 Repealed. Laws 1988, LB 874, § 49.

2-1007 Repealed. Laws 1988, LB 874, § 49.

2-1008 Repealed. Laws 1988, LB 874, § 49.

(b) ERADICATION AND CONTROL IN GENERAL

2-1009 Repealed. Laws 1988, LB 874, § 49.

2-1010 Repealed. Laws 1988, LB 874, § 49.

2-1011 Repealed. Laws 1988, LB 874, § 49.

2-1012 Repealed. Laws 1988, LB 874, § 49.

2-1013 Repealed. Laws 1988, LB 874, § 49.

2-1014 Repealed. Laws 1988, LB 874, § 49.

2-1015 Repealed. Laws 1988, LB 874, § 49.

2-1016 Repealed. Laws 1988, LB 874, § 49.

2-1017 Repealed. Laws 1988, LB 874, § 49.

2-1018 Repealed. Laws 1979, LB 537, § 4.

2-1019 Repealed. Laws 1988, LB 874, § 49.

2-1019.01 Repealed. Laws 1988, LB 874, § 49.

2-1020 Repealed. Laws 1988, LB 874, § 49.

2-1021 Repealed. Laws 1988, LB 874, § 49.

2-1022 Repealed. Laws 1988, LB 874, § 49.

2-1023 Repealed. Laws 1988, LB 874, § 49.

2-1024 Repealed. Laws 1988, LB 874, § 49.

2-1025 Repealed. Laws 1988, LB 874, § 49.

2-1026 Repealed. Laws 1988, LB 874, § 49.

2-1027 Repealed. Laws 1988, LB 874, § 49.

2-1028 Repealed. Laws 1988, LB 874, § 49.

2-1029 Repealed. Laws 1988, LB 874, § 49.

2-1030 Repealed. Laws 1988, LB 874, § 49.

2-1031 Repealed. Laws 1988, LB 874, § 49.

2-1032 Repealed. Laws 1988, LB 874, § 49.

2-1033 Repealed. Laws 1988, LB 874, § 49.

2-1034 Repealed. Laws 1988, LB 874, § 49.

2-1035 Repealed. Laws 1988, LB 874, § 49.

2-1036 Repealed. Laws 1988, LB 874, § 49.

2-1037 Repealed. Laws 1988, LB 874, § 49.

2-1038 Repealed. Laws 1988, LB 874, § 49.

(c) ORANGE OR CEDAR RUST

2-1039 Repealed. Laws 1979, LB 537, § 4.

2-1040 Repealed. Laws 1979, LB 537, § 4.

2-1041 Repealed. Laws 1979, LB 537, § 4.

2-1042 Repealed. Laws 1979, LB 537, § 4.

2-1043 Repealed. Laws 1979, LB 537, § 4.

2-1044 Repealed. Laws 1979, LB 537, § 4.

2-1045 Repealed. Laws 1979, LB 537, § 4.

(d) STATE ENTOMOLOGIST

2-1046 Repealed. Laws 1988, LB 874, § 49.

2-1047 Repealed. Laws 1988, LB 874, § 49.

(e) EUROPEAN CORN BORER; OTHER PESTS

2-1048 Repealed. Laws 1988, LB 874, § 49.

2-1049 Repealed. Laws 1988, LB 874, § 49.

2-1050 Repealed. Laws 1988, LB 874, § 49.

(f) SUGAR BEET NEMATODE

2-1051 Repealed. Laws 1988, LB 874, § 49.

2-1052 Repealed. Laws 1988, LB 874, § 49.

(g) PEST ERADICATION DISTRICTS

2-1053 Repealed. Laws 1988, LB 874, § 49.

2-1054 Repealed. Laws 1988, LB 874, § 49.

2-1055 Repealed. Laws 1988, LB 874, § 49.

2-1056 Repealed. Laws 1988, LB 874, § 49.

2-1057 Repealed. Laws 1988, LB 874, § 49.

2-1058 Repealed. Laws 1988, LB 874, § 49.

2-1059 Repealed. Laws 1988, LB 874, § 49.

(h) BUREAU OF INVESTIGATION

2-1060 Repealed. Laws 1945, c. 3, § 3.

2-1061 Repealed. Laws 1945, c. 3, § 3.

(i) PRAIRIE DOGS

2-1062 Repealed. Laws 1995, LB 87, § 1.

2-1063 Repealed. Laws 1995, LB 87, § 1.

2-1064 Repealed. Laws 1984, LB 969, § 2.

2-1065 Repealed. Laws 1984, LB 969, § 2.

(j) GRASSHOPPERS AND OTHER PESTS

2-1066 Repealed. Laws 2017, LB274, § 6.

2-1067 Repealed. Laws 2017, LB274, § 6.

2-1068 Repealed. Laws 2017, LB274, § 6.

2-1069 Repealed. Laws 2017, LB274, § 6.

2-1070 Repealed. Laws 2017, LB274, § 6.

2-1071 Repealed. Laws 2017, LB274, § 6.

(k) PLANT PROTECTION AND PLANT PEST ACT

2-1072 Act, how cited.

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

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

2-1073 Public policy declaration.

It is hereby declared to be the public policy of the State of Nebraska and the purpose of the Plant Protection and Plant Pest Act to protect and foster the health, prosperity, and general welfare of Nebraska residents by preserving and protecting the plant industry and the agricultural interests of the state. Because of the importance of the plant industry and agricultural interests to the welfare and economy of the state and the damage which can result from the uncontrolled proliferation of plant pests, there is a need to impose standards and restrictions on the movement and care of plants and the movement, treatment, control, and eradication of plant pests within the state. The Department of Agriculture shall be charged with administering and enforcing such standards and restrictions through the act.

Source: Laws 1988, LB 874, § 2; Laws 2017, LB274, § 1.

2-1074 Definitions, where found.

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

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

2-1074.01 Biological control, defined.

Biological control shall mean:

(1) The use by humans of living organisms to control or suppress undesirable animals, plants, or microorganisms which affect plants or plant pests; or

(2) The action of parasites, predators, pathogens, or competitive organisms on a host or prey population which affect plants or plant pests to produce a lower general equilibrium than would prevail in the absence of the biological control agents.

Source: Laws 1993, LB 406, § 3.

2-1075 Biological control agent, defined.

Biological control agent shall mean a parasite, predator, pathogen, or competitive organism intentionally released by humans for the purposes of biological control with the intent of causing a reduction of a host or prey population.

Source: Laws 1988, LB 874, § 4; Laws 1993, LB 406, § 4.

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

2-1075.02 Certified seed potatoes, defined.

Certified seed potatoes means seed potatoes which have been certified by a certification entity recognized by the department to certify that the seed potatoes are free of regulated plant pests.

Source: Laws 2008, LB791, § 3.

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

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

Source: Laws 2013, LB68, § 3.

2-1076 Collector, defined.

Collector shall mean any person who only gathers wild plants for the purpose of distribution.

Source: Laws 1988, LB 874, § 5.

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

2-1078 Department, defined.

Department shall mean the Department of Agriculture.

Source: Laws 1988, LB 874, § 7.

2-1078.01 Director, defined.

Director shall mean the Director of Agriculture or his or her designated employee, representative, or authorized agent.

Source: Laws 1993, LB 406, § 6.

2-1079 Distribute, defined.

Distribute shall mean selling, exchanging, bartering, moving, or transporting; offering to sell, exchange, barter, move, or transport; holding nursery stock for sale, exchange, or barter; acting as a broker; or otherwise supplying. Distribute shall not include moving or transporting on contiguous real estate that is owned, leased, or controlled by the same person.

Source: Laws 1988, LB 874, § 8; Laws 1993, LB 406, § 7.

2-1079.01 Distribution location, defined.

Distribution location shall mean each place nursery stock is offered for sale or sold and shall also include all locations of a vehicle from which nursery stock is offered for sale or sold directly. Distribution location shall not include each location from which an order is made by a purchaser ordering by mail, telephone, or facsimile transmission but shall include the location where such orders are received within the state.

Source: Laws 1993, LB 406, § 8.

2-1079.02 Genetically engineered plant organism, defined.

Genetically engineered plant organism shall mean an organism altered or produced through genetic modification from a donor, vector, or recipient organism using recombinant deoxyribonucleic acid techniques.

Source: Laws 1993, LB 406, § 9.

2-1079.03 Grow, defined.

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

Source: Laws 2013, LB68, § 4.

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

2-1080.01 Harmonization plan, defined.

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

Source: Laws 2013, LB68, § 5.

2-1081 Nuisance plant, defined.

Nuisance plant shall mean any plant not economically essential to the welfare of the people of Nebraska, as determined by the department, and which may serve as a favorable host of plant pests or may be detrimental to the agricultural interests of the State of Nebraska.

Source: Laws 1988, LB 874, § 10.

2-1082 Nursery, defined.

Nursery shall mean any property where nursery stock is grown, propagated, collected, or distributed and shall include, but not be limited to, private property or any property owned, leased, or managed by any agency of the United States, the State of Nebraska or its political subdivisions, or any other state or its political subdivisions where nursery stock is fumigated, treated, packed, or stored by any person.

Source: Laws 1988, LB 874, § 11.

2-1083 Nursery stock, defined.

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

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

2-1083.01 Nursery stock distributor, defined.

Nursery stock distributor shall mean any person involved in:

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

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

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

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

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

Source: Laws 2013, LB68, § 7.

2-1084 Person, defined.

Person shall mean any body politic or corporate, society, community, the public generally, any individual, partnership, limited liability company, joint-stock company, or association, or any agent of any such entity.

Source: Laws 1988, LB 874, § 13; Laws 1993, LB 121, § 62.

2-1084.01 Place of origin, defined.

Place of origin shall mean the county and state where nursery stock was most recently grown for a period of not less than one cycle of active growth.

Source: Laws 1993, LB 406, § 10.

2-1085 Plant, defined.

Plant shall mean any plant, plant product, plant part, or reproductive or propagative part of a plant, plant product, or plant part including, but not limited to, trees, shrubs, vines, forage and cereal plants, fruit, seeds, grain, wood, or lumber. This shall include all growing media, packing material, or containers associated with the plants, plant parts, or plant products named in this section.

Source: Laws 1988, LB 874, § 14.

2-1086 Plant pest, defined.

Plant pest shall mean any insect, arthropod, nematode, mollusk, fungus, bacteria, virus, mycoplasma, parasitic plant, physiological disorder, or other infectious agent which can directly or indirectly injure or cause damage or a pathological condition to plants.

Source: Laws 1988, LB 874, § 15.

2-1087 Property, defined.

Property shall mean any real estate or personal property, including any vessel, automobile, aircraft, rail car, other vehicle, machinery, building, dock, nursery, orchard, or other place where plants are grown or maintained or the contents of such place.

Source: Laws 1988, LB 874, § 16.

2-1088 Rules and regulations, defined.

Rules and regulations shall mean rules and regulations adopted and promulgated by the department pursuant to the Plant Protection and Plant Pest Act.

Source: Laws 1988, LB 874, § 17.

2-1089 Wild plants, defined.

Wild plants shall mean nursery stock from any place other than a nursery.

Source: Laws 1988, LB 874, § 18.

2-1090 State Entomologist; position created; duties.

There is hereby created in the department and under the direction of the Director of Agriculture the position of State Entomologist. Such person shall be a graduate of a recognized university with a major, or its equivalent, in entomology, plant pathology, or an equivalent biological science and have not less than two years of experience in such field and administrative work. It shall be the duty of the State Entomologist through the Plant Protection and Plant Pest Act to protect the interest of Nebraska as stated in section 2-1073, to regulate the distribution of plants, and to assist exporters of plants in meeting the requirements imposed by other states or countries.

Source: Laws 1988, LB 874, § 19.

2-1091 Implementation or enforcement of act; department; powers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(15) Implement programs or plans to eradicate, manage, treat, or control plant pests;

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

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

Source: Laws 1988, LB 874, § 20; Laws 1993, LB 406, § 11; Laws 2013, LB68, § 8; Laws 2017, LB274, § 2.

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

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

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

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

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

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

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

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

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

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

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

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

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

2-1091.02 Fees; department; powers.

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

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

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

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

(3) License Fees.

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

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

(5) Other Fees.

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

(6) Any fee remaining unpaid for more than one month shall be considered delinquent and the person owing the fee shall pay an additional administrative fee of twenty-five percent of the delinquent amount for each month it remains

unpaid, not to exceed one hundred percent of the original amount due. The department may waive the additional administrative fee based upon the existence and extent of any mitigating circumstances that have resulted in the late payment of such fee. The purpose of the additional administrative fee is to cover the administrative costs associated with collecting fees, and all money collected as an additional administrative fee shall be remitted to the State Treasurer for credit to the Plant Protection and Plant Pest Cash Fund.

Source: Laws 2013, LB68, § 11.

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

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

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

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

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

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

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

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

(4) All growing areas within the state shall be inspected by the department at least once per year for certification and compliance with the Plant Protection and Plant Pest Act.

(5) Following the certification inspection of Nebraska-grown nursery stock, the department shall provide a copy of the plant inspection report to the nursery stock distributor specifying any area of the nursery from which nursery stock cannot be distributed or any plants which may not be distributed as nursery stock. When deemed necessary to maintain compliance with the purposes of the Plant Protection and Plant Pest Act, the department shall require the nursery stock distributor to withdraw from distribution any variety or amount of nursery stock. A reinspection may be conducted by the department at the nursery stock distributor's request and cost. The department may also reinspect to determine compliance with the act. To determine the cost of any reinspection, the department shall use fees as outlined in subsection (2) of this section. The nursery stock distributor shall comply with the recommendations of the department as to the treatment or destruction of nursery stock.

(6) The department may require the treatment or destruction of any nursery stock that is infested or infected with plant pests, nonviable, damaged, or desiccated to the point of not being reasonably capable of growth.

(7) Any nursery stock on which a withdrawal-from-distribution order has been issued shall be released for distribution only by authorized department employees or after written permission has been obtained from the department. Each nursery stock distributor shall promptly report to the department, in writing, the amount and type of plants treated or destroyed under requirements on withdrawal-from-distribution orders. The department may withhold a license or certification of Nebraska-grown nursery stock until conditions have been met by the nursery stock distributor as specified in the plant inspection report or any other order issued by the department. A certification of Nebraska-grown stock may be issued covering portions of the nursery which are not infested or infected if the nursery stock distributor agrees to treat, destroy, or remove as specified by the department those plants found to be infested or infected.

Source: Laws 1988, LB 874, § 24; Laws 1993, LB 406, § 15; Laws 2013, LB68, § 10.

2-1096 Repealed. Laws 2013, LB 68, § 23.

2-1097 Repealed. Laws 2013, LB 68, § 23.

2-1098 Repealed. Laws 2013, LB 68, § 23.

2-1099 Repealed. Laws 2013, LB 68, § 23.

2-10,100 Repealed. Laws 2013, LB 68, § 23.

2-10,100.01 Repealed. Laws 2013, LB 68, § 23.

2-10,100.02 Repealed. Laws 2013, LB 68, § 23.

2-10,101 Repealed. Laws 2013, LB 68, § 23.

2-10,102 Collectors; nursery stock distributor's license required; inspection.

Collectors shall be required to obtain a nursery stock distributor's license and shall be required to apply for an additional inspection for the certification of the collected nursery stock as provided in section 2-1095. All collected nursery stock shall be labeled as such.

Source: Laws 1988, LB 874, § 31; Laws 2013, LB68, § 12.

2-10,103 Nursery stock distributor; duties.

A nursery stock distributor shall:

(1) Comply with the Plant Protection and Plant Pest Act and the rules and regulations:

(a) In the care of nursery stock;

(b) In the distribution of nursery stock including nursery stock that has been withdrawn from distribution;

(c) Regarding treatment or destruction of nursery stock as required by a withdrawal-from-distribution order;

(d) In maintaining the nursery stock in a manner accessible to the department; and

(e) In the payment of license fees;

(2) Comply with any order of the director issued pursuant to the act;

(3) Not distribute nursery stock obtained from an unlicensed nursery stock distributor;

(4) Not allow the license to be used by any person other than the person to whom it was issued; and

(5) Not interfere with the department in the performance of its duties.

Source: Laws 1988, LB 874, § 32; Laws 1993, LB 406, § 22; Laws 2013, LB68, § 13.

2-10,103.01 Nursery stock distributor; disciplinary actions; procedures.

(1) A nursery stock distributor may be placed on probation requiring such person to comply with the conditions set out in an order of probation issued by the director or be ordered to cease and desist from failing to comply or be ordered to pay an administrative fine pursuant to section 2-10,103.02 after:

(a) The director determines the nursery stock distributor has not complied with section 2-10,103;

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

(c) The director finds that issuing the specified order is appropriate based on the hearing record or the available information if the hearing is waived by the nursery stock distributor.

(2) A nursery stock distributor may be suspended after:

(a) The director determines the nursery stock distributor has not complied with section 2-10,103;

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

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

(3) A license may be immediately suspended and the director may order the nursery stock distributor's operation to cease prior to hearing when:

(a) The director determines an immediate danger to the public health, safety, or welfare exists; and

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

director shall establish a hearing date and notify the nursery stock distributor of the date and time of such hearing.

(4) A license may be revoked after:

(a) The director determines the nursery stock distributor has committed serious, repeated, or multiple violations of any of the requirements of section 2-10,103;

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

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

(5) Any nursery stock distributor whose license has been suspended shall cease operations until the license is reinstated. Any nursery stock distributor whose license is revoked shall cease operating until a new license is issued.

(6) The director may terminate a proceeding to suspend or revoke a license or subject a nursery stock distributor to an order of the director described in subsection (1) of this section at any time if the reasons for such proceeding no longer exist. A license which has been suspended may be reinstated, a person with a revoked license may be issued a new license, or a nursery stock distributor may no longer be subject to the director's order if the director determines that the conditions which prompted the suspension, revocation, or order of the director no longer exist.

(7) Proceedings to suspend or revoke a license or subject a nursery stock distributor to an order of the director described in subsection (1) of this section shall not preclude the department from pursuing other civil or criminal actions.

Source: Laws 1993, LB 406, § 23; Laws 2013, LB68, § 14.

2-10,103.02 Administrative fine; collection; use.

(1) The director may issue an order imposing an administrative fine on any person who has violated any provision, requirement, condition, limitation, or duty imposed by the Plant Protection and Plant Pest Act or rules and regulations adopted and promulgated pursuant to the act in an amount which shall not exceed one thousand dollars for each violation. A violation means each action which violates any separate or distinct provision, requirement, condition, limitation, or duty imposed by the act or such rules and regulations. In determining whether to impose an administrative fine and, if a fine is imposed, the amount of the fine, the director shall take into consideration (a) the seriousness of the violation, (b) the extent to which the person derived financial gain as a result of his or her failure to comply, (c) the extent of intent, willfulness, or negligence by the person in the violation, (d) the likelihood of the violation reoccurring, (e) the history of the person's failure to comply, (f) the person's attempts to prevent or limit his or her failure to comply, (g) the person's willingness to correct violations, (h) the nature of the person's disclosure of violations, (i) the person's cooperation with investigations of his or her failure to comply, and (j) any factors which may be established by the rules and regulations.

(2) The department shall remit administrative fines collected under the act to the State Treasurer on a monthly basis for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(3) Any administrative fine imposed under the Plant Protection and Plant Pest Act and unpaid shall constitute a debt to the State of Nebraska which may be collected by lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the violator resides or owns property. The lien shall attach to the real estate of the violator when notice of such lien is filed and indexed against the real estate in the office of the register of deeds or county clerk in the county where the real estate is located.

Source: Laws 1993, LB 406, § 24; Laws 2013, LB68, § 15.

2-10,103.03 Cease and desist order; hearing.

Whenever the director has reason to believe that any person has violated any provision of the Plant Protection and Plant Pest Act or any rule or regulation, an order may be entered requiring the person to appear before the director to show cause why an order should not be entered requiring such person to cease and desist from the violation charged. Such order shall set forth notice of such hearing. Hearings shall be conducted as provided in section 2-10,103.04. After such hearing, if the director finds such person to be in violation, he or she shall enter an order requiring the person to cease and desist from the specific act, practice, or omission which violated the act.

Source: Laws 1993, LB 406, § 25.

2-10,103.04 Notice or order; service; notice; contents; hearings; procedure; new hearing.

(1) Any notice or order provided for in the Plant Protection and Plant Pest Act shall be personally served on the person holding the nursery stock distributor license, the person named in the notice, or the person authorized by the person holding the nursery stock distributor license to receive notices and orders of the department or shall be sent by certified mail, return receipt requested, to the last-known address of the person holding the nursery stock distributor license, the person named in the notice, or the person authorized to receive such notices and orders. A copy of the notice and the order shall be filed in the records of the department.

(2) Any notice to comply provided for in the act shall set forth the acts or omissions with which the person holding the nursery stock distributor license or the person named in the notice is charged.

(3) A notice of the right of the person holding the nursery stock distributor license or the person named in the notice to a hearing provided for in the act shall set forth the time and place of the hearing except as otherwise provided in subsection (3) of section 2-10,103.01. A notice of the right of the person holding the nursery stock distributor license or the person named in the notice to such hearing shall include notice that the right of the person holding the nursery stock distributor license or the person named in the notice to a hearing may be waived pursuant to subsection (5) of this section. A notice of such right to a hearing shall include notice of the potential actions that may be taken against the person holding the nursery stock distributor license or the person named in the notice.

(4) The hearings provided for in the act shall be conducted by the director at a time and place he or she designates. The director shall make a final finding based upon the complete hearing record and issue an order. If the director has suspended a license pursuant to subsection (3) of section 2-10,103.01, the director shall sustain, modify, or rescind the order. All hearings shall be in accordance with the Administrative Procedure Act.

(5) The person holding the nursery stock distributor license or the person named in the notice shall be deemed to waive the right to a hearing if such person does not come to the hearing at the time and place set forth in the notice described in subsection (3) of this section without requesting the director at least two days before the designated time to change the time and place for the hearing, except that before an order of the director becomes final, the director may designate a different time and place for the hearing if the person shows the director that the person had a justifiable reason for not coming to the hearing and not timely requesting a change in the time and place for such hearing. If the person holding the nursery stock distributor license or the person named in the notice waives the right to a hearing, the director shall make a final finding based upon the available information and issue an order. If the director has suspended a license pursuant to subsection (3) of section 2-10,103.01, the director shall sustain, modify, or rescind the order.

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

Source: Laws 1993, LB 406, § 26; Laws 2013, LB68, § 16.

Cross References

Administrative Procedure Act, see section 84-920.

2-10,104 Foreign distributor; reciprocity; department; reciprocal agreements.

(1) Any person residing outside the state and desiring to solicit orders or distribute nursery stock in Nebraska may do so if:

(a) Such person is duly licensed under the nursery laws of the state where the nursery stock originates and the laws of that state are essentially equivalent to the laws of Nebraska as determined by the department; and

(b) Such person complies with the Plant Protection and Plant Pest Act and the rules and regulations on all nursery stock distributed in Nebraska.

(2) The department may cooperate with and enter into reciprocal agreements with other states regarding licensing and movement of nursery stock. Reciprocal agreements with other states shall not prevent the department from prohibiting the distribution in Nebraska of nursery stock which fails to meet the minimum criteria for nursery stock of Nebraska-licensed nursery stock distributors.

Source: Laws 1988, LB 874, § 33; Laws 2013, LB68, § 17.

2-10,105 Optional inspections; nursery stock distributor's license; optional issuance.

(1) Optional inspections of plants may be conducted by the department upon request by any persons desiring such inspection. A fee as set forth in subsection (2) of section 2-1095 shall be charged for such an inspection.

(2) Any person who desires a nursery stock distributor's license for any greenhouse plants grown for indoor use, annual plants, florist stock, cut flowers, sod, turf, onions, or potatoes, or seeds of any such plant, may apply for such license to the department. The inspection of such plants shall conform to the same requirements that apply to the inspection of nursery stock as set forth in section 2-1095. For persons who grow or distribute both nursery stock and greenhouse plants grown for indoor use, annual plants, florist stock, cut flowers, sod, turf, onions, or potatoes, or seeds of any such plant, one license shall be issued if the annual inspection of such plants is conducted concurrently with the nursery stock inspection and the other requirements of the Plant Protection and Plant Pest Act are met. If a reinspection trip is required, the applicant shall be assessed a reinspection fee as outlined in subsection (2) of section 2-1095.

Source: Laws 1988, LB 874, § 34; Laws 1993, LB 406, § 27; Laws 2013, LB68, § 18.

2-10,106 Importation and distribution; labeling requirements; exception; department; powers.

(1) It shall be unlawful for any person, including any carrier transporting nursery stock, to bring into or cause to be brought into Nebraska any nursery stock unless such shipment is plainly and legibly marked with a label showing the name and address of the consignor and consignee, the nature and quantity of the contents, the place of origin, and the license or its equivalent issued by the recognized authorizing agency stating that the nursery from which the nursery stock originates has been inspected.

(2) It shall be unlawful for any person to distribute in Nebraska nursery stock for the purpose of resale in Nebraska without meeting the labeling criteria stated in this section.

(3) The requirements of this section shall not apply to nursery stock distributed to the final consumer at a distribution location where a valid nursery stock distributor's license has been conspicuously posted.

(4) The department may cause to be held for inspection any plants, regardless of proper labeling according to the Plant Protection and Plant Pest Act, if there is reason to believe they are infested or infected with plant pests. Such plants shall be held only for a period of time reasonable for proper inspection and any treatment deemed necessary by the department. The department shall not be held responsible for costs incurred by treatment or delay.

(5) In carrying out this section, the department may intercept or detain any person or property including vehicles or vessels reasonably believed to be carrying any plants or any other articles capable of carrying plant pests. The department may hold for treatment, destroy, or otherwise dispose of any plants, if found infested or infected with plant pests, at the owner's cost.

Source: Laws 1988, LB 874, § 35; Laws 2013, LB68, § 19.

2-10,107 Nuisance plants; department; powers.

Any person owning or controlling property shall keep such property free from all species of plants declared by the department to be nuisance plants. If the department determines that any species or variety of plant is a nuisance plant and that such plant should be eradicated in order to safeguard the agricultural interests of the state, the department shall give public notice of proposed eradication by publication in one or more newspapers of general circulation throughout the area over which such nuisance plant exists, designating the species or variety in question, the proposed eradication area, and the reasons for the eradication. Such notice shall designate a place and time for a public hearing at which all interested parties may be heard. After such hearing has been held, the department may cause to be served by first-class mail individual notices upon the owner of record of such land at that person's last-known address stating (1) that the species or variety of plant is a nuisance plant and (2) that the department is authorized to destroy or order the destruction of such plant. It shall be the duty of every person affected by the notice to use measures of arrest and control required of such person by the instructions of the department.

Source: Laws 1988, LB 874, § 36.

2-10,108 Plant pests; department; powers.

(1) Whenever the department finds that there exists, in any other state, territory, country, or part thereof, any plant pests detrimental to the agricultural interests of the state and that the control, eradication, retarding, or prevention of such pests is necessary to protect the plant industry of the state, the department may impose and enforce a quarantine prohibiting the transportation into, within, or through Nebraska of such pests. Quarantine enforcement shall apply to any plants or any other property capable of carrying such plant pests regardless of whether the plants are distributed by a person holding a valid license or its equivalent issued by an authorizing agency within the state of origin recognized by the department. Nursery stock and all other plants shall be subject to any quarantine measures deemed necessary by the department.

(2) When it has been determined that an area of the state is infected or infested with plant pests which may be detrimental to the agricultural interests of the state, such area may be quarantined by the department. Under such quarantine the department may restrict or prevent the movement or transportation of any plants or any other property capable of carrying such plant pests originating in or having been maintained in any area infested or infected with such plant pests. Public notice of any quarantine shall be given by the department by publication in one or more newspapers in circulation within the area of the state affected by such order.

(3) Any plants or other property moved or transported in violation of a quarantine imposed pursuant to this section may be seized, treated, destroyed, or returned to the state of origin without compensation by the department.

Source: Laws 1988, LB 874, § 37.

2-10,109 Withdrawal-from-distribution order; issuance.

If the department finds that plants are distributed in violation of the Plant Protection and Plant Pest Act, the department may issue a written or printed withdrawal-from-distribution order to the person in charge of such plants for the protection of the public health, safety, or welfare and may enforce such

order. Such an order shall specify the nature of each violation and the precise action required to bring the plants into compliance with the applicable provisions of the act. Such an order shall advise the person that he or she may request an immediate hearing before the department on the specified violation.

The department may issue a withdrawal-from-distribution order on plants that are perishable, even if the result of such order will bring about the involuntary disposal of such items, when, in the opinion of the person issuing such order, no alternative course of action would sufficiently protect the public health, safety, or welfare under the circumstances.

Source: Laws 1988, LB 874, § 38.

2-10,110 Implementation or enforcement agreements authorized.

The department may receive grants-in-aid or receive and disperse pass-through funds or otherwise cooperate and enter into agreements with the United States Department of Agriculture or any other person in the department's implementation or enforcement of the Plant Protection and Plant Pest Act or federal programs related to plant protection or plant pests in the state.

Source: Laws 1988, LB 874, § 39; Laws 2017, LB274, § 3.

2-10,111 Costs; liability.

(1) All costs associated with treating, seizing, or destroying any plant or issuing and enforcing any withdrawal-from-distribution order for any plant, which plant is in violation of the Plant Protection and Plant Pest Act or the rules and regulations adopted and promulgated pursuant to the act, shall be the responsibility of the person in possession of the plant. The department shall be reimbursed by the person in possession of the plant for the actual cost incurred by the department in enforcing the act or such rules and regulations.

(2) All costs related to enforcement of the act and such rules and regulations shall be the responsibility of the person violating the act. The department shall be reimbursed by persons violating the act or such rules and regulations for the actual cost incurred by the department in enforcing the act.

(3) The department shall not be liable for any costs incurred by any person due to any departmental actions relating to the enforcement of the act or such rules and regulations.

Source: Laws 1988, LB 874, § 40; Laws 2013, LB68, § 20.

2-10,112 Excess fees; disposition.

If the department determines that any fee has been erroneously collected or computed, the department shall credit the excess amount collected or paid to any fees then due and owing from the person under the Plant Protection and Plant Pest Act. Any remaining balance may be refunded to the person by whom it was paid.

Source: Laws 1988, LB 874, § 41.

2-10,113 Foreign nursery stock; foreign soil or plant pests for research or educational purposes; biological control agent or genetically engineered plant organism; permit requirements; trade secrets; confidentiality.

(1) Any person receiving any shipment of nursery stock from any foreign country that has not been inspected and released by the United States Department of Agriculture at the port of entry shall notify the department of the arrival of such shipment, its contents, and the name of the consignor. Such person shall hold the shipment unopened until inspected or released by the department.

(2) No person shall import or cause to be brought into Nebraska any soils or plant pests or distribute within the state any nonindigenous plant pests to be used in the open environment for research purposes or other educational uses without permission from the department.

(3) No person shall import or cause to be brought into Nebraska or distribute within the state any nonindigenous biological control agent or genetically engineered plant organism to be used in the open environment without a permit as set forth in rules and regulations. Such rules and regulations may provide for reasonable exemptions from permit requirements. A permit shall not be required under this section if a permit has been issued under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq., or any regulations adopted and promulgated pursuant to such act.

An application for a permit shall include information regarding where the biological control agent or genetically engineered plant organism will be released and any other information required by the department. An application for a permit to import or distribute an arthropod to be used as a biological control agent shall be accompanied by a voucher specimen. Permits may be issued only after the department determines that the proposed shipment or use will not create sufficient hazard to warrant the refusal of a permit. Sufficient hazard shall include, but not be limited to, a substantial hazard to the environment or to plant or animal life not intended to be affected by the agent or organism. The department may rely upon the findings of interested federal agencies or any experts that the department may deem appropriate in making a determination about the threat posed by such agents or organisms. The department may also request confidential business information.

(4) An applicant submitting information required by this section may mark clearly portions of data which in his or her opinion are trade secrets and submit the marked material separately from other material required to be submitted under this section. The department shall keep such material confidential and in a manner that makes it not accessible to anyone who does not need to have access to it in order to adequately protect the public health, safety, or welfare.

Source: Laws 1988, LB 874, § 42; Laws 1993, LB 406, § 28.

2-10,114 Agents or employees; liability of principal.

In construing and enforcing the Plant Protection and Plant Pest Act, omission or failure of any individual acting for or employed by any other person or other principal within the scope of his or her employment or office shall in every case be deemed the act, omission, or failure of such person or other principal as well as that of the individual.

Source: Laws 1988, LB 874, § 43.

2-10,115 Violations; penalties; appeal of department order; procedure.

(1) Any person shall be guilty of a Class IV misdemeanor for the first violation and a Class II misdemeanor for any subsequent violation of the same nature and in violation of the Plant Protection and Plant Pest Act if that person:

(a) Distributes nursery stock without a nursery stock distributor license issued under the Plant Protection and Plant Pest Act;

(b) Receives nursery stock for further distribution from any person who has not been duly licensed or approved under the act;

(c) Uses any license issued by the department after it has been revoked or has expired, while the licensee was under suspension, or for purposes other than those authorized by the act;

(d) Offers any hindrance or resistance to the department in the carrying out of the act, including, but not limited to, denying or concealing information or denying access to any property relevant to the proper enforcement of the act;

(e) Allows any plant declared a nuisance plant as outlined in section 2-10,107 to exist on such person's property or distributes any such plants or materials capable of harboring plant pests;

(f) Acts as a nursery stock distributor and:

(i) Fails to comply with provisions for treatment or destruction of nursery stock as required by withdrawal-from-distribution orders;

(ii) Distributes any quarantined nursery stock or nursery stock for which a withdrawal-from-distribution order has been issued;

(iii) Distributes nursery stock for the purpose of further distribution to any person in Nebraska not licensed as a nursery stock distributor; or

(iv) Fails to pay all fees required by the act and the rules and regulations;

(g) Distributes nursery stock which is not sound, healthy, reasonably capable of growth, labeled correctly, and free from injurious plant pests;

(h) Distributes plants which have been quarantined or are in a quarantined area;

(i) Violates any item set forth as unlawful in section 2-10,106;

(j) Distributes biological control agents or genetically engineered plant organisms without a permit if a permit is required by the act;

(k) Fails to keep and make available for examination by the department all books, papers, and other information necessary for the enforcement of the act;

(l) Violates any order of the director after such order has become final or upon termination of any review proceeding when the order has been sustained by a court of law; or

(m) Violates any other provision of the Plant Protection and Plant Pest Act.

(2) Any lot or shipment of plants not in compliance with the Plant Protection and Plant Pest Act, the rules and regulations, or both shall be subject to seizure on complaint of the department to a court of competent jurisdiction in the county in which such plants are located. If the court finds the plants to be in violation of the act, the rules and regulations, or both and orders the condemnation of the plants, such plants shall be disposed of in any manner deemed necessary by the department. In no instance shall the disposition of the plants be ordered by the court without first giving the claimant an opportunity to apply to the court for release of such plants or for permission to treat or relabel

the plants to bring such plants into compliance with the act, the rules and regulations, or both.

(3) It shall be the duty of the Attorney General or the county attorney of the county in which any violation occurs or is about to occur, when notified by the department of a violation or threatened violation, to pursue appropriate proceedings without delay pursuant to this section, subdivision (6) of section 2-1091, or subsection (3) of section 2-10,103.02 or any combination thereof.

(4) Any person adversely affected by an order made by the department pursuant to the Plant Protection and Plant Pest Act may appeal such order, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1988, LB 874, § 44; Laws 1993, LB 406, § 29; Laws 2013, LB68, § 21.

Cross References

Administrative Procedure Act, see section 84-920.

2-10,115.01 Political subdivision; ordinance or resolution; restrictions.

A political subdivision shall not enact an ordinance or resolution which is in conflict with the Plant Protection and Plant Pest Act.

Source: Laws 1993, LB 406, § 30.

2-10,116 Rules and regulations.

The department shall have authority to adopt and promulgate such rules and regulations as are necessary to the effective discharge of its duties under the Plant Protection and Plant Pest Act. The rules and regulations may include, but shall not be limited to, provisions governing:

(1) The issuance and revocation of licenses as authorized by the Plant Protection and Plant Pest Act;

(2) The assessment and collection of license, inspection, reinspection, and delinquent fees;

(3) The withdrawal from distribution of nursery stock;

(4) The care, viability, and standards for nursery stock;

(5) The labeling and shipment of nursery stock;

(6) The issuance and release of plant pest quarantines and withdrawal-from-distribution orders;

(7) The establishment of a restricted plant pest list;

(8) The preparation, maintenance, handling, and filing of reports by persons subject to the act;

(9) The adoption of the American Association of Nurserymen's American Standard for Nursery Stock insofar as it does not conflict with any provision of the act;

(10) Factors to be considered when the director issues an order imposing an administrative fine;

(11) The planting of certified seed potatoes in the state; and

(12) The implementation of programs or plans involving the movement, treatment, control, and eradication of plant pests in the state.

Source: Laws 1988, LB 874, § 45; Laws 1993, LB 406, § 31; Laws 2008, LB791, § 4; Laws 2017, LB274, § 4.

2-10,116.01 Repealed. Laws 2013, LB 68, § 23.

2-10,117 Plant Protection and Plant Pest Cash Fund; created; use; investment.

All money received from any source pursuant to the Plant Protection and Plant Pest Act shall be remitted by the department to the State Treasurer and by the State Treasurer credited to the Plant Protection and Plant Pest Cash Fund which is hereby created. The fund also shall include funds transferred pursuant to section 81-201.05. The fund shall be used by the department to aid in defraying the expenses of administering the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1988, LB 874, § 46; Laws 1993, LB 406, § 33; Laws 1994, LB 1066, § 3; Laws 2004, LB 869, § 7.

Cross References

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

ARTICLE 11
AGRICULTURAL COMMODITY STAMP PLANS

Section
2-1101. Repealed. Laws 1947, c. 179, § 1.
2-1102. Repealed. Laws 1947, c. 179, § 1.
2-1103. Repealed. Laws 1947, c. 179, § 1.
2-1104. Repealed. Laws 1947, c. 179, § 1.
2-1105. Repealed. Laws 1947, c. 179, § 1.
2-1106. Repealed. Laws 1947, c. 179, § 1.
2-1107. Repealed. Laws 1947, c. 179, § 1.
2-1108. Repealed. Laws 1947, c. 179, § 1.
2-1109. Repealed. Laws 1947, c. 179, § 1.
2-1110. Repealed. Laws 1947, c. 179, § 1.
2-1111. Repealed. Laws 1947, c. 179, § 1.

2-1101 Repealed. Laws 1947, c. 179, § 1.

2-1102 Repealed. Laws 1947, c. 179, § 1.

2-1103 Repealed. Laws 1947, c. 179, § 1.

2-1104 Repealed. Laws 1947, c. 179, § 1.

2-1105 Repealed. Laws 1947, c. 179, § 1.

2-1106 Repealed. Laws 1947, c. 179, § 1.

2-1107 Repealed. Laws 1947, c. 179, § 1.

2-1108 Repealed. Laws 1947, c. 179, § 1.

2-1109 Repealed. Laws 1947, c. 179, § 1.

2-1110 Repealed. Laws 1947, c. 179, § 1.

2-1111 Repealed. Laws 1947, c. 179, § 1.

ARTICLE 12

HORSERACING

Cross References

County Horseracing Facility Bond Act, see section 23-392.

Section
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2-1232. Repealed. Laws 2014, LB 656, § 9.
2-1233. Repealed. Laws 2014, LB 656, § 9.
2-1234. Repealed. Laws 2014, LB 656, § 9.
2-1235. Repealed. Laws 2014, LB 656, § 9.
2-1236. Repealed. Laws 2014, LB 656, § 9.
2-1237. Repealed. Laws 2014, LB 656, § 9.
2-1238. Repealed. Laws 2014, LB 656, § 9.
2-1239. Repealed. Laws 2014, LB 656, § 9.
2-1240. Repealed. Laws 2014, LB 656, § 9.
2-1241. Repealed. Laws 2014, LB 656, § 9.
2-1242. Repealed. Laws 2014, LB 656, § 9.
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2-1201 State Racing and Gaming Commission; creation; members; terms; qualifications; compensation; expenses; bond or insurance; personal financial interest prohibited.

(1) There hereby is created a State Racing and Gaming Commission. For purposes of sections 2-1201 to 2-1229, commission means the State Racing and Gaming Commission.

(2) The commission shall consist of seven members who shall be appointed by the Governor and subject to confirmation by a majority of the members elected to the Legislature and may be for cause removed by the Governor. A violation by a member of the commission of section 2-1219 shall be considered cause for removal. One member of the commission shall be appointed from each congressional district, as such districts existed on January 1, 2010, and four members of the commission shall be appointed at large for terms as follows:

(a) The member representing the second congressional district who is appointed on or after April 1, 2010, shall serve until March 31, 2014, and until his or her successor is appointed and qualified. Thereafter the term of the member representing such district shall be four years and until his or her successor is appointed and qualified;

(b) The member representing the third congressional district who is appointed on or after April 1, 2011, shall serve until March 31, 2015, and until his or her successor is appointed and qualified. Thereafter the term of the member representing such district shall be four years and until his or her successor is appointed and qualified;

(c) The member representing the first congressional district who is appointed on or after April 1, 2012, shall serve until March 31, 2016, and until his or her successor is appointed and qualified. Thereafter the term of the member representing such district shall be four years and until his or her successor is appointed and qualified;

(d) Not later than sixty days after July 15, 2010, the Governor shall appoint one at-large member who shall serve until March 31, 2013, and until his or her successor is appointed and qualified. Thereafter the term of such member shall be four years and until his or her successor is appointed and qualified;

(e) Not later than sixty days after July 15, 2010, the Governor shall appoint one at-large member who shall serve until March 31, 2014, and until his or her successor is appointed and qualified. Thereafter the term of such member shall be four years and until his or her successor is appointed and qualified; and

(f) Not later than sixty days after May 26, 2021, the Governor shall appoint two additional at-large members who shall serve until March 31, 2025, and until their successors are appointed and qualified. One of such members shall have experience in the Nebraska gaming industry, and one shall have experience in the Nebraska horseracing industry. Thereafter the terms of such at-large members shall be four years and until their successors are appointed and qualified.

(3) Not more than four members of the commission shall belong to the same political party. No more than three of the members shall reside, when appointed, in the same congressional district. No more than two of the members shall reside in any one county. Any vacancy shall be filled by appointment by the Governor for the unexpired term. The compensation of the members of the commission shall be one thousand dollars per month, which may be adjusted every two years in an amount not to exceed the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the period between June 30 of the first year to June 30 of the year of adjustment. The members shall be reimbursed for expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177. The members of the commission shall be bonded or insured as required by section 11-201.

(4) No member shall have any personal financial interest in any licensed racetrack enclosure or authorized gaming operator as defined in the Nebraska Racetrack Gaming Act for the duration of the member's term.

Source: Laws 1935, c. 173, § 1, p. 629; C.S.Supp.,1941, § 2-1501; R.S. 1943, § 2-1201; Laws 1978, LB 653, § 1; Laws 1981, LB 204, § 4; Laws 2004, LB 884, § 1; Laws 2006, LB 1111, § 1; Laws 2010, LB861, § 1; Laws 2020, LB381, § 2; Laws 2021, LB561, § 1; Laws 2022, LB876, § 1.
Effective date April 20, 2022.

Cross References

Nebraska Racetrack Gaming Act, see section 9-1101.

2-1201.01 Commission; purposes.

The purpose of the commission is to provide statewide regulation of horseracing and games of chance as defined in the Nebraska Racetrack Gaming Act in order to prevent and eliminate corrupt practices and fraudulent behavior, and thereby maintain a high level of integrity and honesty in the horseracing industry of Nebraska and the operation of games of chance in Nebraska, and to insure that all funds received by the commission are properly distributed.

Source: Laws 1980, LB 939, § 1; Laws 2021, LB561, § 2.

Cross References

Nebraska Racetrack Gaming Act, see section 9-1101.

2-1202 Commission; chairperson; executive director; compensation; duties; bond; personnel; duties; bonded or insured; vested with authority and power of law enforcement officer.

(1) The commission shall elect one of its members to be chairperson thereof, and it shall be authorized to employ an executive director and such other assistants and employees as may be necessary to carry out the purposes of sections 2-1201 to 2-1218, the Nebraska Racetrack Gaming Act, and sections 9-1201 to 9-1209. Such executive director shall have no other official duties. The executive director shall keep a record of the proceedings of the commission, preserve the books, records, and documents entrusted to the executive director, and perform such other duties as the commission shall prescribe; and the commission shall require the executive director to give bond in such sum as it may fix, conditioned for the faithful performance of the duties of the executive director. The commission shall be authorized to fix the compensation of the executive director, and also the compensation of its other employees, subject to the approval of the Governor. The commission shall have an office at such place within the state as it may determine and shall meet at least eight times per year.

(2) The commission shall appoint or employ deputies, investigators, inspectors, agents, security personnel, and other persons as deemed necessary to administer and effectively enforce the regulation of horseracing, the Nebraska Racetrack Gaming Act, and sections 9-1201 to 9-1209. Any appointed or employed personnel shall perform the duties assigned by the commission.

(3) All personnel appointed or employed by the commission shall be bonded or insured as required by section 11-201. As specified by the commission, certain personnel shall be vested with the authority and power of a law enforcement officer to carry out the laws of this state administered by the commission.

Source: Laws 1935, c. 173, § 2, p. 630; C.S.Supp.,1941, § 2-1502; R.S. 1943, § 2-1202; Laws 1967, c. 4, § 1, p. 72; Laws 2021, LB561, § 3; Laws 2022, LB876, § 2.
Effective date April 20, 2022.

Cross References

Nebraska Racetrack Gaming Act, see section 9-1101.

Secretary of Racing Commission is an employee thereof and is subject to such duties as commission may prescribe. Neff v. Boomer, 149 Neb. 361, 31 N.W.2d 222 (1948).

2-1202.01 Repealed. Laws 1971, LB 33, § 1.

2-1203 Commission; powers; fines; board of stewards; powers; appeal; fine.

The commission shall have power to prescribe and enforce rules and regulations governing horseraces and race meetings licensed as provided in sections 2-1201 to 2-1229 and games of chance as provided in the Nebraska Racetrack Gaming Act. Such rules and regulations shall contain criteria to be used by the commission for decisions on approving and revoking track licenses and setting racing dates.

The commission may revoke or suspend licenses issued to racing industry participants and may, in lieu of or in addition to such suspension or revocation, impose a fine in an amount not to exceed twenty-five thousand dollars upon a

finding that a rule or regulation has been violated by a licensed racing industry participant. The exact amount of the fine shall be proportional to the seriousness of the violation and the extent to which the licensee derived financial gain as a result of the violation.

The commission may delegate to a board of stewards such of the commission's powers and duties as may be necessary to carry out and effectuate the purposes of sections 2-1201 to 2-1229.

Any decision or action of such board of stewards may be appealed to the commission or may be reviewed by the commission on its own initiative. The board of stewards may impose a fine not to exceed five thousand dollars upon a finding that a rule or regulation has been violated.

The commission shall remit administrative fines collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1935, c. 173, § 3, p. 630; C.S.Supp.,1941, § 2-1503; R.S. 1943, § 2-1203; Laws 1975, LB 582, § 1; Laws 1980, LB 939, § 3; Laws 1991, LB 200, § 1; Laws 1992, LB 718, § 1; Laws 1994, LB 1153, § 1; Laws 2001, LB 295, § 2; Laws 2003, LB 243, § 1; Laws 2005, LB 573, § 1; Laws 2014, LB656, § 1; Laws 2021, LB561, § 4; Laws 2022, LB876, § 3.
Effective date April 20, 2022.

Cross References

Nebraska Racetrack Gaming Act, see section 9-1101.

2-1203.01 Commission; duties.

The commission shall:

(1) Enforce all state laws covering horseracing as required by sections 2-1201 to 2-1229 and enforce rules and regulations covering horseracing adopted and promulgated by the commission under the authority of section 2-1203;

(2) License racing industry participants, race officials, mutuel employees, concessionaires, and such other persons as deemed necessary by the commission if the license applicants meet eligibility standards established by the commission;

(3) Prescribe and enforce security provisions, including, but not limited to, the restricted access to areas within track enclosures and backstretch areas, and prohibitions against misconduct or corrupt practices;

(4) Determine or cause to be determined by chemical testing and analysis of body fluids whether or not any prohibited substance has been administered to the winning horse of each race and any other horse selected by the board of stewards;

(5) Verify the certification of horses registered as being Nebraska-bred under section 2-1213; and

(6) Collect and verify the amount of revenue received by the commission under section 2-1208.

Source: Laws 1980, LB 939, § 2; Laws 1989, LB 591, § 1; Laws 1992, LB 718, § 2; Laws 2014, LB656, § 2; Initiative Law 2020, No. 430, § 7; Laws 2021, LB561, § 5.

2-1203.02 Licensees, administrators, and managers; application; fingerprinting and criminal history record check; costs.

(1) Any person between sixteen and seventy-five years of age applying for or holding a license to participate in or be employed at a horserace meeting licensed by the commission shall be subject to fingerprinting and a check of his or her criminal history record information maintained by the Identification Division of the Federal Bureau of Investigation for the purpose of determining whether the commission has a basis to deny the license application or to suspend, cancel, or revoke the person's license, except that the commission shall not require a person to be fingerprinted if such person has been previously fingerprinted in connection with a license application in this state within the last five years prior to the application for such license. Any person between sixteen and seventy-five years of age involved in the administration or management of a racetrack, including the governing body, shall be subject to fingerprinting and a check of his or her criminal history record information maintained by the Identification Division of the Federal Bureau of Investigation. The applicant, licensee, or person involved in the administration or management of a racetrack shall pay the actual cost of any fingerprinting or check of his or her criminal history record information. The requirements of this subsection shall not apply to employees of concessions who do not work in restricted-access areas, admissions employees whose duties involve only admissions ticket sales and verification or parking receipts sales and verification, and medical or emergency services personnel authorized to provide such services at the racetrack.

(2) If the applicant is an individual who is applying for a license to participate in or be employed at a horserace meeting, the application shall include the applicant's social security number.

Source: Laws 1991, LB 200, § 2; Laws 1994, LB 1153, § 2; Laws 1997, LB 752, § 53; Laws 2021, LB561, § 6; Laws 2022, LB876, § 4. Effective date April 20, 2022.

2-1204 Horseracing; licenses; applications.

The Nebraska State Fair Board, a county fair board, a county agricultural society for the improvement of agriculture organized under the County Agricultural Society Act, or a corporation or association of persons organized and carried on for civic purposes or which conducts a livestock exposition for the promotion of the livestock or horse-breeding industries of the state and which does not permit its members to derive personal profit from its activities by way of dividends or otherwise may apply to the commission for a license to conduct horseracing at a designated place within the state. Such application shall be filed with the executive director of the commission at least sixty days before the first day of the horserace meeting which such corporation or association proposes to hold or conduct, shall specify the day or days when and the exact location where it is proposed to conduct such racing, and shall be in such form and contain such information as the commission shall prescribe.

Source: Laws 1935, c. 173, § 4, p. 630; C.S.Supp.,1941, § 2-1504; R.S. 1943, § 2-1204; Laws 1997, LB 469, § 31; Laws 2002, LB 1236, § 12; Laws 2021, LB561, § 7.

Cross References

County Agricultural Society Act, see section 2-250.

2-1205 License; terms and conditions; revocation; relocation of racetrack; conditions.

(1) If the commission is satisfied that its rules and regulations and all provisions of sections 2-1201 to 2-1218 have been and will be complied with, it may issue a license for a period of not more than five years. The license shall set forth the name of the licensee, the place where the races or race meetings are to be held, and the time and number of days during which racing may be conducted by such licensee. Any such license issued shall not be transferable or assignable. The commission shall have the power to revoke any license issued at any time for good cause upon reasonable notice and hearing. No license shall be granted to any corporation or association except upon the express condition that it shall not, by any lease, contract, understanding, or arrangement of whatever kind or nature, grant, assign, or turn over to any person, corporation, or association the operation or management of any racing or race meeting licensed under such sections or of the parimutuel system of wagering described in section 2-1207 or in any manner permit any person, corporation, or association other than the licensee to have any share, percentage, or proportion of the money received for admissions to the racing or race meeting or from the operation of the parimutuel system; and any violation of such conditions shall authorize and require the commission immediately to revoke such license.

(2)(a) Any racetrack for which a licensee is issued a license to conduct a race or race meeting under sections 2-1201 to 2-1218 which is in existence and operational as of April 20, 2022, shall:

(i) Hold a minimum of five live racing meet days and fifty live horseraces annually beginning January 1, 2026, through December 31, 2030; and

(ii) Beginning January 1, 2031, hold a minimum of fifteen live racing meet days and one hundred twenty live horseraces annually.

(b) Any racetrack for which a licensee is issued a license to conduct a race or race meeting under sections 2-1201 to 2-1218 which is not in existence and operational until after April 20, 2022, shall:

(i) Hold a minimum of one live racing meet day annually for the first three years of operation;

(ii) Hold a minimum of five live racing meet days and fifty live horseraces annually for the fourth year of operation through the seventh year of operation; and

(iii) Beginning with the eighth year of operation, hold a minimum of fifteen live racing meet days and one hundred twenty live horseraces annually.

(c) A racetrack that fails to meet the minimum requirements under this subsection is subject to discipline by the commission, including revocation of the license issued under sections 2-1201 to 2-1218.

(3) A racetrack for which a licensee is issued a license to conduct a race or race meeting under sections 2-1201 to 2-1218 in existence on November 1, 2020, which is located in the counties of Adams, Dakota, Douglas, Hall, Lancaster, and Platte, may move such racetrack location to another county in Nebraska that does not have a racetrack one time only, subject to approval by the commission as provided in subdivision (27) of section 9-1106, subsequent to

the initial issuance of the market analysis and socioeconomic-impact studies conducted pursuant to section 9-1106.

Source: Laws 1935, c. 173, § 5, p. 631; C.S.Supp.,1941, § 2-1505; R.S. 1943, § 2-1205; Laws 1975, LB 599, § 1; Laws 1986, LB 1041, § 3; Laws 2022, LB876, § 5.
Effective date April 20, 2022.

Because a relicensure decision would involve a consideration of any rule violations by an equine veterinarian during prior periods of licensure, it is reasonable and consistent with the State Racing Commission's statutory purpose to promptly investigate and resolve alleged rule violations committed during a period of licensure, even if the process of doing so extends into a period when the subject is not licensed. Brunk v. Nebraska State Racing Comm., 270 Neb. 186, 700 N.W.2d 594 (2005).

Because relicensure of an equine veterinarian involves a consideration of prior rule violations, the State Racing Commission has authority to determine that a person who has violated its rules will not be eligible for relicensure for a specified period. Brunk v. Nebraska State Racing Comm., 270 Neb. 186, 700 N.W.2d 594 (2005).

2-1206 Licensee; bond.

Every corporation or association licensed under sections 2-1201 to 2-1218 shall, before said license is issued, give a bond to the State of Nebraska in such reasonable sum as the commission shall fix, with a surety or sureties to be approved by the commission, conditioned to faithfully make the payments prescribed by said sections, to keep its books and records and make reports as herein provided, and to conduct its racing in conformity with the provisions of said sections and the rules and regulations prescribed by the commission.

Source: Laws 1935, c. 173, § 6, p. 631; C.S.Supp.,1941, § 2-1506.

2-1207 Horseracing; parimutuel wagering; how conducted; certificate, contents; deductions; licensee; duties; person under twenty-one years of age prohibited; penalty.

(1) Within the enclosure of any racetrack where a race or race meeting licensed and conducted under sections 2-1201 to 2-1218 is held or at a racetrack licensed to simulcast races or conduct interstate simulcasting, the parimutuel method or system of wagering on the results of the respective races may be used and conducted by the licensee. Under such system, the licensee may receive wagers of money from any person present at such race or racetrack receiving the simulcast race or conducting interstate simulcasting on any horse in a race selected by such person to run first in such race, and the person so wagering shall acquire an interest in the total money so wagered on all horses in such race as first winners in proportion to the amount of money wagered by him or her. Such licensee shall issue to each person so wagering a certificate on which shall be shown the number of the race, the amount wagered, and the number or name of the horse selected by such person as first winner. As each race is run, at the option of the licensee, the licensee may deduct from the total sum wagered on all horses as first winners not less than fifteen percent or more than eighteen percent from such total sum, plus the odd cents of the redistribution over the next lower multiple of ten. At the option of the licensee, the licensee may deduct up to and including twenty-five percent from the total sum wagered by exotic wagers as defined in section 2-1208.03. The commission may authorize other levels of deduction on wagers conducted by means of interstate simulcasting. The licensee shall notify the commission in writing of the percentages the licensee intends to deduct during the live race meet conducted by the licensee and shall notify the commission at least one week in advance of any changes to such percentages the licensee intends to make. The licensee shall also deduct from the total sum wagered by exotic

wagers, if any, the tax plus the odd cents of the redistribution over the next multiple of ten as provided in subsection (1) of section 2-1208.04. The balance remaining on hand shall be paid out to the holders of certificates on the winning horse in the proportion that the amount wagered by each certificate holder bears to the total amount wagered on all horses in such race to run first. The licensee may likewise receive such wagers on horses selected to run second, third, or both, or in such combinations as the commission may authorize, the method, procedure, and authority and right of the licensee, as well as the deduction allowed to the licensee, to be as specified with respect to wagers upon horses selected to run first.

(2) At all race meets held pursuant to this section, the licensee shall deduct from the total sum wagered one-third of the amount over fifteen percent deducted pursuant to subsection (1) of this section on wagers on horses selected to run first, second, or third and one percent of all exotic wagers to be used to promote agriculture and horse breeding in Nebraska and for the support and preservation of horseracing pursuant to section 2-1207.01.

(3) No person under twenty-one years of age shall be permitted to make any parimutuel wager, and there shall be no wagering on horseracing except under the parimutuel method outlined in this section. Any person, association, or corporation who knowingly aids or abets a person under twenty-one years of age in making a parimutuel wager shall be guilty of a Class I misdemeanor.

Source: Laws 1935, c. 173, § 7, p. 631; C.S.Supp.,1941, § 2-1507; R.S. 1943, § 2-1207; Laws 1959, c. 5, § 1, p. 71; Laws 1963, c. 6, § 1, p. 66; Laws 1965, c. 9, § 1, p. 123; Laws 1973, LB 76, § 1; Laws 1976, LB 519, § 5; Laws 1977, LB 40, § 12; Laws 1982, LB 631, § 1; Laws 1983, LB 365, § 1; Laws 1986, LB 1041, § 4; Laws 1987, LB 708, § 5; Laws 1989, LB 591, § 2; Laws 1990, LB 1055, § 1; Laws 1992, LB 718, § 3; Laws 1993, LB 471, § 1; Laws 1994, LB 1153, § 3; Laws 2005, LB 573, § 2; Laws 2014, LB656, § 3; Laws 2021, LB561, § 8.

This section only permits a definite form of gambling, known as parimutuel horserace betting, conducted in strict accordance with conditions and limitations set out in act of which this section is a part, and does not throw down the bars to permit gambling generally in connection with horseraces of any kind, wherever held. State ex rel. Hunter v. The Araho, 137 Neb. 389, 289 N.W. 545 (1940).

2-1207.01 Deduction from wagers; distribution; costs.

The amount deducted from wagers pursuant to subsection (2) of section 2-1207 may be used to promote agriculture and horsebreeding in Nebraska and shall be distributed as purse supplements and breeder and stallion awards for Nebraska-bred horses, as defined and registered pursuant to section 2-1213, at the racetrack where the funds were generated, except that if a racetrack does not continue to conduct live race meets, amounts deducted may be distributed as purse supplements and breeder and stallion awards at racetracks that conduct live race meets and amounts deducted pursuant to a contract with the organization representing the majority of the licensed owners and trainers at the racetrack's most recent live race meet shall be used by that organization to promote live thoroughbred horseracing in the state or as purse supplements at racetracks that conduct live race meets in the state. Any costs incurred by the commission pursuant to this section and subsection (2) of section 2-1207 shall be separately accounted for and be deducted from such funds.

Source: Laws 1983, LB 365, § 2; Laws 1994, LB 1354, § 1; Laws 1996, LB 1255, § 1; Laws 2021, LB561, § 9.

2-1208 Race meetings; tax; fees.

(1)(a) For all race meetings, every corporation or association licensed under the provisions of sections 2-1201 to 2-1218 relating to horseracing shall pay the tax imposed by section 2-1208.01 and shall also pay to the commission:

(i) Beginning on April 20, 2022, through June 30, 2023, the sum of sixty-four one hundredths of one percent of the gross sum wagered by the parimutuel method at each licensed racetrack enclosure during the calendar year;

(ii) Beginning July 1, 2023, through June 30, 2024, the sum of one percent of the gross sum wagered by the parimutuel method at the licensed racetrack enclosure during the previous calendar year; and

(iii) Beginning July 1, 2024, and each year thereafter, the sum of two percent of the gross sum wagered by the parimutuel method at the licensed racetrack enclosure during the previous calendar year.

(b) For race meetings devoted principally to running live races, the licensee shall pay to the commission the sum of one hundred dollars for each live racing day that the licensee serves as the host track for intrastate simulcasting and fifty dollars for any other live racing day.

(2) No other license tax, permit tax, occupation tax, or excise tax or racing fee, except as provided in this section and in sections 2-1203 and 2-1208.01, relating to horseracing shall be levied, assessed, or collected from any such licensee by the state or by any county, township, district, city, village, or other governmental subdivision or body having power to levy, assess, or collect any such tax or fee.

Source: Laws 1935, c. 173, § 8, p. 632; C.S.Supp.,1941, § 2-1508; R.S. 1943, § 2-1208; Laws 1959, c. 5, § 2, p. 72; Laws 1980, LB 939, § 4; Laws 1992, LB 718, § 4; Laws 1994, LB 1153, § 4; Laws 1999, LB 127, § 1; Laws 2005, LB 573, § 3; Laws 2014, LB656, § 4; Laws 2021, LB561, § 10; Laws 2022, LB876, § 6.
Effective date April 20, 2022.

This section imposes a tax directly upon the licensee racetrack. Section 77-2701 et seq. impose a sales tax upon the purchaser. Thus, section 77-2701 does not conflict with the provisions of this section which prohibit any additional taxes from being imposed upon the licensee. Governors of Ak-Sar-Ben v. Department of Rev., 217 Neb. 518, 349 N.W.2d 385 (1984).

2-1208.01 Parimutuel wagering; tax; rates; return.

(1) There is hereby imposed a tax on the gross sum wagered by the parimutuel method at each race enclosure during a calendar year as follows:

(a) The first ten million dollars shall not be taxed;

(b) Any amount over ten million dollars but less than or equal to seventy-three million dollars shall be taxed at the rate of two and one-half percent; and

(c) Any amount in excess of seventy-three million dollars shall be taxed at the rate of four percent.

(2)(a) Except as provided in subdivision (2)(b) of this section, an amount equal to two percent of the first taxable seventy million dollars at each race meeting shall be retained by the licensee for capital improvements and for maintenance of the premises within the licensed racetrack enclosure and shall be a credit against the tax levied in subsection (1) of this section. This subdivision includes each race meeting held after January 1, 2010, within the licensed racetrack enclosure located in Lancaster County where the Nebraska State Fair was held prior to 2010.

(b) For race meetings conducted at the location where the Nebraska State Fair is held, an amount equal to two and one-half percent of the first taxable seventy million dollars at each race meeting shall be retained by the licensee for the purpose of maintenance of the premises within the licensed racetrack enclosure and maintenance of other buildings, streets, utilities, and existing improvements at the location where the Nebraska State Fair is held. Such amount shall be a credit against the tax levied in subsection (1) of this section.

(3) A return as required by the Tax Commissioner shall be filed for a racetrack enclosure for each month during which wagers are accepted at the enclosure. The return shall be filed with and the net tax due pursuant to this section shall be paid to the Department of Revenue on the tenth day of the following month.

Source: Laws 1959, c. 5, § 3, p. 73; Laws 1963, c. 6, § 2, p. 67; Laws 1965, c. 9, § 2, p. 124; Laws 1973, LB 76, § 2; Laws 1982, LB 631, § 2; Laws 1984, LB 830, § 2; Laws 1985, LB 154, § 1; Laws 1986, LB 1041, § 5; Laws 1987, LB 467, § 1; Laws 1989, LB 591, § 3; Laws 1990, LB 1055, § 2; Laws 1993, LB 365, § 1; Laws 2002, LB 1236, § 13; Laws 2009, LB224, § 6.

2-1208.02 Parimutuel wagering; Department of Revenue; taxes due; duties.

(1) The Department of Revenue shall audit and verify the amount of the tax that is due the state as provided by sections 2-1208 to 2-1208.02.

(2) The pertinent provisions of sections 77-2708 to 77-2713, 77-27,125 to 77-27,131, and 77-27,133 to 77-27,135, shall be applicable to the administration and collection of the tax imposed by section 2-1208.01, except that the information obtained by the Department of Revenue in its audit and enforcement activities shall continue to be public records as defined in section 84-712.01.

Source: Laws 1959, c. 5, § 4, p. 74; Laws 1980, LB 834, § 50.

2-1208.03 Exotic wagering; terms, defined.

For purposes of sections 2-1208.03 and 2-1208.04, unless the context otherwise requires:

(1) Exotic wagers shall mean daily double, exacta, quinella, trifecta, pick six, and other similar types of bets which are approved by the commission;

(2) Gross exotic daily receipts shall mean the total sum of all money wagered, on a daily basis, by means of exotic wagers at race meets;

(3) Race meet shall mean any exhibition of racing of horses at which the parimutuel or certificate method of wagering is used;

(4) Racetrack shall mean any racetrack licensed by the commission to conduct race meets; and

(5) Recipient track shall mean a racetrack with a total annual parimutuel handle, based on the previous racing year, of twelve million dollars or less.

Source: Laws 1986, LB 1041, § 1; Laws 2021, LB561, § 11.

For purposes of determining a racetrack's eligibility to receive funds from the track distribution fund, the State Racing Commission must include the total dollar amount of all wagers placed at the track over the course of a calendar year, including amounts wagered on races which are simulcast to the track from another location. State Bd. of Ag. v. State Racing Comm., 239 Neb. 762, 478 N.W.2d 270 (1992).

2-1208.04 Exotic wagering; withholding; Track Distribution Fund; created; distributed; investment.

(1) Racetracks shall separately account for their gross exotic daily receipts. For all meets commencing after July 16, 1994, any racetrack that had for its previous race meet a total parimutuel handle of less than fifty million dollars shall withhold an amount equal to one-half of one percent of such receipts and any racetrack that had for its previous race meet a total parimutuel handle of fifty million dollars or more shall withhold an amount equal to one percent of such receipts, except that for all meets commencing on or after January 1, 1995, each racetrack shall withhold an amount equal to one-fourth of one percent of such receipts, which amount shall be deducted from purses at the withholding track. Such amount withheld shall be paid to the commission on the last day of each month during each race meeting for deposit in the Track Distribution Fund, which fund is hereby created.

(2) The fund shall be distributed monthly to recipient racetracks which conduct wagering by the parimutuel method on thoroughbred horseracing. Such racetracks shall receive the percentage which the total number of days of horseraces run at such racetrack in the year of distribution bears to the total number of days of horseraces run at all such racetracks in the year of distribution. Before January 1, 1995, one-half of the amount received under this subsection by a racetrack shall be used to supplement purses at the track, and on and after January 1, 1995, the entire amount received by a racetrack shall be used to supplement purses at the track.

(3) Any money in the Track Distribution Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Any money in the fund which is not distributed at the end of the calendar year shall be available for expenditure by the commission to defray its expenses pursuant to section 2-1209.

(4) The assessment required by this section shall be in addition to the assessments, taxes, and fees required by Chapter 2, article 12.

Source: Laws 1986, LB 1041, § 2; Laws 1987, LB 467, § 2; Laws 1994, LB 1354, § 2; Laws 1995, LB 7, § 4; Laws 2021, LB561, § 12.

Cross References

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

2-1209 Funds; disbursement.

Out of the funds received pursuant to section 2-1208, the expenses of the commissioners, the compensation and reasonable expenses of the executive director, assistants, and employees, and the other reasonable expenses of the commission related to the regulation of horseracing, including suitable furniture, equipment, supplies, and office expenses, shall first be paid. Sums paid out by the commission shall be subject to the general policy for disbursement of funds by agencies of the state, including regular audit.

Source: Laws 1935, c. 173, § 9, p. 633; C.S.Supp.,1941, § 2-1509; R.S. 1943, § 2-1209; Laws 1994, LB 1153, § 5; Laws 2021, LB561, § 13.

2-1210 Repealed. Laws 1994, LB 1153, § 8.

2-1211 Licensees; records; reports; audit.

Every corporation or association licensed under sections 2-1201 to 2-1218 shall so keep its books and records as to clearly show the total number of admissions to races conducted by it on each racing day and the amount received daily from admission fees and the total amount of money wagered during the race meeting, including wagers at locations to which its races were simulcast and at races which it received via simulcast from other racetracks, and shall furnish to the commission such reports and information as it may require with respect thereto. The licensee shall furnish annually by March 30 to the commission and the Governor a complete audit by a certified public accountant detailing all expenses and disbursements of the previous calendar year. Such audit shall be in the form specified by the commission.

Source: Laws 1935, c. 173, § 11, p. 634; C.S.Supp.,1941, § 2-1511; R.S.1943, § 2-1211; Laws 1965, c. 10, § 2, p. 125; Laws 1994, LB 1153, § 6; Laws 2021, LB561, § 14; Laws 2022, LB876, § 7. Effective date April 20, 2022.

2-1212 Repealed. Laws 1981, LB 545, § 52.

2-1213 Horseracing; issuance of licenses limited; race of Nebraska-bred horses; commission designate registrar; fees.

(1)(a) No license shall be granted for racing on more than one racetrack in any one county, except that the commission may, in its discretion, grant a license to any county agricultural society to conduct racing during its county fair notwithstanding a license may have been issued for racing on another track in such county.

(b) Since the purpose of sections 2-1201 to 2-1218 is to encourage agriculture and horse breeding in Nebraska, every licensee shall hold at least one race on each racing day limited to Nebraska-bred horses, including thoroughbreds or quarterhorses. Three percent of the first money of every purse won by a Nebraska-bred horse shall be paid to the breeder of such horse.

(2) For purposes of this section, Nebraska-bred horse shall mean a horse registered with the Nebraska Thoroughbred or Quarter Horse Registry and meeting the following requirements: (a) It shall have been foaled in Nebraska; (b) its dam shall have been registered, prior to foaling, with the Nebraska Thoroughbred or Quarter Horse Registry; and (c) its dam shall have been continuously in Nebraska for ninety days immediately prior to foaling, except that such ninety-day period may be reduced to thirty days in the case of a mare in foal which is purchased at a nationally recognized thoroughbred or quarter-horse blood stock sale, the name and pedigree of the mare being listed in the sale catalog, and which is brought into this state and remains in this state for thirty days immediately prior to foaling.

The requirement that a dam shall be continuously in Nebraska for either ninety days or thirty days, as specified in subdivision (2)(c) of this section, shall not apply to a dam which is taken outside of Nebraska to be placed for sale at a nationally recognized thoroughbred or quarterhorse blood stock sale, the name and pedigree of the mare being listed in the sale catalog, or for the treatment of an extreme sickness or injury, if written notice of such proposed sale or treatment is provided to the secretary of the commission within three days of the date such horse is taken out of the state.

The commission may designate official registrars for the purpose of registration and to certify the eligibility of Nebraska-bred horses. An official registrar shall perform such duties in accordance with policies and procedures adopted and promulgated by the commission in the current rules and regulations of the commission. The commission may authorize the official registrar to collect specific fees as would reasonably compensate the registrar for expenses incurred in connection with registration of Nebraska-bred horses. The amount of such fee or fees shall be established by the commission and shall not be changed without commission approval. Fees shall not exceed one hundred dollars per horse.

Any decision or action taken by the official registrar shall be subject to review by the commission or may be taken up by the commission on its own initiative.

Source: Laws 1935, c. 173, § 13, p. 635; C.S.Supp.,1941, § 2-1513; R.S.1943, § 2-1213; Laws 1973, LB 178, § 1; Laws 1975, LB 342, § 1; Laws 1978, LB 867, § 1; Laws 1981, LB 136, § 1; Laws 1982, LB 839, § 1; Laws 1987, LB 708, § 6; Laws 1991, LB 334, § 1; Laws 1996, LB 1255, § 2; Laws 2005, LB 573, § 4; Laws 2021, LB561, § 15; Laws 2022, LB876, § 8.
Effective date April 20, 2022.

2-1213.01 Repealed. Laws 2022, LB876, § 27.

2-1214 Sections, how construed.

No part of sections 2-1201 to 2-1218 shall be construed to apply to horseracing or horserace meetings at any state or county fair or elsewhere unless the parimutuel system of wagering hereinbefore described is used or intended to be used in connection therewith; but no person, association or corporation shall hold, conduct or operate any such race or meeting in connection with which said parimutuel system is used or intended to be used without a license as hereinbefore provided.

Source: Laws 1935, c. 173, § 14, p. 635; C.S.Supp.,1941, § 2-1514; R.S.1943, § 2-1214.

2-1215 Violations; penalty.

Any person, corporation, or association holding or conducting any horserace or horserace meeting in connection with which the parimutuel system of wagering is used or to be used, without a license duly issued by the commission; or any person, corporation, or association holding or conducting horseraces or horserace meetings in connection with which any wagering is permitted otherwise than in the manner specified in sections 2-1201 to 2-1218; or any person, corporation, or association violating any of the provisions of sections 2-1201 to 2-1218 or any of the rules and regulations prescribed by the commission, shall be guilty of a Class IV felony.

Source: Laws 1935, c. 173, § 15, p. 635; C.S.Supp.,1941, § 2-1515; R.S.1943, § 2-1215; Laws 1977, LB 40, § 13; Laws 2021, LB561, § 16; Laws 2022, LB876, § 9.
Effective date April 20, 2022.

2-1216 Parimutuel wagering legalized; fees paid, how construed.

The parimutuel system of wagering on the results of horseraces, when conducted within the racetrack enclosure at licensed horserace meetings, shall not under any circumstances be held or construed to be unlawful, any other statutes of the State of Nebraska to the contrary notwithstanding. The money inuring to the commission under sections 2-1201 to 2-1218 relating to horseracing from permit fees or from other sources shall never be considered as license money. It is the intention of the Legislature that the funds arising under such sections be construed as general revenue to be appropriated and allocated exclusively for the specific purposes set forth in such sections.

Source: Laws 1935, c. 173, § 20, p. 637; C.S.Supp.,1941, § 2-1516; R.S.1943, § 2-1216; Laws 1992, LB 718, § 5; Laws 2014, LB656, § 5; Laws 2021, LB561, § 17.

2-1217 Drugging of horses prohibited.

It shall be unlawful for any person to use or permit to be used a narcotic of any kind to stimulate or retard any horse that is to run in a race in this state to which the provisions of sections 2-1201 to 2-1218 apply, or for a person having the control of such horse and knowledge of such stimulation or retardation to allow it to run in any such race. The owners of such horse and their agents or employees shall permit any member of the commission or any person appointed by the commission for that purpose to make such tests as the commission deems proper in order to determine whether any such animal has been so stimulated or retarded. The findings of the commission that a horse has been stimulated or retarded by a narcotic or narcotics shall be prima facie evidence of such fact.

Source: Laws 1935, c. 173, § 21, p. 638; C.S.Supp.,1941, § 2-1517; R.S.1943, § 2-1217; Laws 2021, LB561, § 18.

2-1218 Violation; penalty.

Any person who shall violate any provisions of section 2-1217 shall be guilty of a Class IV felony.

Source: Laws 1935, c. 173, § 22, p. 638; C.S.Supp.,1941, § 2-1518; R.S.1943, § 2-1218; Laws 1977, LB 40, § 14; Laws 2022, LB876, § 10.
Effective date April 20, 2022.

2-1219 Commission; members; employees; activities prohibited; conflict of interest; penalty.

(1) When any matter comes before the commission that may cause financial benefit or detriment to a member of the commission, a member of his or her immediate family, or a business with which the member is associated, which is distinguishable from the effects of such matter on the public generally or a broad segment of the public, such member shall take the following actions as soon as he or she is aware of such potential conflict or should reasonably be aware of such potential conflict, whichever is sooner:

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

(b) Deliver a copy of the statement to the executive director of the commission; and

(c) Recuse himself or herself from taking any action or making any decision relating to such matter in the discharge of his or her official duties as a member of the commission.

(2) No horse in which any member or employee of the commission has any interest shall be raced at any meet under the jurisdiction of the commission.

(3) No member or employee of the commission shall have a pecuniary interest or engage in any private employment in a profession or business which is regulated by or interferes or conflicts with the performance or proper discharge of the duties of the commission.

(4) No member or employee of the commission shall wager or cause a wager to be placed on the outcome of any race at a race meeting which is under the jurisdiction and supervision of the commission.

(5) No member or employee of the commission shall have a pecuniary interest or engage in any private employment in a business which does business with any racing association licensed by the commission or in any business issued a concession operator license by the commission.

(6) Any commission employee violating this section shall forfeit his or her employment. Any violation of this section by a member of the commission shall be considered cause for removal by the Governor in accordance with subsection (2) of section 2-1201.

(7) The commission shall include in its rules and regulations prohibitions against actual or potential specific conflicts of interest on the part of racing officials and other individuals licensed by the commission.

Source: Laws 1965, c. 10, § 1, p. 125; Laws 1980, LB 939, § 5; Laws 2010, LB861, § 2; Laws 2021, LB561, § 19; Laws 2022, LB876, § 11.
Effective date April 20, 2022.

2-1220 Racehorses; fraudulent acts; penalty.

It shall be unlawful for any person knowingly and willfully to falsify, conceal, or cover up by any trick, scheme, or device a material fact, or make any false, fictitious, or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry regarding the prior racing record, pedigree, identity, or ownership of a registered animal in any matter related to the breeding, buying, selling, or racing of such animal. Whoever violates any provision of this section shall be guilty of a Class III felony.

Source: Laws 1973, LB 178, § 2; Laws 2022, LB876, § 12.
Effective date April 20, 2022.

2-1221 Accepting anything of value to be wagered, transmitted, or delivered for wager; delivering off-track wagers; prohibited; penalty.

Except as provided in section 2-1207, whoever directly or indirectly accepts anything of value to be wagered or to be transmitted or delivered for wager in any parimutuel system of wagering on horseraces or delivers anything of value which has been received outside of the enclosure of a racetrack holding a race

meet licensed under sections 2-1201 to 2-1247 to be placed as wagers in the parimutuel pool within such enclosure shall be guilty of a Class I misdemeanor.

Source: Laws 1977, LB 273, § 1; Laws 1978, LB 748, § 1; Laws 1984, LB 915, § 1; Laws 1987, LB 1, § 10; Laws 1992, LB 718, § 6; Laws 2014, LB656, § 6; Laws 2021, LB561, § 20.

Statute upheld as constitutional against attacks that it violates the constitutional right to freely contract, is unconstitutionally vague and overbroad, and denies equal protection of the law. Midwest Messenger Assn. v. Spire, 223 Neb. 748, 393 N.W.2d 438 (1986).

A racetrack messenger service, whether or not it actually engages in gambling, is so intertwined with gambling that it falls within the state's plenary police power to regulate gaming activity. Pegasus of Omaha, Inc. v. State, 203 Neb. 755, 280 N.W.2d 64 (1979).

Prohibition by the Legislature of operation of a racetrack messenger service bears a reasonable relationship to the legitimate state interest in the regulation of gambling. No constitutional provision renders such prohibition unlawful. Pegasus of Omaha, Inc. v. State, 203 Neb. 755, 280 N.W.2d 64 (1979).

This statute regulates commercial and business affairs of the state and, therefore, must be held valid under the due process clause of the 14th Amendment because it does bear a rational relation to a legitimate state objective. Nebraska Messenger Services Ass'n v. Thone, 611 F.2d 250 (8th Cir. 1979).

This section only prohibits messenger services which deliver wagers to the race track for a fee; it does not prevent reasonable use of the messenger service's property. Therefore, the prohibitory effect of this section is not sufficient to render it an unconstitutional taking under the 14th Amendment to the United States Constitution. Nebraska Messenger Services Ass'n v. Thone, 478 F.Supp. 1036 (D. Neb. 1979).

Under this section, the state may prohibit any person from placing monies of another into a parimutuel wagering pool for a fee, and since this does not involve a ''fundamental right'', but rather is a regulation of commercial and business affairs of the state and since the state has some rational basis, this section is not invalid under the due process clause of the 14th Amendment of the United States Constitution. Nebraska Messenger Services Ass'n v. Thone, 478 F.Supp. 1036 (D. Neb. 1979).

2-1221.01 Repealed. Laws 1987, LB 1, § 16.

2-1222 Racing and Gaming Commission's Racing Cash Fund; created; use; investment.

There is hereby created the Racing and Gaming Commission's Racing Cash Fund from which shall be appropriated such amounts as are available therefrom and as shall be considered incident to the administration of horseracing by the State Racing and Gaming Commission's office. The fund shall contain all license fees and gross receipt taxes collected by the commission as provided under sections 2-1203, 2-1203.01, and 2-1208 relating to horseracing but shall not include taxes collected pursuant to section 2-1208.01, and such fees and taxes collected shall be remitted to the State Treasurer for credit to the Racing and Gaming Commission's Racing Cash Fund. Money in the fund may be transferred to the General Fund at the direction of the Legislature. Any money in the Racing and Gaming Commission's Racing 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 1980, LB 939, § 6; Laws 1992, LB 718, § 7; Laws 1994, LB 1066, § 4; Laws 2014, LB656, § 7; Laws 2017, LB331, § 16; Laws 2021, LB561, § 21; Laws 2022, LB876, § 13.
Effective date April 20, 2022.

Cross References

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

2-1223 Licensees; exempt from Uniform Disposition of Unclaimed Property Act.

Those corporations or associations eligible for licenses to conduct horseracing by the parimutuel method as defined in section 2-1204, shall be exempt from the provisions of the Uniform Disposition of Unclaimed Property Act.

Source: Laws 1980, LB 939, § 7.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

2-1224 Simulcast; authorized; legislative findings.

(1) The Legislature finds that:

(a) The horseracing, horse breeding, and parimutuel wagering industry is an important sector of the agricultural economy of the state, provides substantial revenue for state and local governments, and employs many residents of the state;

(b) The simultaneous telecast of live audio and visual signals of horseraces conducted within the state on which parimutuel betting is permitted holds the potential to strengthen and further these economic contributions and it is in the best interest of the state to permit such live telecasts;

(c) Permitting parimutuel wagering on the results of horseracing conducted at racetracks outside the state also holds the potential to strengthen and further these economic contributions and it is in the best interest of the state to permit such wagering; and

(d) No simulcast or interstate simulcast shall be authorized which would jeopardize present live racing, horse breeding, or employment opportunities or which would infringe on current operations or markets of the racetracks which generate significant revenue for local governments in the state.

(2) The Legislature hereby authorizes the telecasts of horseraces conducted within the state on which parimutuel wagering shall be permitted and interstate simulcasting under rules and regulations adopted and promulgated by the commission in the manner and subject to the conditions provided in sections 2-1207 and 2-1224 to 2-1229.

Source: Laws 1987, LB 708, § 1; Laws 1989, LB 591, § 4; Laws 2021, LB561, § 22.

2-1225 Terms, defined.

For purposes of sections 2-1207 and 2-1224 to 2-1229, unless the context otherwise requires:

(1) Commission shall mean the State Racing and Gaming Commission;

(2) Interstate simulcast shall mean parimutuel wagering at any licensed racetrack within the state on the results of any horserace conducted outside the state;

(3) Licensed horserace meeting shall include, but not be limited to, licensed racetracks at which simulcasts or interstate simulcasts are conducted;

(4) Operator shall mean any licensee issued a license under sections 2-1201 to 2-1223 operating a simulcast facility in accordance with sections 2-1224 to 2-1229;

(5) Receiving track shall mean any track which displays a simulcast which originates from another track or which conducts interstate simulcasts;

(6) Sending track shall mean any track from which a simulcast or interstate simulcast originates;

(7) Simulcast shall mean the telecast of live audio and visual signals of any horserace conducted in the state for the purpose of parimutuel wagering;

(8) Simulcast facility shall mean a facility within the state which is authorized to display simulcasts for parimutuel wagering purposes under sections 2-1224 to 2-1227 or to conduct interstate simulcasts under sections 2-1228 and 2-1229; and

(9) Track shall mean the grounds or enclosures within which horseraces are conducted by licensees authorized to conduct such races in accordance with sections 2-1201 to 2-1223.

Source: Laws 1987, LB 708, § 2; Laws 1989, LB 591, § 5; Laws 2021, LB561, § 23.

2-1226 Simulcast facility license; application.

Any racetrack issued a license under sections 2-1201 to 2-1223 which operates at least one live race meet during each calendar year except as provided in section 2-1228 may apply to the commission for a simulcast facility license. An application for such license shall be in such form as may be prescribed by the commission and shall contain such information, material, or evidence as the commission may require. Any racetrack issued a simulcast facility license may display the simulcast of a horserace on which parimutuel wagering shall be allowed.

Source: Laws 1987, LB 708, § 3; Laws 1996, LB 1255, § 3.

2-1227 Simulcast; license; agreement between tracks; sections applicable; wagering; how conducted.

(1) The commission may authorize and approve one or more applications by any racetrack issued a license under sections 2-1201 to 2-1223 for a license to provide the simulcast of horseraces for wagering purposes from a track operated by the applicant which is conducting a race to a receiving track which is also licensed pursuant to sections 2-1201 to 2-1223 and has applied for a simulcast facility license. No application shall be approved by the commission without a written agreement between the receiving track and the sending track relating to the simulcast. The written agreement between the receiving track and the sending track shall have the consent of the organization representing a majority of the licensed owners and trainers at both the sending and the receiving track.

(2) Every licensee authorized to accept wagers on simulcast racing events pursuant to sections 2-1224 to 2-1227 shall be deemed to be conducting a licensed horserace meeting and shall be subject to all appropriate provisions of sections 2-1201 to 2-1223 relating to the conduct of horserace meetings.

(3) The sums retained by any receiving track from the total deposits in pools wagered on simulcast racing events conducted pursuant to sections 2-1201 to 2-1227 shall be equal to the retained percentages applicable to the sending track. Of the sums retained by the receiving track from simulcast pools, the parimutuel tax shall be levied in accordance with sections 2-1201 to 2-1223. Of the sums retained by the receiving track, an amount as determined by agreement between the sending track and receiving track shall be distributed to the sending track.

(4) Any simulcast between a sending track located in the state and receiving track located in the state as provided in this section shall result in the combination of all wagers placed at the receiving track located in the state with

the wagers placed at the sending track located in the state so as to produce common parimutuel betting pools for the calculation of odds and the determination of payouts from such pools, which payout shall be the same for all winning tickets, irrespective of whether the wager is placed at a sending track located in the state or receiving track located in the state.

Source: Laws 1987, LB 708, § 4; Laws 1989, LB 591, § 6; Laws 1993, LB 471, § 2.

2-1228 Interstate simulcast facility license; application.

Any racetrack issued a license under sections 2-1201 to 2-1223 (1) conducting primarily quarterhorse races in the year immediately preceding the year for which application is made, regardless of the total number of days of live racing conducted in such year, or (2) conducting primarily thoroughbred horseraces in the year immediately preceding the year for which application is made which conducted live racing on at least seventy percent of the days for which it was authorized to conduct live racing in 1988 unless the commission determines that such racetrack was unable to conduct live racing on the required number of days due to factors beyond its control, including, but not limited to, fire, earthquake, tornado, or other natural disaster, may apply to the commission for an interstate simulcast facility license. An application for such license shall be in a form prescribed by the commission and shall contain such information, material, or evidence as the commission may require. Any racetrack issued an interstate simulcast facility license may conduct the interstate simulcast of any horserace permitted under its license, and parimutuel wagering shall be allowed on such horserace. The commission shall not authorize interstate simulcasting for any racetrack pursuant to sections 2-1201 to 2-1223 unless all of the thoroughbred racetracks together applied for and received authority to conduct at least one hundred eighty live racing days in the calendar year in which the application is made. If any racetrack conducts live racing for less than seventy percent of the days assigned such racetrack in 1988, (a) such racetrack shall be precluded from conducting interstate simulcasts and (b) the number of live racing days conducted by such racetrack shall be subtracted from an amount equal to seventy percent of all the days assigned such racetrack in 1988 and the amount remaining shall be deducted from the one-hundred-eighty-day total required by this section. If any racetrack ceases to conduct live racing, seventy percent of the days assigned such racetrack in 1988 shall be deducted from the one-hundred-eighty-day total required by this section.

Source: Laws 1989, LB 591, § 7; Laws 1993, LB 471, § 3.

2-1229 Interstate simulcast facility license; issuance; agreement between tracks.

(1) The commission may authorize and approve an application for an interstate simulcast facility license by a receiving track within the state to receive the interstate simulcast of horseraces for parimutuel wagering purposes from any track located outside of the state. In determining whether such application should be approved, the commission shall consider whether such interstate simulcast would have a significant effect upon either live racing or the simulcasting of live racing of the same type and at the same time conducted in this state and whether it would expand the access to or availability of simulcasting

to areas of the state or markets which are not at the time of the application fully served. Prior to approving any such application, the commission shall confer with and receive any recommendations of the organization which represents the majority of the thoroughbred breeders in Nebraska as to what effect an interstate simulcast would have upon horse breeding and horseracing in this state. No application submitted under section 2-1228 shall be approved by the commission without:

(a) The prior written approval of any other racetrack issued a license under sections 2-1201 to 2-1223 and conducting live racing of the same type on the same day at the same time as the proposed interstate simulcast race or races and of the organization which represented a majority of the licensed owners and trainers at the racetrack's immediately preceding live thoroughbred race meeting;

(b) The prior written approval of any other racetrack issued a license under sections 2-1224 to 2-1227 which is simulcasting the racing program of any licensee conducting live racing in this state of the same type on the same day at the same time as the proposed interstate simulcast race or races and of the organization which represented a majority of the licensed owners and trainers at the racetrack's immediately preceding live thoroughbred race meeting; and

(c) A written agreement between the receiving track and the sending track located outside of the state in any other state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico setting forth the division of all proceeds between the sending and receiving tracks and all other conditions under which such interstate simulcast will be conducted. Such written agreement shall have the consent of the group representing the majority of horsepersons racing at the sending track and of the organization which represented a majority of the licensed owners and trainers at the receiving track's immediately preceding live thoroughbred race meeting.

(2) Every licensee authorized to accept wagers on interstate simulcast events pursuant to this section shall be deemed to be conducting a licensed horserace meeting and shall also be subject to all appropriate provisions of sections 2-1201 to 2-1223 relating to the conduct of horserace meetings.

Source: Laws 1989, LB 591, § 8; Laws 1993, LB 471, § 4.

2-1230 Repealed. Laws 2014, LB 656, § 9.

2-1231 Repealed. Laws 2014, LB 656, § 9.

2-1232 Repealed. Laws 2014, LB 656, § 9.

2-1233 Repealed. Laws 2014, LB 656, § 9.

2-1234 Repealed. Laws 2014, LB 656, § 9.

2-1235 Repealed. Laws 2014, LB 656, § 9.

2-1236 Repealed. Laws 2014, LB 656, § 9.

2-1237 Repealed. Laws 2014, LB 656, § 9.

2-1238 Repealed. Laws 2014, LB 656, § 9.

2-1239 Repealed. Laws 2014, LB 656, § 9.

2-1240 Repealed. Laws 2014, LB 656, § 9.

2-1241 Repealed. Laws 2014, LB 656, § 9.

2-1242 Repealed. Laws 2014, LB 656, § 9.

2-1243 Horseracing industry participants; legislative findings.

The Legislature finds that the horseracing industry is an important facet of economic and recreational development in Nebraska. Breeders, owners, and trainers are an important and integral part of the live horseracing industry in Nebraska.

Source: Laws 1993, LB 471, § 5.

2-1244 Horseracing industry participant, defined.

For purposes of sections 2-1243 to 2-1246, horseracing industry participant shall mean an individual who currently holds a valid license for purposes of conducting horseracing from the State Racing and Gaming Commission and who owns, trains, cares for, or rides horses stabled at a Nebraska-licensed racetrack for the purpose of horseracing at the live race meeting at such racetrack.

Source: Laws 1993, LB 471, § 6; Laws 2021, LB561, § 24.

2-1245 Horseracing industry participants; rights.

(1) A horseracing industry participant shall be entitled to reasonable treatment from those licensed to conduct thoroughbred race meets.

(2) Private property belonging to a horseracing industry participant at a racetrack facility shall not unlawfully be converted, seized, damaged, or destroyed by racetrack employees or agents without compensation.

(3) A horseracing industry participant shall not be deemed to forfeit or waive any right to privacy without reasonable cause guaranteed by law by virtue of being licensed by the state, by entry upon licensed horseracing facilities, or by engaging in the sport of horseracing in this state.

(4) A horseracing industry participant may not be excluded from the grounds of any licensed racetrack by track management without a hearing by the stewards at such racetrack unless there are reasonable grounds to believe such participant has committed a felony or is posing a physical danger to himself or herself, to others, or to animals in his or her care or his or her physical presence will bring immediate harm to horseracing. Such hearing shall be held as soon as practicable and shall be given first priority and precedence by the stewards. This subsection shall not apply to the allocation of stalls pursuant to an agreement between the horseracing industry participant and the licensed racetrack.

(5) A horseracing industry participant shall be free from unreasonable searches and seizures of his or her person without probable cause and shall be free from unreasonable searches and seizures of his or her housing, vehicle, papers, and effects.

(6) If a horseracing industry participant has been charged with a violation of a rule of racing which involves a substantial risk of loss or suspension of his or her license or which involves a criminal penalty, he or she shall be entitled to the following protections as a matter of right:

(a) To remain silent;

(b) To the benefit of counsel, including the opportunity to confer with counsel in preparation of a defense;

(c) To a speedy and public hearing;

(d) To present evidence and to testify in person at his or her hearing;

(e) To cross-examine the witnesses who testify against him or her; and

(f) To have prospective witnesses excluded from the hearing room during the hearing.

Nothing in this section shall prevent a horseracing industry participant from knowingly waiving any rights afforded under this subsection.

(7) A horseracing industry participant shall not be required to waive his or her constitutional rights nor the rights granted pursuant to sections 2-1243 to 2-1246 as a condition of pursuing a livelihood in this state or at any licensed thoroughbred horseracing facility.

Source: Laws 1993, LB 471, § 7.

2-1246 Rules and regulations; sections; how construed.

(1) The State Racing and Gaming Commission shall adopt and promulgate rules and regulations which provide for dismissal, license revocation or suspension, fines, or other suitable penalties necessary to enforce sections 2-1243 to 2-1245.

(2) Nothing in such sections shall affect in any way the right of any horseracing industry participant to bring any action in any appropriate forum for the violation of any law of this state or any rule of racing.

Source: Laws 1993, LB 471, § 8; Laws 2021, LB561, § 25.

2-1247 Interstate Compact on Licensure of Participants in Horse Racing with Pari-Mutuel Wagering.

The Interstate Compact on Licensure of Participants in Horse Racing with Pari-Mutuel Wagering is hereby enacted into law and entered into with all other jurisdictions legally joining therein, in the form substantially as follows:

ARTICLE I. PURPOSES

Section 1. Purposes.

The purposes of this compact are to:

1. Establish uniform requirements among the party states for the licensing of participants in live horse racing with pari-mutuel wagering, and ensure that all such participants who are licensed pursuant to this compact meet a uniform minimum standard of honesty and integrity.

2. Facilitate the growth of the horse racing industry in each party state and nationwide by simplifying the process for licensing participants in live racing, and reduce the duplicative and costly process of separate licensing by the regulatory agency in each state that conducts live horse racing with pari-mutuel wagering.

3. Authorize the Nebraska State Racing and Gaming Commission to participate in this compact.

4. Provide for participation in this compact by officials of the party states, and permit those officials, through the compact committee established by this

compact, to enter into contracts with governmental agencies and nongovernmental persons to carry out the purposes of this compact.

5. Establish the compact committee created by this compact as an interstate governmental entity duly authorized to request and receive criminal history record information from the Federal Bureau of Investigation and other state and local law enforcement agencies.

ARTICLE II. DEFINITIONS

Section 2. Definitions.

''Compact committee'' means the organization of officials from the party states that is authorized and empowered by this compact to carry out the purposes of this compact.

''Official'' means the appointed, elected, designated or otherwise duly selected member of a racing commission or the equivalent thereof in a party state who represents that party state as a member of the compact committee.

''Participants in live racing'' means participants in live horse racing with pari-mutuel wagering in the party states.

''Party state'' means each state that has enacted this compact.

''State'' means each of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico and each territory or possession of the United States.

ARTICLE III. ENTRY INTO FORCE, ELIGIBLE PARTIES AND WITHDRAWAL

Section 3. Entry into force.

This compact shall come into force when enacted by any four (4) states. Thereafter, this compact shall become effective as to any other state upon both (i) that state's enactment of this compact and (ii) the affirmative vote of a majority of the officials on the compact committee as provided in Section 8.

Section 4. States eligible to join compact.

Any state that has adopted or authorized horse racing with pari-mutuel wagering shall be eligible to become party to this compact.

Section 5. Withdrawal from compact and impact thereof on force and effect of compact.

Any party state may withdraw from this compact by enacting a statute repealing this compact, but no such withdrawal shall become effective until the head of the executive branch of the withdrawing state has given notice in writing of such withdrawal to the head of the executive branch of all other party states. If as a result of withdrawals participation in this compact decreases to less than three (3) party states, this compact no longer shall be in force and effect unless and until there are at least three (3) or more party states again participating in this compact.

ARTICLE IV. COMPACT COMMITTEE

Section 6. Compact committee established.

There is hereby created an interstate governmental entity to be known as the ''compact committee,'' which shall be comprised of one (1) official from the racing commission or its equivalent in each party state. The Nebraska State Racing and Gaming Commission shall designate one of its members to represent the State of Nebraska as the compact committee official. A compact

committee official shall be appointed, serve and be subject to removal in accordance with the laws of the party state he represents. Pursuant to the laws of his party state, each official shall have the assistance of his state's racing commission or the equivalent thereof in considering issues related to licensing of participants in live racing and in fulfilling his responsibilities as the representative from his state to the compact committee. If an official representing the State of Nebraska is unable to perform any duty in connection with the powers and duties of the compact committee, the Nebraska State Racing and Gaming Commission shall designate another of its members or its executive director as an alternate who shall serve and represent the State of Nebraska as its official on the compact committee until the commission determines that the original representative official is able once again to perform the duties as that party state's representative official on the compact committee. The designation of an alternate shall be communicated by the Nebraska State Racing and Gaming Commission to the compact committee as the committee's bylaws may provide.

Section 7. Powers and duties of compact committee.

In order to carry out the purposes of this compact, the compact committee is hereby granted the power and duty to:

1. Determine which categories of participants in live racing, including but not limited to owners, trainers, jockeys, grooms, mutuel clerks, racing officials, veterinarians, and farriers, should be licensed by the committee, and establish the requirements for the initial licensure of applicants in each such category, the term of the license for each category, and the requirements for renewal of licenses in each category. Provided, however, that with regard to requests for criminal history record information on each applicant for a license, and with regard to the effect of a criminal record on the issuance or renewal of a license, the compact committee shall determine for each category of participants in live racing which licensure requirements for that category are, in its judgment, the most restrictive licensure requirements of any party state for that category and shall adopt licensure requirements for that category that are, in its judgment, comparable to those most restrictive requirements.

2. Investigate applicants for a license from the compact committee and, as permitted by federal and state law, gather information on such applicants, including criminal history record information from the Federal Bureau of Investigation and relevant state and local law enforcement agencies, and, where appropriate, from the Royal Canadian Mounted Police and law enforcement agencies of other countries, necessary to determine whether a license should be issued under the licensure requirements established by the committee as provided in paragraph 1 above. Only officials on, and employees of, the compact committee may receive and review such criminal history record information, and those officials and employees may use that information only for the purposes of this compact. No such official or employee may disclose or disseminate such information to any person or entity other than another official on or employee of the compact committee. The fingerprints of each applicant for a license from the compact committee shall be taken by the compact committee, its employees, or its designee and, pursuant to Public Law 92-544 or Public Law 100-413, shall be forwarded to a state identification bureau, or to the Association of Racing Commissioners, International, an association of state officials regulating pari-mutuel wagering designated by the Attorney General of the United States, for submission to the Federal Bureau of Investigation for a

criminal history record check. Such fingerprints may be submitted on a fingerprint card or by electronic or other means authorized by the Federal Bureau of Investigation or other receiving law enforcement agency.

3. Issue licenses to, and renew the licenses of, participants in live racing listed in paragraph 1 of this section who are found by the committee to have met the licensure and renewal requirements established by the committee. The compact committee shall not have the power or authority to deny a license. If it determines that an applicant will not be eligible for the issuance or renewal of a compact committee license, the compact committee shall notify the applicant that it will not be able to process his application further. Such notification does not constitute and shall not be considered to be the denial of a license. Any such applicant shall have the right to present additional evidence to, and to be heard by, the compact committee, but the final decision on issuance or renewal of the license shall be made by the compact committee using the requirements established pursuant to paragraph 1 of this section.

4. Enter into contracts or agreements with governmental agencies and with nongovernmental persons to provide personal services for its activities and such other services as may be necessary to effectuate the purposes of this compact.

5. Create, appoint, and abolish those offices, employments, and positions, including an executive director, as it deems necessary for the purposes of this compact, prescribe their powers, duties and qualifications, hire persons to fill those offices, employments and positions, and provide for the removal, term, tenure, compensation, fringe benefits, retirement benefits and other conditions of employment of its officers, employees and other positions.

6. Borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, corporation or other entity.

7. Acquire, hold, and dispose of real and personal property by gift, purchase, lease, license, or in other similar manner, in furtherance of the purposes of this compact.

8. Charge a fee to each applicant for an initial license or renewal of a license.

9. Receive other funds through gifts, grants and appropriations.

Section 8. Voting requirements.

A. Each official shall be entitled to one (1) vote on the compact committee.

B. All action taken by the compact committee with regard to the addition of party states as provided in Section 3, the licensure of participants in live racing, and the receipt and disbursement of funds shall require a majority vote of the total number of officials (or their alternates) on the committee. All other action by the compact committee shall require a majority vote of those officials (or their alternates) present and voting.

C. No action of the compact committee may be taken unless a quorum is present. A majority of the officials (or their alternates) on the compact committee shall constitute a quorum.

Section 9. Administration and management.

A. The compact committee shall elect annually from among its members a chairman, a vice-chairman, and a secretary/treasurer.

B. The compact committee shall adopt bylaws for the conduct of its business by a two-thirds vote of the total number of officials (or their alternates) on the committee at that time and shall have the power by the same vote to amend and rescind these bylaws. The committee shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendments thereto with the secretary of state or equivalent agency of each of the party states.

C. The compact committee may delegate the day-to-day management and administration of its duties and responsibilities to an executive director and his support staff.

D. Employees of the compact committee shall be considered governmental employees.

Section 10. Immunity from liability for performance of official responsibilities and duties.

No official of a party state or employee of the compact committee shall be held personally liable for any good faith act or omission that occurs during the performance and within the scope of his responsibilities and duties under this compact.

ARTICLE V. RIGHTS AND RESPONSIBILITIES OF EACH PARTY STATE

Section 11. Rights and responsibilities of each party state.

A. By enacting this compact, each party state:

1. Agrees (i) to accept the decisions of the compact committee regarding the issuance of compact committee licenses to participants in live racing pursuant to the committee's licensure requirements, and (ii) to reimburse or otherwise pay the expenses of its official representative on the compact committee or his alternate.

2. Agrees not to treat a notification to an applicant by the compact committee under paragraph 3 of Section 7 that the compact committee will not be able to process his application further as the denial of a license, or to penalize such applicant in any other way based solely on such a decision by the compact committee.

3. Reserves the right (i) to charge a fee for the use of a compact committee license in that state, (ii) to apply its own standards in determining whether, on the facts of a particular case, a compact committee license should be suspended or revoked, (iii) to apply its own standards in determining licensure eligibility, under the laws of that party state, for categories of participants in live racing that the compact committee determines not to license and for individual participants in live racing who do not meet the licensure requirements of the compact committee, and (iv) to establish its own licensure standards for the licensure of non-racing employees at horse racetracks and employees at separate satellite wagering facilities. Any party state that suspends or revokes a compact committee license shall, through its racing commission or the equivalent thereof or otherwise, promptly notify the compact committee of that suspension or revocation.

B. No party state shall be held liable for the debts or other financial obligations incurred by the compact committee.

ARTICLE VI. CONSTRUCTION AND SEVERABILITY

Section 12. Construction and severability.

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

Source: Laws 2001, LB 295, § 1; Laws 2021, LB561, § 26.

ARTICLE 13

NONPROFIT AGRICULTURAL CORPORATIONS

Section

2-1301. Refunding of bonded indebtedness; section, how construed.
2-1302. Refunding debentures; form.

2-1301 Refunding of bonded indebtedness; section, how construed.

Any corporation organized and existing under and by virtue of the laws of the State of Nebraska if created not for private gain or profit and under legal restrictions which preclude it from being organized for private gain or profit, and if organized and existing for the purpose of promoting and advancing the interests of agriculture and farm husbandry in the State of Nebraska, having outstanding any bonds or debentures matured or about to mature, may refund such bond indebtedness or debentures in an amount not exceeding the existing unpaid principal and interest due on such bonds or debentures, by issuing new bonds or new debentures in exchange for bonds or debentures maturing or about to mature, or to be sold for the purpose of securing funds to redeem principal and interest of the bonds or debentures maturing or about to mature. Such new bonds or debentures shall not be issued in excess of the amount required to refund the existing indebtedness, shall not be sold or exchanged at less than par and shall not draw interest at a rate in excess of three percent per annum, which interest may be made payable annually or semiannually. No authority is hereby granted nor shall this section be construed to grant authority to any such corporation to increase its indebtedness, the sole object and purpose of this section being to authorize refunding of existing indebtedness.

Source: Laws 1937, c. 2, § 1, p. 52; C.S.Supp.,1941, § 2-1601; R.S.1943, § 2-1301.

2-1302 Refunding debentures; form.

Said refunding debentures shall be in substantially the form as provided in section 2-111, Compiled Statutes of Nebraska, 1929.

Source: Laws 1937, c. 2, § 2, p. 53; C.S.Supp.,1941, § 2-1602; R.S.1943, § 2-1302; Laws 1983, LB 421, § 9.

ARTICLE 14
AGRICULTURAL STATISTICS

Section
2-1401. Repealed. Laws 1979, LB 25, § 1.

2-1401 Repealed. Laws 1979, LB 25, § 1.

ARTICLE 15
NEBRASKA NATURAL RESOURCES COMMISSION

Cross References

Natural resources districts, see Chapter 2, article 32.

(a) GENERAL PROVISIONS

Section
2-1501. Terms, defined.
2-1502. Soil and water conservation and flood control needs; state financial assistance; conditions.
2-1503. Transferred to section 2-1501.
2-1503.01. Small Watersheds Flood Control Fund; created; use; investment.
2-1503.02. Commission; flood control funds; allocations; acquisition of land or easements.
2-1503.03. Commission; department; powers; authority.
2-1504. Nebraska Natural Resources Commission; creation; functions; membership; selection; terms; vacancy.
2-1505. Commission; organization; compensation of members.
2-1506. Water Sustainability Fund; goals; legislative findings.
2-1507. Water Sustainability Fund; distribution; allocation; natural resources district; eligibility; report.
2-1508. Commission; rank and score applications for funding; criteria.
2-1509. Application; form; contents; director; duties; state participation; request.
2-1510. Program, project, or activity; funding request; director; powers; findings; conflict of interest.
2-1511. Director; recommendations; agreement; contents; loan; repayment period; successor; contract; lien; filing.
2-1512. Department; powers; Water Sustainability Fund; use.
2-1513. Water Sustainability Fund; legislative analysis.
2-1514. Repealed. Laws 1977, LB 510, § 10.
2-1515. Repealed. Laws 1977, LB 510, § 10.
2-1516. Repealed. Laws 1977, LB 510, § 10.
2-1517. Repealed. Laws 1977, LB 510, § 10.
2-1517.01. Repealed. Laws 1977, LB 510, § 10.
2-1517.02. Repealed. Laws 1977, LB 510, § 10.
2-1517.03. Repealed. Laws 1977, LB 510, § 10.
2-1517.04. Repealed. Laws 1973, LB 335, § 5.
2-1518. Repealed. Laws 1977, LB 510, § 10.
2-1519. Repealed. Laws 1977, LB 510, § 10.
2-1520. Repealed. Laws 1977, LB 510, § 10.
2-1521. Repealed. Laws 1977, LB 510, § 10.
2-1522. Repealed. Laws 1977, LB 510, § 10.
2-1523. Repealed. Laws 1977, LB 510, § 10.
2-1524. Repealed. Laws 1977, LB 510, § 10.
2-1525. Repealed. Laws 1977, LB 510, § 10.
2-1526. Repealed. Laws 1977, LB 510, § 10.
2-1527. Repealed. Laws 1977, LB 510, § 10.
2-1528. Repealed. Laws 1977, LB 510, § 10.
2-1529. Repealed. Laws 1983, LB 36, § 5.
2-1530. Repealed. Laws 1977, LB 510, § 10.
2-1530.01. Repealed. Laws 1977, LB 510, § 10.

Section
2-1531. Repealed. Laws 1977, LB 510, § 10.
2-1532. Repealed. Laws 1977, LB 510, § 10.
2-1533. Repealed. Laws 1977, LB 510, § 10.
2-1534. Repealed. Laws 1977, LB 510, § 10.
2-1535. Repealed. Laws 1977, LB 510, § 10.
2-1536. Repealed. Laws 1977, LB 510, § 10.
2-1537. Repealed. Laws 1977, LB 510, § 10.
2-1538. Repealed. Laws 1977, LB 510, § 10.
2-1539. Repealed. Laws 1977, LB 510, § 10.
2-1540. Repealed. Laws 1977, LB 510, § 10.
2-1541. Repealed. Laws 1977, LB 510, § 10.
2-1542. Repealed. Laws 1977, LB 510, § 10.
2-1543. Repealed. Laws 1977, LB 510, § 10.
2-1544. Repealed. Laws 1977, LB 510, § 10.
2-1545. Repealed. Laws 1977, LB 510, § 10.
2-1546. Repealed. Laws 1977, LB 510, § 10.
2-1547. Transferred to section 61-210.
2-1548. Repealed. Laws 1977, LB 510, § 10.
2-1549. Repealed. Laws 1977, LB 510, § 10.
2-1549.01. Repealed. Laws 1977, LB 510, § 10.
2-1549.02. Repealed. Laws 1977, LB 510, § 10.
2-1549.03. Repealed. Laws 1977, LB 510, § 10.
2-1549.04. Repealed. Laws 1977, LB 510, § 10.
2-1550. Repealed. Laws 1977, LB 510, § 10.
2-1551. Repealed. Laws 1977, LB 510, § 10.
2-1552. Repealed. Laws 1977, LB 510, § 10.
2-1553. Repealed. Laws 1977, LB 510, § 10.
2-1554. Repealed. Laws 1977, LB 510, § 10.
2-1555. Repealed. Laws 1977, LB 510, § 10.
2-1556. Repealed. Laws 1977, LB 510, § 10.
2-1557. Repealed. Laws 1977, LB 510, § 10.
2-1558. Repealed. Laws 1977, LB 510, § 10.
2-1559. Repealed. Laws 1977, LB 510, § 10.
2-1560. Repealed. Laws 1977, LB 510, § 10.
2-1561. Repealed. Laws 1977, LB 510, § 10.
2-1562. Repealed. Laws 1977, LB 510, § 10.
2-1563. Repealed. Laws 1977, LB 510, § 10.
2-1564. Repealed. Laws 1977, LB 510, § 10.
2-1565. Repealed. Laws 1977, LB 510, § 10.
2-1566. Repealed. Laws 1977, LB 510, § 10.
2-1567. Repealed. Laws 1977, LB 510, § 10.
2-1568. Department; data bank; establish; maintain; administer; available to other agencies.
2-1569. Basic data, defined.
2-1570. Repealed. Laws 2005, LB 342, § 4.
2-1571. Repealed. Laws 1983, LB 36, § 5.
2-1572. Repealed. Laws 1983, LB 36, § 5.
2-1573. Repealed. Laws 1983, LB 36, § 5.
2-1574. Repealed. Laws 1983, LB 36, § 5.

(b) NEBRASKA SOIL AND WATER CONSERVATION ACT

2-1575. Act, how cited.
2-1576. Legislative intent.
2-1577. Nebraska Soil and Water Conservation Fund; created; investment.
2-1578. Commission; rules and regulations.
2-1579. Fund; grants; conditions; acceptance, how construed.
2-1580. Fund; erosion and sediment control payments; conditions.
2-1581. Fund; payments to reduce consumptive use of water; conditions.
2-1582. Repealed. Laws 1983, LB 1, § 1.
2-1583. Fund; land diversion payments; authorized.
2-1584. Department; assistance from local, state, or federal agencies.

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2-1585. Long-term agreements; authorized; conditions.

(c) NEBRASKA RESOURCES DEVELOPMENT FUND

2-1586. Statement of purpose.
2-1587. Nebraska Resources Development Fund; created; reserve fund; administration; investment.
2-1588. Fund; allocation; report; projects; costs.
2-1589. Fund; allocations, grants, loans; conditions.
2-1590. Department; commission; fund; powers.
2-1591. Repealed. Laws 1984, LB 1106, § 73.
2-1592. Grant or loan; application; deadline; procedure.
2-1593. Program or project; funding; review; approve or reject; procedure.
2-1594. Program or project; costs or acquisition of interest; approval.
2-1595. Application for a grant, loan, or acquisition; agreement; provisions; successor in interest; lien; filing; foreclosure.

(d) NEBRASKA SOIL SURVEY FUND

2-1596. Legislative intent.
2-1597. Nebraska Soil Survey Fund; created; purposes; administration.
2-1598. Nebraska Soil Survey Fund; how expended.

(e) WATER PLANNING AND REVIEW PROCESS

2-1599. Statement of purpose.
2-15,100. Water planning and review; how conducted; assistance.
2-15,101. Appropriations; procedure.
2-15,102. Repealed. Laws 1985, LB 102, § 22.
2-15,103. Commission; duties.
2-15,104. Repealed. Laws 2000, LB 900, § 256.
2-15,105. Public hearings; materials; made available to public.
2-15,106. Annual report; contents.

(f) WATER MANAGEMENT

2-15,107. Repealed. Laws 1991, LB 772, § 8.
2-15,108. Repealed. Laws 1991, LB 772, § 8.
2-15,109. Repealed. Laws 1991, LB 772, § 8.
2-15,110. Repealed. Laws 1991, LB 772, § 8.
2-15,111. Repealed. Laws 1991, LB 772, § 8.
2-15,112. Repealed. Laws 1991, LB 772, § 8.
2-15,113. Repealed. Laws 1991, LB 772, § 8.
2-15,114. Repealed. Laws 1991, LB 772, § 8.
2-15,115. Repealed. Laws 1991, LB 772, § 8.
2-15,116. Repealed. Laws 1991, LB 772, § 8.
2-15,117. Repealed. Laws 1991, LB 772, § 8.
2-15,118. Repealed. Laws 1989, LB 710, § 2.
2-15,119. Repealed. Laws 1989, LB 710, § 2.
2-15,120. Repealed. Laws 1989, LB 710, § 2.
2-15,121. Repealed. Laws 2000, LB 900, § 256.

(g) NATURAL RESOURCES WATER QUALITY FUND

2-15,122. Natural Resources Water Quality Fund; created; use; investment.
2-15,123. Natural Resources Water Quality Fund; allocation; programs; rules and regulations.

(a) GENERAL PROVISIONS

2-1501 Terms, defined.

As used in sections 2-1501 to 2-15,123, unless the context otherwise requires:

(1) Commission means the Nebraska Natural Resources Commission;

(2) State means the State of Nebraska;

(3) Agency of this state means the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state;

(4) United States or agencies of the United States means the United States of America, the Natural Resources Conservation Service of the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America;

(5) Government or governmental means the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them;

(6) Lands, easements, and rights-of-way means lands and rights or interests in lands whereon channel improvements, channel rectifications, or water-retarding or gully-stabilization structures are located, including those areas for flooding and flowage purposes, spoil areas, borrow pits, access roads, and similar purposes;

(7) Local organization means any natural resources district, drainage district, irrigation district, or other public district, county, city, or state agency;

(8) Subwatershed means a portion of a watershed project as divided by the department on a complete hydrologic unit;

(9) Rechanneling means the channeling of water from one watercourse to another watercourse by means of open ditches;

(10) Watercourse means any depression two feet or more below the surrounding land serving to give direction to a current of water at least nine months of the year, having a bed and well-defined banks and, upon order of the commission, also includes any particular depression which would not otherwise be within the definition of watercourse;

(11) Director means the Director of Natural Resources;

(12) Department means the Department of Natural Resources; and

(13) Combined sewer overflow project means a municipal project to reduce overflows from a combined sewer system pursuant to a long-term control plan approved by the Department of Environment and Energy.

Source: Laws 1937, c. 8, § 3, p. 93; C.S.Supp.,1941, § 2-1903; R.S.1943, § 2-1503; Laws 1951, c. 7, § 1, p. 73; Laws 1959, c. 6, § 2, p. 75; Laws 1961, c. 4, § 1, p. 65; Laws 1961, c. 3, § 2, p. 62; Laws 1963, c. 8, § 2, p. 73; Laws 1963, c. 9, § 1, p. 76; Laws 1969, c. 16, § 1, p. 164; Laws 1969, c. 9, § 66, p. 138; Laws 1971, LB 415, § 1; Laws 1972, LB 542, § 1; Laws 1977, LB 510, § 1; Laws 1984, LB 1106, § 11; Laws 1999, LB 403, § 1; R.S.Supp.,1999, § 2-1503; Laws 2000, LB 900, § 17; Laws 2014, LB1098, § 1; Laws 2019, LB302, § 8.

2-1502 Soil and water conservation and flood control needs; state financial assistance; conditions.

(1) The purpose of the Small Watersheds Flood Control Fund is to assist local organizations by paying all or part of the cost of purchase of needed lands, easements, and rights-of-way for soil and water conservation and flood control needs when the following conditions have been met:

(a) The local organizations have agreed on a program of work;

(b) Such a program of work has been found to be feasible, practicable, and will promote the health, safety, and general welfare of the people of the state;

(c) The department has either participated in the planning or reviewed the plans and has approved the program of work;

(d) Local organizations have obtained a minimum of seventy-five percent of the needed number of easements and rights-of-way in the project or a subwatershed prior to the use of state funds for this purpose;

(e) Local organizations have made a formal request or application to the department for state funds for the purpose of purchasing lands, easements, and rights-of-way;

(f) Local organizations and the department have entered into an agreement on the administration and expenditure of these state funds;

(g) The purchase price of the land, easement, or right-of-way has been established either by the courts or by one credentialed real property appraiser approved by the department, which appraisal costs shall be a nonstate cost; and

(h) Local organizations have given assurance to the department that they have obtained any water rights or other permits required under state or federal law and complied with all other applicable state laws.

(2) State funds to be used for lands, easements, and rights-of-way shall be granted to the local organizations in whose name the land, easement, or right-of-way shall be recorded. Rental or lease revenue from these lands may be used subject to the approval of the department by the local organization in the proper management of these lands, such management to include, but not be limited to, weed control, construction, and maintenance of conservation measures, seeding of grass, planting of trees, and construction and maintenance of fences. Within ten years from the purchase date of lands and rights-of-way, and if the lands and rights-of-way are not granted or retained for public purposes as otherwise provided by this section, it shall be the duty of the local organization to sell the property purchased wholly or partially from state funds and to remit to the department a pro rata share of the proceeds of such sale equal to the percentage of the total cost of the acquisition of such real property made from any state allocation made hereunder and all such remittances shall be deposited in the Small Watersheds Flood Control Fund. The local organization shall retain any easement or right-of-way needed to assure the continued operation, maintenance, inspection, and repair of the works of improvement constructed on the land to be sold. The commission and local organization may grant for public purposes title to lands and rights-of-way acquired in whole or in part with funds from the Small Watersheds Flood Control Fund to any public district, city, county, political subdivision of the state, or agency of the state or federal government, or the local organization, with approval of the commission, may retain for public purposes the title to such lands and rights-of-way. Whenever any such grant or retention is approved, the department shall be reimbursed in the amount of the pro rata share of the appraised fair market value that is equal to the percentage of the total cost of acquisition paid from the Small Watersheds Flood Control Fund. All such proceeds to the department shall be remitted to the State Treasurer for credit to the Small Watersheds Flood Control Fund.

Source: Laws 1937, c. 8, § 2, p. 92; C.S.Supp.,1941, § 2-1902; R.S.1943, § 2-1502; Laws 1957, c. 3, § 1, p. 80; Laws 1963, c. 8, § 1, p. 69; Laws 1965, c. 12, § 1, p. 131; Laws 1969, c. 9, § 65, p. 136; Laws

1979, LB 31, § 1; Laws 1981, LB 224, § 1; Laws 1990, LB 1153, § 51; Laws 1991, LB 203, § 1; Laws 1994, LB 1107, § 1; Laws 2000, LB 900, § 18; Laws 2006, LB 778, § 1.

2-1503 Transferred to section 2-1501.

2-1503.01 Small Watersheds Flood Control Fund; created; use; investment.

The Small Watersheds Flood Control Fund is created. The State Treasurer shall credit to the fund such money as is specifically appropriated during any session of the Legislature. The State Treasurer shall also credit such fund with money contributed to or remitted by local organizations which was obtained through the sale or lease of property procured through the use of state funds as authorized in sections 2-1502 to 2-1503.03. In addition, funds, services, and properties made available by the United States or one of its departments or agencies may be credited to the fund. The money in the fund shall not be subject to fiscal year or biennium limitations. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Small Watersheds Flood Control 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. 8, § 3, p. 74; Laws 1969, c. 584, § 26, p. 2357; Laws 1986, LB 258, § 2; Laws 1995, LB 7, § 5; Laws 2000, LB 900, § 19; Laws 2009, First Spec. Sess., LB3, § 2.

Cross References

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

2-1503.02 Commission; flood control funds; allocations; acquisition of land or easements.

The commission shall adopt and promulgate rules and regulations for the administration of the Small Watersheds Flood Control Fund. The commission may allocate to any local organization in this state, from the Small Watersheds Flood Control Fund, such sum or sums as in the judgment of the commission may be necessary to enable such local organization to acquire real property or easements needed to permit the local organizations to install upstream flood control or watershed protection and flood prevention structures on rivers, tributaries, streams, or watersheds thereof, including cooperative projects between the local organization and the United States. When any property or easement has been acquired by the use of any funds allocated under this section and the property is thereafter sold or leased, it shall be the duty of the local organization to remit to the department a pro rata share of the proceeds of such sale or lease equal to the percentage of total state funds involved.

Source: Laws 1963, c. 8, § 4, p. 75; Laws 1963, c. 3, § 1, p. 62; Laws 2000, LB 900, § 20.

2-1503.03 Commission; department; powers; authority.

The commission shall have sole power and authority to specify the date and all other terms for the sale of any lands or rights-of-way acquired wholly or in part with funds from the Small Watersheds Flood Control Fund and to require the execution of all necessary documents to complete such sales. The depart-

ment shall, upon acquisition by the local organization of any such lands or rights-of-way, prepare and file with the register of deeds in the county where such lands or rights-of-way are located an affidavit stating that state funds were utilized for the acquisition of such lands or rights-of-way by the organization receiving such funds and that such lands or rights-of-way cannot be sold, conveyed, granted, or in any way transferred by such organization except at the direction of the commission and in compliance with its rules and regulations.

Source: Laws 1973, LB 188, § 3; Laws 2000, LB 900, § 21.

2-1504 Nebraska Natural Resources Commission; creation; functions; membership; selection; terms; vacancy.

(1) The Nebraska Natural Resources Commission is established. The commission shall advise the department as requested by the director and shall perform such other functions as are specifically conferred on the commission by law. The commission shall have no jurisdiction over matters pertaining to water rights.

(2) Each member of the commission shall be a resident of the State of Nebraska and shall have attained the age of majority. The voting members of the commission shall be:

(a) One resident of each of the following river basins, with delineations being those on the Nebraska river basin map officially adopted by the commission and on file with the department: (i) The Niobrara River, White River, and Hat Creek basin, (ii) the North Platte River basin, (iii) the South Platte River basin, (iv) the middle Platte River basin, (v) the lower Platte River basin, (vi) the Loup River basin, (vii) the Elkhorn River basin, (viii) the Missouri tributaries basin, (ix) the Republican River basin, (x) the Little Blue River basin, (xi) the Big Blue River basin, and (xii) the Nemaha River basin;

(b) One additional resident of each river basin which encompasses one or more cities of the metropolitan class; and

(c) Fourteen members appointed by the Governor, subject to confirmation by the Legislature. Of the members appointed by the Governor, one shall represent each of the following categories: Agribusiness interests; agricultural interests; ground water irrigators; irrigation districts; manufacturing interests; metropolitan utilities districts; municipal users of water from a city of the primary class; municipal users of water from a city of the first or second class or a village; outdoor recreation users; public power districts; public power and irrigation districts; range livestock owners; surface water irrigators; and wildlife conservation interests.

(3) Members of the commission described in subdivision (2)(a) of this section shall be selected for four-year terms at individual caucuses of the natural resources district directors residing in the river basin from which the member is selected. Such caucuses shall be held for each basin within ten days following the first Thursday after the first Tuesday of the year the term of office of the member from that basin expires. The dates and locations for such caucuses shall be established by the commission, and the commission shall provide notice to the public by issuing press releases for publication in a newspaper of general circulation in each county that comprises the river basin for which a caucus election will be held. Terms of office of such members shall follow the sequence originally determined by the river basin representatives to the commission at their first meeting on the third Thursday after the first Tuesday in

January 1975. All river basin members shall take office on the third Thursday after the first Tuesday in January following their selection and any vacancy shall be filled for the unexpired term by a caucus held within thirty days following the date such vacancy is created. Each member of the commission representing a river basin shall qualify by filing with the other members of the commission an acceptance in writing of his or her selection.

(4) Members of the commission described in subdivision (2)(b) of this section shall be residents of natural resources districts which encompass one or more cities of the metropolitan class and shall be selected in the same manner, at the same time, and for a four-year term having the same term sequence as provided for the other members from such basin under subsection (3) of this section.

(5) For members of the commission described in subdivision (2)(c) of this section:

(a) The Governor shall appoint the eleven additional members added by Laws 2014, LB1098, within thirty days after April 17, 2014. The eleven additional appointments shall be for staggered four-year terms, as determined by the Governor. The Governor shall also set the terms of the current members of the commission appointed under such subdivision and serving on April 17, 2014, to staggered four-year terms. Future appointments shall be for four-year terms. Members whose terms have expired shall continue to serve until their successors have been appointed. In the case of a vacancy, the Governor shall appoint a successor for the unexpired term. Members may be removed for cause. Initial appointees shall begin serving immediately following notice of appointment, except that the member appointed representing municipal users of water from the class of city or a village that is being represented by the current member representing municipal users of water and the members representing surface water irrigators and ground water irrigators shall not begin serving until the term of the current member representative of the category expires or such member resigns or is otherwise removed; and

(b) In appointing such members, the Governor shall:

(i) Create a broad-based commission which has knowledge of, has experience with, and is representative of Nebraska's water use and economy;

(ii) Give recognition to the importance of both water quantity and water quality; and

(iii) Appoint members who represent diverse geographic regions of the state, including urban and rural areas, and represent, to the extent possible, the racial and ethnic diversity of the state.

(6) After the members have been appointed as required under this section, the commission shall revise or adopt and promulgate rules and regulations as necessary to administer the Water Sustainability Fund pursuant to sections 2-1506 to 2-1513.

Source: Laws 1937, c. 8, § 4, p. 94; C.S.Supp.,1941, § 2-1904; R.S.1943, § 2-1504; Laws 1951, c. 7, § 2, p. 74; Laws 1957, c. 3, § 2, p. 82; Laws 1959, c. 6, § 3, p. 76; Laws 1961, c. 4, § 2, p. 66; Laws 1963, c. 9, § 2, p. 78; Laws 1967, c. 7, § 1, p. 78; Laws 1967, c. 5, § 1, p. 73; Laws 1969, c. 9, § 67, p. 140; Laws 1972, LB 542, § 2; Laws 1973, LB 337, § 1; Laws 1977, LB 510, § 2; Laws 1980, LB

423, § 1; Laws 1983, LB 36, § 1; Laws 1983, LB 37, § 1; Laws 1984, LB 1106, § 13; Laws 2000, LB 900, § 22; Laws 2014, LB1098, § 2; Laws 2020, LB632, § 1.

Cross References

Department of Natural Resources, powers, see Chapter 61, article 2.

Designation by Legislature of University of Nebraska officers as members of Natural Resources Commission was a legislative appointment in violation of Constitution; but designation of Director of Water Resources was valid as simply adding to the duties of a state officer. Neeman v. Nebraska Nat. Resources Commission, 191 Neb. 672, 217 N.W.2d 166 (1974).

2-1505 Commission; organization; compensation of members.

The commission shall designate a chairperson, a vice-chairperson, and such other officers as it may desire and may, from time to time, change such designation. A majority of the commission shall constitute a quorum, and the concurrence of a majority in any matter within their duties shall be required for its determination. Each of the members of the commission shall receive a per diem of fifty dollars per day for each day in the performance of his or her duties on the commission, but no member shall receive more than two thousand dollars in any one year, and in addition shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of his or her duties on the commission, as provided in sections 81-1174 to 81-1177.

Source: Laws 1937, c. 8, § 4, p. 95; C.S.Supp.,1941, § 2-1904; R.S.1943, § 2-1505; Laws 1957, c. 3, § 3, p. 84; Laws 1961, c. 4, § 3, p. 68; Laws 1972, LB 542, § 3; Laws 1978, LB 653, § 2; Laws 1980, LB 701, § 1; Laws 1981, LB 204, § 5; Laws 2000, LB 900, § 23.

2-1506 Water Sustainability Fund; goals; legislative findings.

(1) The goals of the Water Sustainability Fund are to: (a) Provide financial assistance to programs, projects, or activities that increase aquifer recharge, reduce aquifer depletion, and increase streamflow; (b) remediate or mitigate threats to drinking water; (c) promote the goals and objectives of approved integrated management plans or ground water management plans; (d) contribute to multiple water supply management goals including flood control, reducing threats to property damage, agricultural uses, municipal and industrial uses, recreational benefits, wildlife habitat, conservation, and preservation of water resources; (e) assist municipalities with the cost of constructing, upgrading, developing, and replacing sewer infrastructure facilities as part of a combined sewer overflow project; (f) provide increased water productivity and enhance water quality; (g) use the most cost-effective solutions available; and (h) comply with interstate compacts, decrees, other state contracts and agreements and federal law.

(2) The Legislature finds that the goals of the Water Sustainability Fund can be met by equally considering programs, projects, or activities in the following categories: (a) Research, data, and modeling; (b) rehabilitation or restoration of water supply infrastructure, new water supply infrastructure, or water supply infrastructure maintenance or flood prevention for protection of critical infrastructure; (c) conjunctive management, storage, and integrated management of ground water and surface water; and (d) compliance with interstate compacts or agreements or other formal state contracts or agreements or federal law.

Source: Laws 2014, LB1098, § 3.

2-1507 Water Sustainability Fund; distribution; allocation; natural resources district; eligibility; report.

(1) It is the intent of the Legislature that the Water Sustainability Fund be equitably distributed statewide to the greatest extent possible for the long term and give priority funding status to projects which are the result of federal mandates.

(2) Distributions to assist municipalities with the cost of constructing, upgrading, developing, and replacing sewer infrastructure facilities as part of a combined sewer overflow project shall be based on a demonstration of need and shall equal ten percent of the total annual appropriation to the Water Sustainability Fund if (a) applicants have applied for such funding as required under section 2-1509 and (b) any such application has been recommended for further consideration by the director and is subsequently approved for allocation by the commission pursuant to subsection (1) of section 2-1511. If more than one municipality demonstrates a need for funds pursuant to this subsection, funds shall be distributed proportionally based on population.

(3) Any money in the Water Sustainability Fund may be allocated by the commission to applicants in accordance with sections 2-1506 to 2-1513. Such money may be allocated in the form of grants or loans for water sustainability programs, projects, or activities undertaken within the state. The allocation of funds to a program, project, or activity in one form shall not of itself preclude additional allocations in the same or any other form to the same program, project, or activity.

(4) When the commission has approved an allocation of funds to a program, project, or activity, the Department of Natural Resources shall establish a subaccount in the Water Sustainability Fund and credit the entire amount of the allocation to the subaccount. Individual subaccounts shall be established for each program, project, or activity approved by the commission. The commission may approve a partial allocation to a program, project, or activity based upon available unallocated funds in the Water Sustainability Fund, but the amount of unfunded allocations shall not exceed eleven million dollars. Additional allocations to a program, project, or activity shall be credited to the same subaccount as the original allocation. Subaccounts shall not be subject to transfer out of the Water Sustainability Fund, except that the commission may authorize the transfer of excess or unused funds from a subaccount and into the unreserved balance of the fund.

(5) A natural resources district is eligible for funding from the Water Sustainability Fund only if the district has adopted or is currently participating in the development of an integrated management plan pursuant to subdivision (1)(a) or (b) of section 46-715.

(6) The commission shall utilize the resources and expertise of and collaborate with the Department of Natural Resources, the University of Nebraska, the Department of Environment and Energy, the Nebraska Environmental Trust Board, and the Game and Parks Commission on funding and planning for water programs, projects, or activities.

(7) A biennial report shall be made to the Clerk of the Legislature describing the work accomplished by the use of funds towards the goals of the Water

Sustainability Fund beginning on December 31, 2015. The report submitted to the Clerk of the Legislature shall be submitted electronically.

Source: Laws 2014, LB1098, § 4; Laws 2015, LB661, § 21; Laws 2016, LB957, § 1; Laws 2019, LB302, § 9.

2-1508 Commission; rank and score applications for funding; criteria.

The commission shall rank and score applications for funding based on criteria that demonstrate the extent to which a program, project, or activity:

(1) Remediates or mitigates threats to drinking water;

(2) Meets the goals and objectives of an approved integrated management plan or ground water management plan;

(3) Contributes to water sustainability goals by increasing aquifer recharge, reducing aquifer depletion, or increasing streamflow;

(4) Contributes to multiple water supply management goals, including, but not limited to, flood control, agricultural use, municipal and industrial uses, recreational benefits, wildlife habitat, conservation of water resources, and preservation of water resources;

(5) Maximizes the beneficial use of Nebraska's water resources for the benefit of the state's residents;

(6) Is cost-effective;

(7) Helps the state meet its obligations under interstate compacts, decrees, or other state contracts or agreements or federal law;

(8) Reduces threats to property damage or protects critical infrastructure that consists of the physical assets, systems, and networks vital to the state or the United States such that their incapacitation would have a debilitating effect on public security or public health and safety;

(9) Improves water quality;

(10) Has utilized all available funding resources of the local jurisdiction to support the program, project, or activity;

(11) Has a local jurisdiction with plans in place that support sustainable water use;

(12) Addresses a statewide problem or issue;

(13) Contributes to the state's ability to leverage state dollars with local or federal government partners or other partners to maximize the use of its resources;

(14) Contributes to watershed health and function; and

(15) Uses objectives described in the annual report and plan of work for the state water planning and review process issued by the department.

Source: Laws 2014, LB1098, § 5.

2-1509 Application; form; contents; director; duties; state participation; request.

(1) Applicants for funds may file an application with the department for a grant or loan from the Water Sustainability Fund. Applications for grants to the department itself shall be filed by the department. Each application shall be filed in such manner and form and be accompanied by such information as may be prescribed by the director and the commission.

(2) Any such application shall:

(a) Describe the nature and purpose of the proposed program, project, or activity;

(b) Set forth or be accompanied by a plan for development of the proposed program, project, or activity, together with engineering, economic, and financial feasibility data and information, and such estimated costs of construction or implementation as may be required by the director and the commission;

(c) State whether money other than that for which the application is made will be used to help in meeting program, project, or activity costs and whether such money is available or has been sought for this purpose;

(d) When appropriate, state that the applicant holds or can acquire title to all lands or has the necessary easements and rights-of-way for the program, project, or activity and related lands and has or may acquire all water rights necessary for the proposed program, project, or activity;

(e) Show that the applicant possesses all necessary authority to undertake or participate in the proposed program, project, or activity; and

(f) Demonstrate the probable environmental and ecological consequences that may result from such proposed program, project, or activity.

(3) Upon receipt of an application, the director shall evaluate and investigate all aspects of the proposed program, project, or activity and the proposed schedule for development and completion of such program, project, or activity, determine eligibility for funding, and make appropriate recommendations to the commission pursuant to sections 2-1506 to 2-1513. As a part of his or her investigation, the director shall consider whether the plan for development of the program, project, or activity is satisfactory. If the director determines that the plan is unsatisfactory or that the application does not contain adequate information upon which to make determinations, the director shall return the application to the applicant and may make such recommendations to the applicant as are considered necessary to make the plan or the application satisfactory.

(4) Requests for utilization of the Water Sustainability Fund for state participation in any water and related land-water resources projects shall also be filed with the department for the director's evaluation, investigation, and recommendations. Such requests shall be filed in the manner and form and be accompanied by such information as shall be prescribed by the department and the commission.

Source: Laws 2014, LB1098, § 6.

2-1510 Program, project, or activity; funding request; director; powers; findings; conflict of interest.

(1) Each program, project, or activity for which funding is requested, whether such request has as its origin an application or the action of the department itself, shall be reviewed as provided in sections 2-1506 to 2-1513 by the director prior to the approval of any allocation for such program, project, or activity by the commission.

(2) The director may recommend approval of and the commission may approve grants or loans, including the appropriate repayment period and the rate of interest, for program, project, or activity costs or acquisition of interests

in programs, projects, or activities if after investigation and evaluation the director finds that:

(a) The plan does not conflict with any existing Nebraska state land plan;

(b) The proposed program, project, or activity is economically and financially feasible based upon standards adopted by the commission pursuant to sections 2-1506 to 2-1513;

(c) The plan for development of the proposed program, project, or activity is satisfactory;

(d) The plan of development minimizes any adverse impacts on the natural environment;

(e) The applicant is qualified, responsible, and legally capable of carrying out the program, project, or activity;

(f) In the case of a loan, the borrower has demonstrated the ability to repay the loan and there is assurance of adequate operation, maintenance, and replacement during the repayment life of the program, project, or activity;

(g) The plan considers other plans and programs of the state and resources development plans of the political subdivisions of the state; and

(h) The money required from the Water Sustainability Fund is available.

(3) The director and staff of the department shall carry out their powers and duties under sections 2-1506 to 2-1513 independently of and without prejudice to their powers and duties under other provisions of law.

(4) No member of the commission shall be eligible to participate in the action of the commission concerning an application for funding to any entity in which such commission member has any interest. The director may be delegated additional responsibilities consistent with the purposes of sections 2-1506 to 2-1513. It shall be the sole responsibility of the commission to determine the priority in which funds are allocated for eligible programs, projects, or activities under section 2-1508.

Source: Laws 2014, LB1098, § 7.

2-1511 Director; recommendations; agreement; contents; loan; repayment period; successor; contract; lien; filing.

(1) The director shall make recommendations based upon his or her review of the criteria set forth in section 2-1510 of whether an application should be considered further or rejected and the form of allocation he or she deems appropriate. The commission shall act in accordance with such recommendations according to the application procedures adopted and promulgated in rules and regulations.

(2) If, after review of the recommendation by the director, the commission determines that an application for a grant, loan, acquisition of an interest, or combination thereof pursuant to sections 2-1506 to 2-1513 is satisfactory and qualified to be approved, before the final approval of such application may be given and the funds allocated, the department shall enter into an agreement in the name of the state with the applicant agency or organization and with any other organizations it deems to be involved in the program, project, or activity to which funds shall be applied. The department shall also enter into such agreements as are appropriate before allocation of any funds for the acquisition of an interest in any qualified program, project, or activity when such acquisi-

tion is initiated by the department itself pursuant to section 2-1512. All agreements entered into pursuant to this section shall include, but not be limited to, a specification of the amount of funds involved, whether the funds are considered as a grant or loan or for the acquisition of an interest in the name of the state, and, if a combination of these is involved, the amount of funds allocated to each category, the specific purpose for which the allocation is made, the terms of administration of the allocated funds, and any penalties to be imposed upon the applicant organization should it fail to apply or repay the funds in accordance with the agreement.

(3) If the allocation to be approved is a loan, the department and the applicant or applicants shall include in the agreement provisions for repayment to the Water Sustainability Fund of money loaned together with any interest at reasonable rates as established by the commission. The agreement shall further provide that repayment of the loan together with any interest thereon shall commence no later than one full year after construction of the project or implementation of the program or activity is completed and that repayment shall be completed within the time period specified by the commission. The repayment period shall not exceed fifty years, except that the commission may extend the time for making repayment in the event of extreme emergency or hardship. Such agreement shall also provide for such assurances of and security for repayment of the loan as shall be considered necessary by the department.

(4) With the express approval of the commission, an applicant may convey its interest in a program, project, or activity to a successor. The department shall contract with the qualified successor in interest of the original obligor for repayment of the loan together with any interest thereon and for succession to its rights and obligations in any contract with the department.

(5) The state shall have a lien upon a program, project, or activity constructed, improved, or renovated with money from the Water Sustainability Fund for the amount of the loan together with any interest thereon. This lien shall attach to all program, project, or activity facilities, equipment, easements, real property, and property of any kind or nature in which the loan recipient has an interest and which is associated with the program, project, or activity. The department shall file a statement of the lien, its amount, terms, and a description of the program, project, or activity with the register of deeds of each county in which the program, project, or activity or any part thereof is located. The register of deeds shall record the lien, and it shall be indexed as other liens are required by law to be indexed. The lien shall be valid until paid in full or otherwise discharged. The lien shall be foreclosed in accordance with applicable state law governing foreclosure of mortgages and liens. Any lien provided for by this section may be subordinate to that which secures federal assistance or other secured assistance received on the same program, project, or activity.

Source: Laws 2014, LB1098, § 8.

2-1512 Department; powers; Water Sustainability Fund; use.

In order to develop Nebraska's water resources, the department, using the process provided for in subsection (4) of section 2-1509, and with the approval of the commission, may acquire interests in water and related land resources projects in the name of the state utilizing the Water Sustainability Fund. Such use of the fund shall be made when the public benefits obtained from the

projects or a part thereof are statewide in nature and when associated costs are determined to be more appropriately financed by other than a local organization. Such use of the fund may be made upon the determination by the department and the commission that such acquisition is appropriate under sections 2-1506 to 2-1513. The department, with the approval of the commission, may also acquire interests in water resource projects in the name of the state to meet future demands for usable water. Such water resource projects may include, but not be limited to, the construction of dams and reservoirs to provide surplus water storage capacity for municipal and industrial water demands and for other projects to assure an adequate quantity of usable water. In furtherance of these goals, the department may contract with the federal government or any of its agencies or departments for the inclusion of additional water supply storage space behind existing or proposed structures.

Source: Laws 2014, LB1098, § 9.

2-1513 Water Sustainability Fund; legislative analysis.

The Appropriations Committee of the Legislature shall, beginning with the FY2023-25 biennial budget review process, conduct a biennial analysis of the financial status of the Water Sustainability Fund, including a review of the committed and uncommitted balance of the fund and the financial impact of pending programs, projects, or activities. The committee shall base its recommendation for transfers to the Water Sustainability Fund upon information provided in the review process.

Source: Laws 2014, LB1098, § 10; Laws 2015, LB661, § 22.

2-1514 Repealed. Laws 1977, LB 510, § 10.

2-1515 Repealed. Laws 1977, LB 510, § 10.

2-1516 Repealed. Laws 1977, LB 510, § 10.

2-1517 Repealed. Laws 1977, LB 510, § 10.

2-1517.01 Repealed. Laws 1977, LB 510, § 10.

2-1517.02 Repealed. Laws 1977, LB 510, § 10.

2-1517.03 Repealed. Laws 1977, LB 510, § 10.

2-1517.04 Repealed. Laws 1973, LB 335, § 5.

2-1518 Repealed. Laws 1977, LB 510, § 10.

2-1519 Repealed. Laws 1977, LB 510, § 10.

2-1520 Repealed. Laws 1977, LB 510, § 10.

2-1521 Repealed. Laws 1977, LB 510, § 10.

2-1522 Repealed. Laws 1977, LB 510, § 10.

2-1523 Repealed. Laws 1977, LB 510, § 10.

2-1524 Repealed. Laws 1977, LB 510, § 10.

2-1525 Repealed. Laws 1977, LB 510, § 10.

2-1526 Repealed. Laws 1977, LB 510, § 10.

2-1527 Repealed. Laws 1977, LB 510, § 10.

2-1528 Repealed. Laws 1977, LB 510, § 10.

2-1529 Repealed. Laws 1983, LB 36, § 5.

2-1530 Repealed. Laws 1977, LB 510, § 10.

2-1530.01 Repealed. Laws 1977, LB 510, § 10.

2-1531 Repealed. Laws 1977, LB 510, § 10.

2-1532 Repealed. Laws 1977, LB 510, § 10.

2-1533 Repealed. Laws 1977, LB 510, § 10.

2-1534 Repealed. Laws 1977, LB 510, § 10.

2-1535 Repealed. Laws 1977, LB 510, § 10.

2-1536 Repealed. Laws 1977, LB 510, § 10.

2-1537 Repealed. Laws 1977, LB 510, § 10.

2-1538 Repealed. Laws 1977, LB 510, § 10.

2-1539 Repealed. Laws 1977, LB 510, § 10.

2-1540 Repealed. Laws 1977, LB 510, § 10.

2-1541 Repealed. Laws 1977, LB 510, § 10.

2-1542 Repealed. Laws 1977, LB 510, § 10.

2-1543 Repealed. Laws 1977, LB 510, § 10.

2-1544 Repealed. Laws 1977, LB 510, § 10.

2-1545 Repealed. Laws 1977, LB 510, § 10.

2-1546 Repealed. Laws 1977, LB 510, § 10.

2-1547 Transferred to section 61-210.

2-1548 Repealed. Laws 1977, LB 510, § 10.

2-1549 Repealed. Laws 1977, LB 510, § 10.

2-1549.01 Repealed. Laws 1977, LB 510, § 10.

2-1549.02 Repealed. Laws 1977, LB 510, § 10.

2-1549.03 Repealed. Laws 1977, LB 510, § 10.

2-1549.04 Repealed. Laws 1977, LB 510, § 10.

2-1550 Repealed. Laws 1977, LB 510, § 10.

2-1551 Repealed. Laws 1977, LB 510, § 10.

2-1552 Repealed. Laws 1977, LB 510, § 10.

2-1553 Repealed. Laws 1977, LB 510, § 10.

2-1554 Repealed. Laws 1977, LB 510, § 10.

2-1555 Repealed. Laws 1977, LB 510, § 10.

2-1556 Repealed. Laws 1977, LB 510, § 10.

2-1557 Repealed. Laws 1977, LB 510, § 10.

2-1558 Repealed. Laws 1977, LB 510, § 10.

2-1559 Repealed. Laws 1977, LB 510, § 10.

2-1560 Repealed. Laws 1977, LB 510, § 10.

2-1561 Repealed. Laws 1977, LB 510, § 10.

2-1562 Repealed. Laws 1977, LB 510, § 10.

2-1563 Repealed. Laws 1977, LB 510, § 10.

2-1564 Repealed. Laws 1977, LB 510, § 10.

2-1565 Repealed. Laws 1977, LB 510, § 10.

2-1566 Repealed. Laws 1977, LB 510, § 10.

2-1567 Repealed. Laws 1977, LB 510, § 10.

2-1568 Department; data bank; establish; maintain; administer; available to other agencies.

The department shall maintain and administer a data bank in the field of soil and water resources in the State of Nebraska. The collection of basic data and necessary interpretations of these data in the area of soil and water resources by agencies, departments, and political subdivisions of the State of Nebraska shall not be affected by this section. Such data and necessary interpretations of them shall be made available to the department for inclusion in the data bank when published or earlier if deemed by the originator to be suitable for inclusion. The source of data shall be identified in the data bank and when appropriate shall be associated with subsequent publication or other use. Processing and interpretation of the basic data shall be carried out by the department, except that this section does not preclude the independent processing and interpretation of such data by the collecting agency or other agencies. The resources of the data bank shall be made available to all interested agencies and persons.

Source: Laws 1969, c. 382, § 1, p. 1348; Laws 2000, LB 900, § 24; Laws 2005, LB 342, § 1.

2-1569 Basic data, defined.

For purposes of section 2-1568, basic data means recorded observations, calculations, or other information concerning: (1) Climatological, meteorological, hydrologic, hydraulic, topographic, and geologic conditions and phenomena, including soils and land use, as these relate to or affect surface and ground

water resources, developed water supplies, water demands, and hydraulic structures; (2) occurrence, quantity, and quality of surface water resources, including variations with time, both short term and long range; (3) occurrence, quantity, and quality of ground water resources, including variations with time, natural and artificial recharge, natural and artificial disposal, and information as to the hydraulic characteristics of underground aquifers and reservoirs; (4) sediment production, transport, and disposition; (5) biologic data for streams, lakes, and reservoirs; (6) water rights; (7) occurrence, types, locations, and amounts of consumptive and nonconsumptive uses and demands for water, including diversions and extractions therefor, and variations over time; (8) occurrence, quantity, and quality of waste discharges and return flows, and variations thereof over time; (9) locations, characteristics, and operational criteria of works constructed to store, replenish, regulate, divert, extract, transport, distribute, protect, and improve surface and ground water resources; (10) project and facility operation data; (11) demographic data; and (12) economic and fiscal information.

Source: Laws 1969, c. 382, § 2, p. 1349; Laws 2005, LB 342, § 2.

2-1570 Repealed. Laws 2005, LB 342, § 4.

2-1571 Repealed. Laws 1983, LB 36, § 5.

2-1572 Repealed. Laws 1983, LB 36, § 5.

2-1573 Repealed. Laws 1983, LB 36, § 5.

2-1574 Repealed. Laws 1983, LB 36, § 5.

(b) NEBRASKA SOIL AND WATER CONSERVATION ACT

2-1575 Act, how cited.

Sections 2-1575 to 2-1585 shall be known and may be cited as the Nebraska Soil and Water Conservation Act.

Source: Laws 1977, LB 450, § 1; Laws 1983, LB 236, § 1; Laws 2000, LB 900, § 26; Laws 2002, LB 1003, § 8; Laws 2003, LB 619, § 1.

2-1576 Legislative intent.

The Legislature recognizes and hereby declares that it is the public policy of this state to properly conserve, protect, and utilize the water and related land resources of the state, to better utilize surface waters and available precipitation, to encourage ground water recharge to protect the state's dwindling ground water supply, to protect the quality of surface water and ground water resources, and to reduce soil erosion and sediment damages. The Legislature further declares that it is in the public interest of this state to financially assist in encouraging water and related land resource conservation and protection measures on privately owned land and that this will produce long-term benefits for the general public.

Source: Laws 1977, LB 450, § 2; Laws 1983, LB 236, § 2; Laws 1986, LB 474, § 14; Laws 1993, LB 247, § 1; Laws 2002, LB 1003, § 9.

2-1577 Nebraska Soil and Water Conservation Fund; created; investment.

(1) There is hereby created the Nebraska Soil and Water Conservation Fund to be administered by the department. The State Treasurer shall credit to the fund such money as is (a) appropriated to the fund by the Legislature, (b) paid to the state as fees, deposits, payments, and repayments relating to the fund, both principal and interest, and (c) donated as gifts, bequests, or other contributions to such fund from public or private entities. Funds made available by any agency of the United States may also be credited to such fund if so directed by such agency.

(2) The money in the fund shall not be subject to any fiscal-year limitation or lapse provision of unexpended balance at the end of any such fiscal year or biennium. Transfers may be made from the fund to the General Fund at the direction of the Legislature.

(3) Any money in the Nebraska Soil and Water 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.

Source: Laws 1977, LB 450, § 3; Laws 1983, LB 236, § 3; Laws 1986, LB 258, § 3; Laws 1995, LB 7, § 7; Laws 2000, LB 900, § 27; Laws 2009, First Spec. Sess., LB3, § 3.

Cross References

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

2-1578 Commission; rules and regulations.

The commission shall adopt and promulgate appropriate rules and regulations necessary for the administration of the Nebraska Soil and Water Conservation Fund.

Source: Laws 1977, LB 450, § 4; Laws 1983, LB 236, § 4; Laws 2000, LB 900, § 28.

2-1579 Fund; grants; conditions; acceptance, how construed.

(1) Except as provided in subsection (2) of this section, expenditures may be made from the Nebraska Soil and Water Conservation Fund as grants to individual landowners of not to exceed seventy-five percent of the actual cost of eligible projects and practices for soil and water conservation or water quality protection, with priority given to those projects and practices providing the greatest number of public benefits.

(2) The department shall reserve at least two percent of the funds credited to the fund for grants to landowners ordered by a natural resources district pursuant to the Erosion and Sediment Control Act to install permanent soil and water conservation practices. Such funds shall be made available for ninety percent of the actual cost of the required practices and shall be granted on a first-come, first-served basis until exhausted. Applications not served shall receive priority in ensuing fiscal years.

(3) The commission shall determine which specific projects and practices are eligible for the funding assistance authorized by this section and shall adopt, by reference or otherwise, appropriate standards and specifications for carrying out such projects and practices. A natural resources district assisting the department in the administration of the program may, with commission ap-

proval, further limit the types of projects and practices eligible for funding assistance in that district.

(4) As a condition for receiving any cost-share funds pursuant to this section, the landowner shall be required to enter into an agreement that if a conservation practice is terminated or a project is removed, altered, or modified so as to lessen its effectiveness, without prior approval of the department or its delegated agent, for a period of ten years after the date of receiving payment, the landowner shall refund to the fund any public funds used for the practice or project. When deemed necessary by the department or its delegated agent, the landowner may as a further condition for receiving such funds be required to grant a right of access for the operation and maintenance of any eligible project constructed with such assistance. Acceptance of money from the fund shall not in any other manner be construed as affecting land ownership rights unless the landowner voluntarily surrenders such rights.

(5) To the extent feasible, the department and the commission shall administer the fund so that federal funds available within the state for the same general purposes are supplemented and not replaced with state funds.

Source: Laws 1977, LB 450, § 5; Laws 1978, LB 707, § 1; Laws 1979, LB 326, § 1; Laws 1980, LB 687, § 1; Laws 1983, LB 236, § 5; Laws 1986, LB 474, § 15; Laws 1990, LB 906, § 1; Laws 1993, LB 247, § 2; Laws 2000, LB 900, § 29; Laws 2002, LB 1003, § 11; Laws 2011, LB2, § 1.

Cross References

Erosion and Sediment Control Act, see section 2-4601.

2-1580 Fund; erosion and sediment control payments; conditions.

Payments may be made from the Nebraska Soil and Water Conservation Fund to owners of private land which is being converted to urban use for the purpose of controlling erosion and sediment loss from construction and development. As a condition for receiving any funds pursuant to this section, the landowner shall agree in writing that the erosion and sediment control practices will be installed prior to the land-disturbing activity, when possible, and that the practices will be adequately maintained or replaced at the landowner's expense until ninety-five percent of the site is permanently stabilized. Payments made pursuant to this section shall be in accordance with and conditional upon such terms as are established by the commission. Such terms may be different from those established by section 2-1579 for payments relating to other types of projects and practices.

Source: Laws 2002, LB 1003, § 10.

2-1581 Fund; payments to reduce consumptive use of water; conditions.

Payments may be made from the Nebraska Soil and Water Conservation Fund to the owners of private land for the purpose of adopting or implementing practices or measures to reduce the consumptive use of water in river basins in which an interstate agreement, compact, or decree could require reduction in water usage.

Payments made pursuant to this section may be made as part of research, cost-sharing, or other programs implemented by natural resources districts,

irrigation districts, or other entities to develop incentive-based practices or measures to reduce the consumptive use of water.

Payments made pursuant to this section shall be in accordance with terms and conditions established by the commission. The commission may establish terms and conditions for receipt of payments under this section which are different than those established for receipt of payments pursuant to section 2-1579.

Source: Laws 2003, LB 619, § 2.

2-1582 Repealed. Laws 1983, LB 1, § 1.

2-1583 Fund; land diversion payments; authorized.

Expenditures may be made from the Nebraska Soil and Water Conservation Fund to individual landowners as land diversion payments for the purpose of encouraging alternate cropping patterns which, when implemented, will assure a longer conservation practice construction period. No such payments shall be made until the intended projects or practices have been completed.

Source: Laws 1983, LB 236, § 6.

2-1584 Department; assistance from local, state, or federal agencies.

The department may request and utilize assistance in the administration of the Nebraska Soil and Water Conservation Fund from natural resources districts, from the Natural Resources Conservation Service and the Farm Service Agency of the United States Department of Agriculture, and from any other appropriate local, state, or federal agencies. Such assistance may include accepting and approving applications for funds and designing, laying out, and certifying the proper completion of projects and practices.

Source: Laws 1983, LB 236, § 7; Laws 1993, LB 247, § 3; Laws 1999, LB 403, § 3; Laws 2000, LB 900, § 30.

2-1585 Long-term agreements; authorized; conditions.

If the commission determines that more effective soil and water conservation or water quality protection could be achieved if financial assistance from the Nebraska Soil and Water Conservation Fund were available for multiyear implementation of comprehensive conservation plans, the department may enter into long-term agreements with landowners for such purposes. Such long-term agreements shall be for a term not to exceed ten years and shall specify the eligible projects and practices to be installed and applied, the year of intended installation, and the estimated cost of each such project or practice. Such agreements shall also provide that financial assistance in any year of the agreement be subject to the appropriation of adequate funds by the Legislature and may provide that priority shall be given to funding such projects and practices over those not identified in other long-term agreements and over those identified in more recently executed long-term agreements. The department shall not in any biennium approve any long-term agreements which would cause the total of then existing state obligations under all such agreements to exceed the amount of new funds appropriated for that biennium.

Source: Laws 1983, LB 236, § 8; Laws 1986, LB 258, § 4; Laws 1993, LB 247, § 4; Laws 2000, LB 900, § 31.

(c) NEBRASKA RESOURCES DEVELOPMENT FUND

2-1586 Statement of purpose.

The Legislature finds that it is a public purpose of the state to properly develop the water and related land resources of the state and that it is in the public interest (1) to provide financial assistance to programs and projects essential to the development, preservation, and maintenance of the state's water and related land resources, including programs and projects for the (a) abatement of pollution, (b) reduction of potential flood damages, (c) reservation of lands for resource development projects, (d) provision of public irrigation facilities, (e) preservation and development of fish and wildlife resources, (f) protection and improvement of public lands, (g) provision of public outdoor recreation lands and facilities, (h) provision and preservation of the waters of the state for all beneficial uses, including domestic, agricultural, and manufacturing uses, (i) conservation of land resources, and (j) protection of the health, safety, and general welfare of the people, and (2) to provide financial assistance to natural resources districts in the preparation of management plans pursuant to section 46-709.

Source: Laws 1974, LB 975, § 1; R.S.1943, (1977), § 2-3263; Laws 1984, LB 1106, § 16; Laws 1996, LB 108, § 1; Laws 2004, LB 962, § 1.

2-1587 Nebraska Resources Development Fund; created; reserve fund; administration; investment.

(1) There is hereby created the Nebraska Resources Development Fund to be administered by the department. The State Treasurer shall credit to the fund, to carry out sections 2-1586 to 2-1595, such money as is (a) appropriated to or transferred into the fund by the Legislature, (b) paid to the state as fees, deposits, payments, and repayments relating to the fund, both principal and interest, and (c) donated as gifts, bequests, or other contributions to such fund from public or private entities. Funds made available by any department or agency of the United States may also be credited to this fund if so directed by such department or agency. The money in the fund shall not be subject to any fiscal year or biennium limitation requiring reappropriation of the unexpended balance at the end of the fiscal year or biennium. Transfers may be made from the fund to the General Fund at the direction of the Legislature.

(2) To aid in the funding of projects and to prevent excessive fluctuations in appropriation requirements for the Nebraska Resources Development Fund, the department shall create a reserve fund to be used only for projects requiring total expenditures from the Nebraska Resources Development Fund in excess of five million dollars. Unless disapproved by the Governor, the department may credit to such reserve fund that portion of any appropriation to the Nebraska Resources Development Fund which exceeds five million dollars. The department may also credit to the reserve fund such other funds as it determines are available.

(3) Any money in the Nebraska Resources Development 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 1974, LB 975, § 2; R.S.1943, (1977), § 2-3264; Laws 1984, LB 985, § 1; Laws 1986, LB 258, § 5; Laws 1995, LB 7, § 8; Laws 2000, LB 900, § 32; Laws 2009, First Spec. Sess., LB3, § 4; Laws 2015, LB661, § 23.

Cross References

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

2-1588 Fund; allocation; report; projects; costs.

(1) No money in the Nebraska Resources Development Fund may be reallocated by the commission in accordance with sections 2-1586 to 2-1595 for utilization by the department, by any state office, agency, board, or commission, or by any political subdivision of the state which has the authority to develop the state's water and related land resources after March 30, 2014. The commission may commit appropriated funds to projects approved as of March 30, 2014, not to exceed amounts specifically allocated to such projects prior to March 30, 2014, unless specific appropriations or transfers to exceed the March 30, 2014, allocation amounts are approved by the Legislature. If such specific appropriations or transfers are made, the commission shall develop procedures to allocate the additional funding to projects approved as of March 30, 2014. Allocations shall not exceed funds appropriated for such purpose. Any of such funds remaining after all such project costs have been completely funded shall be transferred to the Water Sustainability Fund by the State Treasurer. Prior to March 30, 2014, the Nebraska Resources Development Fund may be allocated in the form of grants or loans or for acquiring state interests in water and related land resources programs and projects undertaken within the state. The allocation of funds to a program or project in one form shall not of itself preclude additional allocations in the same or any other form to the same program or project. Funds may also be allocated to assist natural resources districts in the preparation of management plans as provided in section 46-709. Funds so allocated shall not be subject to sections 2-1589 to 2-1595.

(2) No project, including all related phases, segments, parts, or divisions, shall receive more than ten million dollars from the fund. On July 1 of each year after 1993, the director shall adjust the project cost and payment limitation of this subsection by an amount equal to the average percentage change in a readily available construction cost index for the prior three years.

(3) Prior to September 1 of each even-numbered year, a biennial report shall be made to the Governor and the Clerk of the Legislature describing the work accomplished by the use of such development fund during the immediately preceding two-year period. The report submitted to the Clerk of the Legislature shall be submitted electronically. The report shall include a complete financial statement. Each member of the Legislature shall receive an electronic copy of such report upon making a request to the director.

Source: Laws 1974, LB 975, § 3; Laws 1979, LB 322, § 3; Laws 1981, LB 545, § 2; R.S.Supp.,1982, § 2-3265; Laws 1984, LB 1106, § 17; Laws 1985, LB 102, § 2; Laws 1993, LB 155, § 1; Laws 1996, LB 108, § 2; Laws 1998, LB 656, § 5; Laws 2000, LB 900, § 33; Laws 2001, LB 129, § 1; Laws 2004, LB 962, § 2; Laws 2006, LB 1226, § 3; Laws 2009, LB179, § 1; Laws 2012, LB782, § 3; Laws 2014, LB906, § 9; Laws 2015, LB661, § 24.

2-1589 Fund; allocations, grants, loans; conditions.

(1) The commission shall adopt and promulgate rules and regulations governing the administration of the Nebraska Resources Development Fund. The commission may make an allocation from the fund as a grant to an agency or

political subdivision if the commission determines that such an allocation will not be reimbursed from revenue or receipts and when the program or project appears to be of general public benefit, thereby making reimbursement of such money from local tax funds inappropriate or impossible, or when the funds are intended for a state or local contribution to a program or project requiring such contribution to meet the requirements for a matching federal grant.

(2) The commission may make an allocation from the fund as a loan to an agency or political subdivision for any program or project or any part thereof consistent with the purposes of the fund which will directly generate revenue or receipts, which can be anticipated to culminate in a program or project which will generate revenue or receipts, or which would not generate revenue or receipts but would be of general public benefit to the applicant making repayment from local tax funds appropriate.

Source: Laws 1974, LB 975, § 4; R.S.1943, (1977), § 2-3266; Laws 2000, LB 900, § 34.

The adoption and implementation of a general benefit project by a natural resources district is an exercise of a power which is legislative in nature, and the requirements of due process that apply to judicial or quasi-judicial proceedings are not applicable. Fisher & Trouble Creek v. Lower Platte No. Nat. Resources Dist., 212 Neb. 196, 322 N.W.2d 403 (1982).

2-1590 Department; commission; fund; powers.

In order to develop Nebraska's land and water resources, the department, with the approval of the commission, may acquire interests in water and related land resources projects in the name of the state utilizing the Nebraska Resources Development Fund. Such use of the fund shall be made when the public benefits obtained from the project or a part thereof are statewide in nature and when associated costs are determined to be more appropriately financed by other than a local organization. Such use of the fund may be made upon the determination by the department and the commission that such acquisition is appropriate under sections 2-1586 to 2-1595 and may be initiated upon a request filed in accordance with section 2-1593 or by the department itself without such a request. The department, with the approval of the commission, may also acquire interests in water resource projects in the name of the state to meet future demands for usable water. Such resource projects may include, but not be limited to, the construction of dams and reservoirs to provide surplus water storage capacity for municipal and industrial water demands and for other projects to assure an adequate quantity of usable water. In furtherance of these goals the department may contract with the federal government or any of its agencies or departments for the inclusion of additional water supply storage space behind existing or proposed structures.

Source: Laws 1974, LB 975, § 5; R.S.1943, (1977), § 2-3267; Laws 2000, LB 900, § 35.

2-1591 Repealed. Laws 1984, LB 1106, § 73.

2-1592 Grant or loan; application; deadline; procedure.

(1) Any organization qualified to apply for and receive funds from the Nebraska Resources Development Fund may file an application with the department for a grant or loan from such fund. Applications for grants to the department itself shall be filed by the department. Each application shall be filed in such manner and form and be accompanied by such information as may be prescribed by the director and the commission. No applications may be

made to receive funds by grant or loan from the Nebraska Resources Development Fund after March 30, 2014.

(2) Any such application shall:

(a) Describe the nature and purpose of the proposed program or project;

(b) Set forth or be accompanied by a plan for development of the proposed program or project, together with engineering, economic, and financial feasibility data and information, and such estimated costs of construction or implementation as may be required by the director and the commission;

(c) State whether money other than that for which the application is made will be used to help in meeting program or project costs and whether such money is available or has been sought for this purpose;

(d) When appropriate, state that the applicant holds or can acquire title to all lands or has the necessary easements and rights-of-way for the project and related lands and has or may acquire all water rights necessary for the proposed project;

(e) Show that the applicant possesses all necessary authority to undertake or participate in the proposed program or project; and

(f) Demonstrate the probable environmental and ecological consequences that may result from such proposed program or project.

(3) Upon receipt of an application, the director shall evaluate and investigate all aspects of the proposed program or project and the proposed schedule for development and completion of such program or project, determine the eligibility of the program or project for funding, and make appropriate recommendations to the commission pursuant to sections 2-1586 to 2-1595. As a part of his or her investigation, the director shall consider whether the plan for development of the program or project is satisfactory. If the director determines that the plan is unsatisfactory or that the application does not contain adequate information upon which to make determinations, the director shall return the application to the applicant and may make such recommendations to the applicant as are considered necessary to make the plan or the application satisfactory.

(4) Requests for utilization of the Nebraska Resources Development Fund for state participation in any water and related land-water resources projects through acquisition of a state interest therein shall also be filed with the department for the director's evaluation, investigation, and recommendations. Such requests shall be filed in the manner and form and be accompanied by such information as shall be prescribed by the department and the commission.

Source: Laws 1974, LB 975, § 7; R.S.1943, (1977), § 2-3269; Laws 1984, LB 1106, § 18; Laws 2000, LB 900, § 36; Laws 2014, LB906, § 10.

2-1593 Program or project; funding; review; approve or reject; procedure.

Each program or project for which funding is requested, whether such request has as its origin an application or the action of the department itself, shall be reviewed as provided in sections 2-1586 to 2-1595 by the director prior to the approval of any allocation for such program or project by the commission. The director shall within a reasonable time, not to exceed six months, after receipt of such request report to the commission the results of his or her review and shall recommend approval or rejection of funding for the program

or project. The director shall indicate what form of allocation he or she deems to be appropriate. In the case of an approved application recommended for a loan, the commission shall indicate the appropriate repayment period and the rate of interest. The commission shall act in accordance with such recommendations unless action to the contrary is approved by each commission member eligible to vote on the specific recommendation under consideration. No member of the commission shall be eligible to participate in the action of the commission concerning an application for funding to any entity in which such commission member has any interest. The director may be delegated additional responsibilities consistent with the purposes of sections 2-1586 to 2-1595. It shall be the sole responsibility of the commission to determine the priority in which funds are allocated for eligible programs and projects under sections 2-1586 to 2-1595.

Source: Laws 1974, LB 975, § 8; R.S.1943, (1977), § 2-3270; Laws 1984, LB 1106, § 19; Laws 2000, LB 900, § 37.

2-1594 Program or project; costs or acquisition of interest; approval.

The director may recommend approval of and the commission may approve grants or loans for program or project costs or acquisition of interests in projects if after investigation and evaluation the director finds that:

(1) The plan does not conflict with any existing Nebraska state land plan;

(2) The proposed program or project is economically and financially feasible based upon standards adopted by the commission pursuant to sections 2-1586 to 2-1595;

(3) The plan for development of the proposed program or project is satisfactory;

(4) The plan of development minimizes any adverse impacts on the natural environment;

(5) The applicant is qualified, responsible, and legally capable of carrying out the program or project;

(6) In the case of a loan, the borrower has demonstrated the ability to repay the loan and there is assurance of adequate operation, maintenance, and replacement during the repayment life of the project;

(7) The plan considers other plans and programs of the state in accordance with section 84-135 and resources development plans of the political subdivisions of the state; and

(8) The money required from the Nebraska Resources Development Fund is available.

The director and staff of the department shall carry out their powers and duties under sections 2-1586 to 2-1595 independently of and without prejudice to their powers and duties under other provisions of law.

Source: Laws 1974, LB 975, § 9; Laws 1981, LB 326, § 11; R.S.Supp.,1982, § 2-3271; Laws 1984, LB 1106, § 20; Laws 1985, LB 102, § 3; Laws 2000, LB 900, § 38; Laws 2001, LB 129, § 2.

2-1595 Application for a grant, loan, or acquisition; agreement; provisions; successor in interest; lien; filing; foreclosure.

(1) If after review of the recommendation by the director the commission determines that an application for a grant, loan, acquisition of an interest, or combination thereof pursuant to sections 2-1586 to 2-1595 is satisfactory and qualified to be approved, before the final approval of such application may be given and the funds allocated, the department shall enter into an agreement in the name of the state with the applicant agency or organization and with any other organizations it deems to be involved in the program or project to which funds shall be applied. The department shall also enter into such agreements as are appropriate before allocation of any funds for the acquisition of interest in any qualified project when such acquisition is initiated by the department itself pursuant to section 2-1590. All agreements entered into pursuant to this section shall include, but not be limited to, a specification of the amount of funds involved, whether the funds are considered as a grant, loan, or for the acquisition of an interest in the name of the state, and, if a combination of these is involved, the amount of funds allocated to each category, the specific purpose for which the allocation is made, the terms of administration of the allocated funds, and any penalties to be imposed upon the applicant organization should it fail to apply or repay the funds in accordance with the agreement.

(2) If the allocation to be approved is a loan, the department and the applicant or applicants shall include in the agreement provisions for repayment to the Nebraska Resources Development Fund of money loaned together with any interest at reasonable rates as established by the commission. The agreement shall further provide that repayment of the loan together with any interest thereon shall commence no later than one full year after construction of the project is completed and that repayment shall be completed within the time period specified by the commission. The repayment period shall not exceed fifty years, except that the commission may extend the time for making repayment in the event of extreme emergency or hardship. Such agreement shall also provide for such assurances of and security for repayment of the loan as shall be considered necessary by the department.

(3) With the express approval of the commission, an applicant may convey its interest in a project to a successor. The department shall contract with the qualified successor in interest of the original obligor for repayment of the loan together with any interest thereon and for succession to its rights and obligations in any contract with the department.

(4) The state shall have a lien upon a project constructed, improved, or renovated with money from the fund for the amount of the loan together with any interest thereon. This lien shall attach to all project facilities, equipment, easements, real property, and property of any kind or nature in which the loan recipient has an interest and which is associated with the project. The department shall file a statement of the lien, its amount, terms, and a description of the project with the county register of deeds of each county in which the project or any part thereof is located. The county register of deeds shall record the lien and it shall be indexed as other liens are required by law to be indexed. The lien shall be valid until paid in full or otherwise discharged. The lien shall be foreclosed in accordance with applicable state law governing foreclosure of mortgages and liens. Any lien provided for by this section may be subordinate to that which secures federal assistance or other secured assistance received on the same project.

Source: Laws 1974, LB 975, § 10; R.S.1943, (1977), § 2-3272; Laws 1984, LB 679, § 2; Laws 1984, LB 1106, § 21; Laws 2000, LB 900, § 39.

(d) NEBRASKA SOIL SURVEY FUND

2-1596 Legislative intent.

The Legislature finds that an accelerated completion of modern soil surveys will be an asset to the State of Nebraska and good for the general welfare of the citizens of the state. The Legislature further finds that the completion of modern soil surveys can be most appropriately accomplished by accelerating, in a manner deemed appropriate by the department, state financial input into the combined state and federal effort currently being conducted cooperatively by the Natural Resources Conservation Service of the United States Department of Agriculture and the Conservation and Survey Division of the University of Nebraska. It is therefor the intent of this Legislature to embark upon an accelerated program for the completion of Nebraska's modern soil surveys and to recommend that the State of Nebraska and the Legislature appropriate the funds necessary to carry out this accelerated program during the years required for its completion.

Source: Laws 1976, LB 180, § 1; R.S.1943, (1977), § 2-3273; Laws 1999, LB 403, § 4; Laws 2000, LB 900, § 40.

2-1597 Nebraska Soil Survey Fund; created; purposes; administration.

The Nebraska Soil Survey Fund is created. The State Treasurer shall credit to such fund for the uses and purposes of sections 2-1596 to 2-1598 such money as is specifically appropriated, and such funds, fees, donations, gifts, services, devises, or bequests of real or personal property received by the department from any source, federal, state, public or private, to be used by the department for the purposes of accelerating the completion of modern soil surveys. The department shall allocate money from the fund for the purposes of sections 2-1596 to 2-1598. The Director of Administrative Services, upon receipt of proper vouchers approved by the department, shall issue warrants on such fund, and the State Treasurer shall countersign and pay from, but not in excess of, the amounts to the credit of such fund.

Source: Laws 1976, LB 180, § 2; R.S.1943, (1977), § 2-3274; Laws 2000, LB 900, § 41.

2-1598 Nebraska Soil Survey Fund; how expended.

The Nebraska Soil Survey Fund shall be expended by contractual agreement with the Conservation and Survey Division of the University of Nebraska for the purposes of accelerating the program of modern soil survey throughout the state in such manner as the department deems proper and necessary.

Source: Laws 1976, LB 180, § 3; R.S.1943, (1977), § 2-3275; Laws 2000, LB 900, § 42.

(e) WATER PLANNING AND REVIEW PROCESS

2-1599 Statement of purpose.

In order to provide for the effective conservation and management of Nebraska's water resources, the Legislature hereby endorses the concept of a state water planning and review process. The purpose of this planning process shall be to coordinate and direct the planning efforts of the state agencies and university divisions with responsibilities and interest in the water resources

field. This interagency planning process shall be designed to: (1) Provide the Legislature and the citizens of Nebraska with information and alternative methods of addressing important water policy issues and areawide or statewide water resources problems; (2) provide coordinated interagency reviews of proposed local, state, and federal water resources programs and projects; (3) develop and maintain the data, information, and analysis capabilities necessary to provide state agencies and other water interests with a support base for water planning and management activities; (4) provide the state with the capacity to plan and design water resources projects; and (5) conduct any other planning activities necessary to protect and promote the interests of the state and its citizens in the water resources of Nebraska.

Source: Laws 1981, LB 326, § 1; R.S.Supp.,1982, § 2-3282.

2-15,100 Water planning and review; how conducted; assistance.

The state water planning and review process shall be conducted under the guidance and general supervision of the director. The director shall be assisted in the state water planning and review process by the Game and Parks Commission, the Department of Agriculture, the Governor's Policy Research Office, the Department of Health and Human Services, the Department of Environment and Energy, the Water Center of the University of Nebraska, and the Conservation and Survey Division of the University of Nebraska. In addition, the director may obtain assistance from any private individual, organization, political subdivision, or agency of the state or federal government.

Source: Laws 1981, LB 326, § 2; R.S.Supp.,1982, § 2-3283; Laws 1984, LB 1106, § 38; Laws 1993, LB 3, § 2; Laws 1996, LB 1044, § 37; Laws 2000, LB 900, § 43; Laws 2007, LB296, § 16; Laws 2019, LB302, § 10.

2-15,101 Appropriations; procedure.

Appropriations may be made to the department for all or part of the costs incurred by agencies other than the department in conducting the state water planning and review process. The state budget administrator shall create a separate budget program within each agency that is to receive a portion of such appropriations. To properly account for such funds, recipients shall submit to the department, in the form prescribed by the department, documentation of all costs incurred in rendering services determined by the department to be eligible for reimbursement.

Source: Laws 1981, LB 326, § 3; R.S.Supp.,1982, § 2-3284; Laws 2000, LB 900, § 44.

2-15,102 Repealed. Laws 1985, LB 102, § 22.

2-15,103 Commission; duties.

The commission shall provide the director and the Legislature upon request with the opinion of the general public and various water interests in the state. It is the intent of the Legislature that the commission consider the different opinions of the individual members but, as a body, it shall provide the director with input and comments on state water planning and review process activities as they relate to the overall use of Nebraska's water resources. The functions of the commission shall include providing upon request advice and assistance in

the planning process by: (1) Identifying legislative and administrative policy issues; (2) developing and reviewing alternative solutions for legislative and administrative policy problems, including impact assessment; (3) recommending the types of problems needing analysis and where such problems are located or likely to be located; (4) disseminating information and materials generated by the planning process to the public; (5) determining the conditions under which and the methods by which additional public input is to be obtained; and (6) reviewing and commenting on reports produced through the planning process.

Source: Laws 1981, LB 326, § 5; R.S.Supp.,1982, § 2-3286; Laws 1984, LB 1106, § 39; Laws 2000, LB 900, § 45.

2-15,104 Repealed. Laws 2000, LB 900, § 256.

2-15,105 Public hearings; materials; made available to public.

It is the intent of the Legislature that the public have maximum input into the formulation of state water policy. The director shall conduct one or more public hearings prior to the completion of any recommendations to the Legislature on methods of addressing water policy issues. All materials produced as part of the state water planning and review process shall be available to interested persons and groups upon request. The department or other agency providing such material may make a charge therefor which does not exceed the actual cost of providing the same.

Source: Laws 1981, LB 326, § 7; R.S.Supp.,1982, § 2-3288; Laws 1984, LB 1106, § 41; Laws 2000, LB 900, § 46.

2-15,106 Annual report; contents.

On or before September 15 for each odd-numbered year and on or before the date provided in subsection (1) of section 81-132 for each even-numbered year, the director shall submit an annual report and plan of work for the state water planning and review process to the Legislature and Governor. The report submitted to the Legislature shall be submitted electronically. The report shall include a listing of expenditures for the past fiscal year, a summary and analysis of work completed in the past fiscal year, funding requirements for the next fiscal year, and a projection and analysis of work to be completed and estimated funding requirements for such work for the next succeeding four years. The explanation of future funding requirements shall include an explanation of the proposed use of such funds and the anticipated results of the expenditure of such funds. The report shall, to the extent possible, identify such information as it affects each agency or other recipient of program funds. The explanation of future funding requirements shall be in a form suitable for providing an explanation of that portion of the budget request pertaining to the state water planning and review process.

Source: Laws 1981, LB 326, § 8; R.S.Supp.,1982, § 2-3289; Laws 1984, LB 1106, § 42; Laws 2000, LB 900, § 47; Laws 2002, Second Spec. Sess., LB 12, § 1; Laws 2012, LB782, § 4; Laws 2016, LB1092, § 1.

(f) WATER MANAGEMENT

2-15,107 Repealed. Laws 1991, LB 772, § 8.

2-15,108 Repealed. Laws 1991, LB 772, § 8.

2-15,109 Repealed. Laws 1991, LB 772, § 8.

2-15,110 Repealed. Laws 1991, LB 772, § 8.

2-15,111 Repealed. Laws 1991, LB 772, § 8.

2-15,112 Repealed. Laws 1991, LB 772, § 8.

2-15,113 Repealed. Laws 1991, LB 772, § 8.

2-15,114 Repealed. Laws 1991, LB 772, § 8.

2-15,115 Repealed. Laws 1991, LB 772, § 8.

2-15,116 Repealed. Laws 1991, LB 772, § 8.

2-15,117 Repealed. Laws 1991, LB 772, § 8.

2-15,118 Repealed. Laws 1989, LB 710, § 2.

2-15,119 Repealed. Laws 1989, LB 710, § 2.

2-15,120 Repealed. Laws 1989, LB 710, § 2.

2-15,121 Repealed. Laws 2000, LB 900, § 256.

(g) NATURAL RESOURCES WATER QUALITY FUND

2-15,122 Natural Resources Water Quality Fund; created; use; investment.

There is hereby created the Natural Resources Water Quality Fund. The State Treasurer shall credit to the fund for the uses and purposes of section 2-15,123 such money as is specifically appropriated, such funds, fees, donations, gifts, services, or devises or bequests of real or personal property received by the department from any source, federal, state, public, or private, to be used by the department for the purpose of funding programs listed in subsection (2) of section 2-15,123, and such money credited under sections 2-2634, 2-2638, and 2-2641. The department shall allocate money from the fund pursuant to section 2-15,123. The fund shall be exempt from provisions relating to lapsing of appropriations, and the unexpended and unencumbered balance existing in the fund on June 30 each year shall be reappropriated, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Natural Resources Water Quality Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1994, LB 961, § 5; Laws 1995, LB 7, § 9; Laws 2000, LB 900, § 48; Laws 2001, LB 329, § 1; Laws 2006, LB 874, § 1; Laws 2009, First Spec. Sess., LB3, § 5.

Cross References

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

2-15,123 Natural Resources Water Quality Fund; allocation; programs; rules and regulations.

(1) The Natural Resources Water Quality Fund shall be allocated by contractual agreement with natural resources districts for the purpose of funding programs listed in subsection (2) of this section. A natural resources district receiving an allocation shall provide a one hundred fifty percent match of district funds. The initial allocations each fiscal year shall be made by the department, based on needs of individual natural resources districts relative to needs of other districts, to districts which have qualifying programs. The director shall have sole discretion to decide whether a district's program qualifies for funding pursuant to this section. The unused allocations may be reallocated to another district if the director determines that one or more districts cannot reasonably be expected to use their full allocation for that fiscal year. The commission shall adopt and promulgate rules and regulations to administer the Natural Resources Water Quality Fund.

(2) The fund shall be allocated to natural resources districts for programs related to water quality, including, but not limited to:

(a) Natural resources districts' water quality programs;

(b) Natural resources districts' illegal water wells decommissioning programs;

(c) Inspections by natural resources districts conducted pursuant to the Nebraska Chemigation Act;

(d) Source water protection programs undertaken by natural resources districts;

(e) Purchases of special equipment required by natural resources districts in management areas and control areas formed pursuant to the Nebraska Ground Water Management and Protection Act; and

(f) Application of soil and water conservation practices.

Source: Laws 1994, LB 961, § 6; Laws 2000, LB 900, § 49; Laws 2001, LB 329, § 2.

Cross References

Nebraska Chemigation Act, see section 46-1101.
Nebraska Ground Water Management and Protection Act, see section 46-701.

ARTICLE 16
COUNTY EXTENSION WORK

Cross References

Cooperative Extension Service, see section 85-1,104.

Section
2-1601. Agricultural extension work authorized.
2-1602. Extension work; scope.
2-1603. County extension society; formation; petition for appropriation.
2-1604. County extension work; funds to aid; referendum; amount.
2-1605. Farm operator, defined; determination of number.
2-1606. County extension society; annual report; budget.
2-1607. County extension work; counties may join; joint board; duties.
2-1608. Joint county extension organizations; employees; retirement system; organizations; duties.

2-1601 Agricultural extension work authorized.

In order to aid in diffusing among the people of Nebraska useful and practical information on subjects relating to agriculture, home economics, and

rural life and to encourage the application of the same, there may be inaugurated, in each of the several counties of the State of Nebraska, extension work which shall be carried on in cooperation with the University of Nebraska Institute of Agriculture and Natural Resources and the United States Department of Agriculture as provided in the Act of Congress of May 8, 1914.

Source: Laws 1939, c. 1, § 1, p. 53; C.S.Supp.,1941, § 2-2001; R.S.1943, § 2-1601; Laws 1991, LB 663, § 27.

2-1602 Extension work; scope.

Cooperative extension work shall consist of the giving of practical demonstrations in agriculture and home economics and imparting information on such subjects through field and home demonstrations, 4-H clubs, public meetings, publications, and otherwise. The work shall be carried on in each county under the direction of the executive board of the extension organization in the county in such manner as may be mutually agreed upon by the executive board of such county provided for in section 2-1603 and the Regents of the University of Nebraska Institute of Agriculture and Natural Resources, through their duly appointed extension representatives.

Source: Laws 1939, c. 1, § 2, p. 53; C.S.Supp.,1941, § 2-2002; R.S.1943, § 2-1602; Laws 1991, LB 663, § 28.

2-1603 County extension society; formation; petition for appropriation.

For the purpose of carrying out the provisions of sections 2-1601 to 2-1608, there may be created in each county or combination of counties within the State of Nebraska an organization to be created in the following manner: Whenever a number of farm operators of a county or counties effect an organization for doing extension work in agriculture and home economics, adopt a constitution and bylaws as are not inconsistent with the Cooperative Extension Service of the University of Nebraska, and are recognized by the extension service as the official body within the county or counties for carrying on extension work in agriculture and home economics within the county or counties, such organization may make such regulations and bylaws for its government and the carrying on of its work as are not inconsistent with the provisions of such sections, except that for the purposes of such sections only one such organization shall be recognized in any one county or counties so affiliated. Any farm operator or spouse of a farm operator who is a legal voter in the county may at any time petition the county board to appropriate a sum of money from the general fund of the county, as provided by section 2-1604, for the purpose of employing and maintaining a county agricultural agent and for carrying out generally the purposes as expressed in sections 2-1601 and 2-1602. It shall be understood that for each family operating a farm, there shall be only one person whose name shall be counted in judging the sufficiency of such petition. When any farm operator or spouse of a farm operator has so petitioned the county board, both spouses shall be deemed members of the county extension organization provided for in sections 2-1601 to 2-1603 and shall be entitled to all voting and participating rights thereto.

Source: Laws 1939, c. 1, § 3, p. 54; C.S.Supp.,1941, § 2-2003; R.S.1943, § 2-1603; Laws 1991, LB 663, § 29; Laws 1992, LB 672, § 1.

2-1604 County extension work; funds to aid; referendum; amount.

If on or before September 1 of any even-numbered year a petition is filed with the county clerk containing the names of twenty percent or more of the farm operators of any county, as determined by the last available federal census, asking the submission to the voters of the question of whether county funds should be appropriated for the continuance or support of county agricultural extension work in the county on January 1 after the filing of the petition, the clerk of the county shall place upon the ballot at the election following the filing of the petition the question, Shall an appropriation be made annually from the general fund of the county for the support of agricultural extension work? Yes . . . No . . .

If a majority of the votes cast on this question are opposed to such appropriation, the county board shall deny the appropriation. If a majority of the votes cast on this question are in favor of the appropriation, the county board may annually set aside in the general fund of the county an amount equal to the county extension budget established under section 2-1606 or 2-1607. Such amount shall not exceed thirty thousand dollars or an amount equal to a levy of two and one-tenth cents on each one hundred dollars upon the taxable value of all the taxable property in such county, whichever is the greater. As claims are approved by the board of directors or by a joint board established pursuant to section 2-1607 and filed with the county clerk, the county board may order warrants to be drawn upon the general fund of the county in payment of such claims. In counties where extension work is being conducted in accordance with sections 2-1110 to 2-1117, C.S.Supp., 1937, which sections have been repealed, the county board may continue to appropriate funds for the continuance of extension work until such support is denied by vote as provided for in this section. If any county has an organization recognized as the sponsoring organization for extension work by the director of extension service within a county not then receiving a county appropriation and can show on August 1 of any odd-numbered year that it has a membership of not less than twenty-five percent of the farm operators of the county included within the organization as petitioners and members, the county board of commissioners or supervisors may appropriate funds for extension work within that county for one year and the county clerk shall submit the question of continued support at the next general election.

Source: Laws 1939, c. 1, § 4, p. 55; C.S.Supp.,1941, § 2-2004; R.S.1943, § 2-1604; Laws 1947, c. 3, § 1, p. 58; Laws 1951, c. 8, § 1, p. 77; Laws 1955, c. 4, § 1, p. 57; Laws 1961, c. 5, § 1, p. 78; Laws 1967, c. 10, § 1, p. 93; Laws 1979, LB 187, § 8; Laws 1992, LB 719A, § 5; Laws 1992, LB 672, § 2; Laws 1996, LB 1085, § 7; Laws 1996, LB 1114, § 12.

After favorable vote by county for agricultural extension service, the county board shall annually set aside in county general fund the amount equal to county extension service budget. State ex rel. Agricultural Extension Service v. Miller, 182 Neb. 285, 154 N.W.2d 469 (1967).

Under prior act, where a petition of fifty-one percent or more of the qualified voters was filed requesting discontinuance of appropriation for extension work, the county board was required to discontinue such appropriation. Thurston County Farm Bureau v. Thurston County, 136 Neb. 575, 287 N.W. 180 (1939).

2-1605 Farm operator, defined; determination of number.

In sections 2-1601 to 2-1608 the term farm operator shall mean any person who actually manages, and either by his or her own or other's labor, operates a tract of agricultural land of not less than three acres, and whose name appears

on the tax rolls of the county as owning property or equipment such as might be used in operating such tract of agricultural land. The number of farmers in a county shall be determined by the report of the last federal census.

Source: Laws 1939, c. 1, § 5, p. 56; C.S.Supp.,1941, § 2-2005; R.S.1943, § 2-1605; Laws 1992, LB 672, § 3.

2-1606 County extension society; annual report; budget.

The president and secretary of the organization shall on or before January 1 of each year file with the county clerk (1) a report of their work during the preceding year; (2) a sworn itemized statement of expenditures under sections 2-1601 to 2-1608 during the preceding year; and (3) a budget or estimate of the funds necessary for the carrying on of such work in the county during the ensuing year.

Source: Laws 1939, c. 1, § 6, p. 56; C.S.Supp.,1941, § 2-2006; R.S.1943, § 2-1606; Laws 1992, LB 672, § 4.

The president and secretary of the county extension service submit proposed budget to county board. State ex rel. Agricultural Extension Service v. Miller, 182 Neb. 285, 154 N.W.2d 469 (1967).

2-1607 County extension work; counties may join; joint board; duties.

(1) Whenever two or more counties which have complied with the provisions of sections 2-1601 to 2-1608 desire to unite for the purpose of continuance, support, and management of extension work, they may do so. The participating county organizations shall form a joint board to direct combined extension work in the participating counties and annually select a president and a secretary. The joint board shall each year establish a combined annual budget for such extension work, and each participating county shall pay its proportionate share of expenses under each combined annual budget as such share of expenses shall be determined by the joint board, except that the share of annual expenses to be paid by a participating county shall not exceed the maximum annual extension budget authorized for it under section 2-1604. The participating counties shall be recognized as but one organization for state and federal aid.

(2) The president and secretary of the joint board shall on or before January 1 of each year file with the county clerk of each participating county (a) a report of the combined extension work of the participating counties for the preceding year, (b) a sworn statement of itemized expenditures under sections 2-1601 to 2-1608 during the preceding year, and (c) the extension budget for each participating county which shall be the amount to be set aside in the general fund of each participating county to pay its proportionate share of the expenses of the combined extension work during the ensuing year.

Source: Laws 1939, c. 1, § 7, p. 56; C.S.Supp.,1941, § 2-2007; R.S.1943, § 2-1607; Laws 1992, LB 672, § 5.

2-1608 Joint county extension organizations; employees; retirement system; organizations; duties.

Whenever two or more county extension organizations have united as provided in section 2-1607 for the purpose of support and management of extension work, county extension employees jointly employed by the participating extension organizations shall be considered persons employed by a county for the purpose of subdivision (10) of section 23-2301 and shall participate in the

Retirement System for Nebraska Counties under the County Employees Retirement Act. To accomplish such participation, the participating county extension organizations shall (1) pick up employee contributions as salary deductions on behalf of such county extension employees in the manner required for a county in section 23-2307 and (2) pay to the Public Employees Retirement Board or an entity designated by the board an amount in accordance with the provisions of section 23-2308. In all other respects the participation of such county extension employees in the retirement system shall be in accordance with the act.

Source: Laws 1992, LB 672, § 6; Laws 1996, LB 847, § 1; Laws 1998, LB 1191, § 1; Laws 2002, LB 687, § 2; Laws 2003, LB 451, § 1; Laws 2006, LB 366, § 1.

Cross References

County Employees Retirement Act, see section 23-2331.

ARTICLE 17

MANUFACTURE OF SYNTHETIC RUBBER FROM FARM PRODUCTS

Section
2-1701. Repealed. Laws 1980, LB 633, § 10; Laws 1980, LB 741, § 1.

2-1701 Repealed. Laws 1980, LB 633, § 10; Laws 1980, LB 741, § 1.

ARTICLE 18

POTATO DEVELOPMENT

PART I

Section
2-1801. Act, how cited.
2-1802. Division of Potato Development; established.
2-1803. Nebraska Potato Development Committee; membership; appointment; term; powers; expenses.
2-1804. Statement of policy; department; powers and duties.
2-1805. Potato shipper; license required.
2-1806. Potato shipper; license; application; issuance; display; records; cancellation and annulment of license; grounds; violations; penalty.
2-1807. Potato shipper; annual statement; excise tax; amount; administrative fee; violations; penalty.
2-1808. Nebraska Potato Development Fund; creation; disbursement; investment.
2-1809. Department; rules and regulations; duties; criminal actions.
2-1810. Terms, defined.
2-1811. Violation; penalty.
2-1812. Applicability of sections.

PART II

2-1813. Act, how cited.
2-1814. Terms, defined.
2-1815. Seed potatoes; when exempt from act.
2-1816. Inspection fee; estimate, how obtained; compulsory potato inspection; establishment; termination.
2-1817. Petition; contents; prima facie evidence.
2-1818. Potato inspection; director; powers.
2-1819. Director; rules and regulations; cooperate; agreements.
2-1820. Director; provide for inspection and grading services; expense.
2-1821. Inspection; certificate; grades used.
2-1822. Inspection; grade; appeal; procedure.
2-1823. Compulsory inspection and grading; special permits; application; issuance.

Section
2-1824. Department; official inspection and grade legend; adopt.
2-1825. Violations; penalties.
2-1826. Acts; how designated.

PART I

2-1801 Act, how cited.

Sections 2-1801 to 2-1811 may be cited as the Nebraska Potato Development Act.

Source: Laws 1945, c. 4, § 1, p. 70.

2-1802 Division of Potato Development; established.

There is hereby established a Division of Potato Development in the Department of Agriculture. The Director of Agriculture shall appoint the division head and any assistants as may be necessary to carry out the provisions of the Nebraska Potato Development Act.

Source: Laws 1945, c. 4, § 2, p. 70; Laws 1991, LB 358, § 1.

2-1803 Nebraska Potato Development Committee; membership; appointment; term; powers; expenses.

With the exception of the ex officio member, the Governor shall appoint an advisory committee to be known as the Nebraska Potato Development Committee. The committee shall be composed of three shippers and four growers from the industry and the vice chancellor of the University of Nebraska Institute of Agriculture and Natural Resources who shall be an ex officio member. The Director of Agriculture shall be the chairperson. The committee shall adopt and provide rules and regulations for the conduct of the affairs of the Division of Potato Development and advise the director regarding the appointment of the division head and any assistants as may be appointed. The members of the committee shall serve without pay but shall receive expenses incurred while on official business as provided in sections 81-1174 to 81-1177. As the terms of office of such appointees expire, successors shall be appointed by the Governor for a period of two years and until their successors are appointed and qualified.

Source: Laws 1945, c. 4, § 3, p. 70; Laws 1947, c. 4, § 1, p. 60; Laws 1981, LB 204, § 7; Laws 1991, LB 358, § 2; Laws 2020, LB381, § 3.

Cross References

Nebraska Potato Council, see section 2-2811.

2-1804 Statement of policy; department; powers and duties.

It is hereby declared to be the public policy of the State of Nebraska to protect and foster the health, prosperity, and general welfare of its people by conserving, developing, and promoting the state's potato industry. The Department of Agriculture shall be the agency of the State of Nebraska for such purpose. In connection therewith and in furtherance thereof, such department shall have the power, among other things, to: (1) Adopt and devise a program of education to promote better practices and methods in the production, storage, grading, and transportation of potatoes grown within the state; (2) disseminate information to landowners and to producers and shippers of potatoes that will

enable them to increase the yield and improve the quality of potatoes; (3) undertake, at such times and in such manner as the department shall determine, an active advertising campaign to acquaint the general public with the high quality and the desirability of the use of potatoes grown in the State of Nebraska; (4) encourage and foster research designed to determine new and better methods of improving the yield and quality of Nebraska potatoes and of converting potatoes to various commercial and industrial uses; (5) enter into such contracts as may be necessary in carrying out the purposes of the Nebraska Potato Development Act and the Nebraska Potato Inspection Act; (6) pay inspection and grading fees prescribed by the Nebraska Potato Inspection Act; and (7) conduct, in addition to the things enumerated, any other work for the improvement of Nebraska potatoes.

Source: Laws 1945, c. 4, § 4, p. 70; Laws 1969, c. 20, § 1, p. 185; Laws 1987, LB 20, § 1.

Cross References

Nebraska Potato Inspection Act, see section 2-1813.

2-1805 Potato shipper; license required.

After sections 2-1801 to 2-1811 shall have been in effect thirty days, it shall be unlawful for any person to act as or conduct the business of a potato shipper without having obtained and being the holder of a license from the Department of Agriculture as hereinafter provided.

Source: Laws 1945, c. 4, § 5, p. 71.

2-1806 Potato shipper; license; application; issuance; display; records; cancellation and annulment of license; grounds; violations; penalty.

Every person desiring to engage in business as a potato shipper shall file with the Department of Agriculture an application for a license in such form and detail as the department may prescribe. If it is found that there has been compliance with the provisions of sections 2-1801 to 2-1811 and the rules and regulations of the department issued in conformance therewith, a license shall forthwith be issued to the applicant. Every person who engages in business as a potato shipper without having a license shall be guilty of a Class IV misdemeanor. Each licensed potato shipper shall display conspicuously in his place of business the license granted to him. Should the licensed potato shipper change his place of business he shall immediately notify the department. Each licensed potato shipper shall keep such records with respect to shipments of potatoes by him as the department may by regulation require. Such records shall be preserved for a period of not less than two years and be, at all times during business hours, subject to inspection by authorized agents of the department. In the event that a licensed potato shipper shall violate any of the provisions of sections 2-1801 to 2-1811 or the regulations of the department issued in conformance therewith, the department may, upon due notice and after full hearing, cancel and annul his license.

Source: Laws 1945, c. 4, § 6, p. 71; Laws 1947, c. 4, § 2, p. 60; Laws 1951, c. 9, § 1, p. 79; Laws 1977, LB 40, § 16.

2-1807 Potato shipper; annual statement; excise tax; amount; administrative fee; violations; penalty.

(1) Beginning July 1, 1997, every potato shipper shall render and have on file with the Department of Agriculture by the last day of July an annual statement under oath, on forms prescribed by the department, which shall set forth the number of pounds of potatoes grown in Nebraska which were sold or shipped by him or her during the preceding fiscal year beginning on July 1 and ending on June 30. For every potato shipper who was required to file an annual statement for calendar year 1996, a short period statement covering January 1, 1997, through June 30, 1997, shall be filed and the excise taxes paid by July 31, 1997, as required by this section. For every potato shipper who was required to file a quarterly statement for the period of January 1, 1997, through March 31, 1997, a final quarterly statement covering April 1, 1997, through June 30, 1997, shall be filed and the excise taxes paid by July 31, 1997, as required by this section. At the time the sworn statement is filed and in connection therewith, each such potato shipper shall pay and remit to the department an excise tax of not to exceed two cents per one hundred pounds upon the potatoes shown in such statement to have been sold, which tax is hereby levied and imposed. The tax shall be set in the manner prescribed in subsection (3) of this section. The department shall transmit to the State Treasurer all money, checks, drafts, or other mediums of exchange thus received. The department shall have authority to adjust all errors in making payment. Any such potato shipper who shall neglect or refuse to file such statement, or to pay the tax herein imposed, within the time prescribed, shall be guilty of a Class IV misdemeanor. No potatoes shall be subject to tax more than once under the Nebraska Potato Development Act.

(2) All excise taxes imposed by this section are delinquent on August 1 of the year due. The department shall impose an additional administrative fee of five percent per month of the excise taxes for each month or portion thereof such taxes are delinquent not to exceed one hundred percent of such taxes. The purpose of the additional administrative fee is to cover the administrative costs associated with collecting the excise taxes. All money collected as an additional administrative fee shall be remitted to the State Treasurer for credit to the Nebraska Potato Development Fund.

(3) The department shall, upon the recommendation of the committee, have the power to set the excise tax prescribed in subsection (1) of this section. The tax shall be one cent per one hundred pounds from July 19, 1980, until adjusted by the department. Adjusted rates shall be effective for periods of not less than one year. The applicable rate of the excise tax shall be prescribed in rules and regulations adopted by the department in the manner prescribed by law.

Source: Laws 1945, c. 4, § 7, p. 72; Laws 1947, c. 4, § 3, p. 61; Laws 1951, c. 9, § 2, p. 80; Laws 1963, c. 12, § 1, p. 90; Laws 1969, c. 20, § 2, p. 186; Laws 1977, LB 40, § 17; Laws 1980, LB 833, § 1; Laws 1997, LB 202, § 1; Laws 2016, LB909, § 1.

2-1808 Nebraska Potato Development Fund; creation; disbursement; investment.

The State Treasurer is hereby directed to establish and set up in the treasury of the State of Nebraska a fund to be known as the Nebraska Potato Development Fund, to which fund shall be credited, for the uses and purposes of the Nebraska Potato Development Act and its enforcement, all taxes and fees collected by the Department of Agriculture. After appropriation, the Director of

Administrative Services, upon receipt of proper vouchers approved by the director of the department, shall issue his or her warrants on such funds and the State Treasurer shall pay the same out of the money credited to the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1945, c. 4, § 8, p. 72; Laws 1969, c. 584, § 29, p. 2359; Laws 1995, LB 7, § 10; Laws 2016, LB909, § 2.

Cross References

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

2-1809 Department; rules and regulations; duties; criminal actions.

The Department of Agriculture shall have authority to promulgate such rules and regulations as are necessary to promptly and effectively enforce the provisions of sections 2-1801 to 2-1811. The department may call upon the Attorney General of Nebraska for legal assistance. All criminal actions for the violation of any provisions of sections 2-1801 to 2-1811 shall be prosecuted by the Attorney General. It shall be the duty of the department to immediately report to the Attorney General any information coming into its possession concerning any violation of sections 2-1801 to 2-1811 or the failure or refusal of any person to comply therewith.

Source: Laws 1945, c. 4, § 9, p. 73.

2-1810 Terms, defined.

As used in the Nebraska Potato Development Act:

(1) Person shall mean and include any natural person, firm, partnership, limited liability company, association, or corporation;

(2) Potato shipper shall mean and include any person engaged in the business of shipping potatoes who, in any calendar year, sells one hundred eighty thousand pounds of potatoes grown in Nebraska, including potato growers who sell one hundred eighty thousand pounds of potatoes not through licensed shippers and any person who utilizes for any purpose in any calendar year one hundred eighty thousand pounds of potatoes grown in Nebraska not purchased from licensed shippers;

(3) Potato grower shall mean the actual grower within the State of Nebraska of at least three acres of potatoes during the crop year; and

(4) Department shall mean the Department of Agriculture.

Source: Laws 1945, c. 4, § 10, p. 73; Laws 1947, c. 4, § 4, p. 62; Laws 1969, c. 20, § 3, p. 186; Laws 1987, LB 20, § 2; Laws 1993, LB 121, § 63.

2-1811 Violation; penalty.

Any person violating any of the provisions of sections 2-1801 to 2-1811 shall be guilty of a Class II misdemeanor.

Source: Laws 1945, c. 4, § 11, p. 73; Laws 1977, LB 40, § 18.

2-1812 Applicability of sections.

Section 2-1807 and subdivision (2) of section 2-1810 shall not apply to the shipping or utilizing of seed potatoes grown in Nebraska and planted in the state by the grower or shipper.

Source: Laws 1969, c. 20, § 4, p. 187.

PART II

2-1813 Act, how cited.

Sections 2-1813 to 2-1825 may be cited as the Nebraska Potato Inspection Act.

Source: Laws 1969, c. 20, § 5, p. 187.

2-1814 Terms, defined.

As used in sections 2-1813 to 2-1825, unless the context otherwise requires:

(1) Department shall mean the Department of Agriculture;

(2) Director shall mean the Director of Agriculture;

(3) Nebraska Potato Development Committee shall mean the advisory committee established by section 2-1803;

(4) Commercial potato growing area shall mean a geographic area in which potatoes are produced and offered for sale in commercial quantities;

(5) Commercial shipment shall mean any potatoes shipped in commerce or processed and destined for human consumption, and noncertified seed potatoes shipped out of the state;

(6) Commercial potato acreage shall mean a potato field of three acres or more; and

(7) Preceding crop year shall mean the last calendar year for which official acreage statistics have been compiled by the state-federal division of agricultural statistics.

Source: Laws 1969, c. 20, § 6, p. 187.

2-1815 Seed potatoes; when exempt from act.

The provisions of sections 2-1813 to 2-1825 shall not include seed potatoes officially designated by law as Nebraska Certified.

Source: Laws 1969, c. 20, § 7, p. 188.

2-1816 Inspection fee; estimate, how obtained; compulsory potato inspection; establishment; termination.

Any person, for the purpose of obtaining information relative to the cost of potato inspection and grading services for a designated area, may request in writing that an estimate be prepared by the director of the costs of such a service. The director may consult with the Nebraska Potato Development Committee to establish an estimated inspection fee based upon the inspector's salary, mileage and other travel expenses, cost of inspection certificates, and other necessary expenses to cover the inspection service and the administration thereof.

To establish compulsory inspection of commercial shipments of potatoes in a designated area, a petition, signed by potato growers representing fifty-one percent or more of the commercial potato acreage of the last preceding crop

year, with an estimate of inspection costs attached, may be presented to the director requesting that all commercial shipments of potatoes originating in the designated area be officially inspected and graded by the department at the point of origin or at locations approved by the director. The director shall fix a time and place for hearing on the petition and shall publish notice thereof in a newspaper having general circulation in the area designated in the petition for three consecutive weeks. At the time and place established by such notice, the director or his or her designate shall hold a public hearing upon the petition at which time evidence will be taken in support of or in opposition to the petition. If the evidence reveals that potato growers representing fifty-one percent or more of the commercial potato acreage of the last preceding crop year are in favor of the compulsory program set forth in the petition request, the director shall enter an order establishing compulsory inspection of commercial shipments of potatoes in the area designated in the petition. A petition to terminate compulsory inspection, signed by potato growers representing fifty-one percent or more of the commercial potato acreage of the last preceding crop year, may be filed with the director at any time and such petition shall be set for public hearing in the manner aforesaid. If the director finds from the evidence submitted at such hearing to terminate inspection services that the petition to terminate represents fifty-one percent or more of the commercial potato acreage of the last preceding crop year, he or she shall enter an order declaring that compulsory potato inspection is terminated. In order to determine the commercial potato acreage of the last preceding crop year, the director shall use the tabulated crop acreage reports of the county assessors, compiled by the state-federal division of agricultural statistics.

Source: Laws 1969, c. 20, § 8, p. 188; Laws 1994, LB 884, § 4.

2-1817 Petition; contents; prima facie evidence.

A petition filed pursuant to section 2-1816 shall be prima facie evidence that (1) it has been properly circulated, (2) the signatures thereon are genuine, (3) the signatures thereon reflect the correct representation of the number of acres specified, (4) the land described therein was devoted to potato production in the last preceding crop year, (5) such petition represents fifty-one percent or more of the commercial acreage in the area designated therein, and (6) each and every other allegation contained therein is true. Any fact contained therein may be rebutted at the hearing before the director.

Source: Laws 1969, c. 20, § 9, p. 189.

2-1818 Potato inspection; director; powers.

The director is empowered to make all arrangements to implement the inspection service or terminate existing inspection service following entry of an order establishing or terminating such services and to this extent he is authorized to appoint persons or designate agents as may be necessary to carry out the duties of the department and to expend such funds as are necessary to accomplish the purposes of sections 2-1813 to 2-1825. The director may require that all persons assigned to inspection and grading duties possess a federal potato inspector's license.

Source: Laws 1969, c. 20, § 10, p. 189.

2-1819 Director; rules and regulations; cooperate; agreements.

The director may promulgate rules and regulations necessary to carry out the provisions, purposes, and intent of sections 2-1813 to 2-1825; and is authorized to cooperate with the United States Department of Agriculture, the University of Nebraska Institute of Agriculture and Natural Resources, and other public or private agencies or groups and to enter into agreements with the same in carrying out the provisions of sections 2-1813 to 2-1825.

Source: Laws 1969, c. 20, § 11, p. 190.

2-1820 Director; provide for inspection and grading services; expense.

The director may, upon written request of any potato grower, provide for inspection and grading services for commercial shipments of potatoes in areas where compulsory inspection and grading are not in force. In all such cases, the inspection and grading service shall be at the expense of the potato grower requesting the same and shall be determined in the manner prescribed in section 2-1816.

Source: Laws 1969, c. 20, § 12, p. 190.

2-1821 Inspection; certificate; grades used.

An official certificate evidencing official inspection and designating the grade of potatoes inspected shall be issued by the appointed inspector or agent of the director to the person or persons for whom the inspection and grading service was completed. All inspections shall be made on the basis of the official grades established from time to time by the United States Department of Agriculture and such additional grades as may be duly adopted by the director; *Provided*, that when United States grades are used, they shall conform in all respects to the requirements and standards prescribed by the United States Department of Agriculture.

Source: Laws 1969, c. 20, § 13, p. 190.

2-1822 Inspection; grade; appeal; procedure.

Any person having a direct financial interest, who is dissatisfied with the grade established by inspection under the Nebraska Potato Inspection Act, may appeal to the director in writing for reinspection. Such appeal shall be made within ten days after inspection and before shipment of the inspected potatoes. Upon receipt of such appeal, the director shall cause a reinspection to be completed to determine the grade in dispute, and upon completion of the reinspection, he or she shall make known his or her findings to all persons having a direct financial interest. All parties shall be bound by the findings following the reinspection. In the event that the reinspection does not determine a new or different grade, all costs of the reinspection shall be paid to the director by the person requesting reinspection. Any official inspection certificate issued as the result of a reinspection shall supersede the original official certificate. The findings may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1969, c. 20, § 14, p. 190; Laws 1988, LB 352, § 3.

Cross References

Administrative Procedure Act, see section 84-920.

2-1823 Compulsory inspection and grading; special permits; application; issuance.

In any area designated for compulsory inspection and grading by order of the director pursuant to the provisions of sections 2-1813 to 2-1825, special permits may be issued authorizing shipment of uninspected potatoes when an official inspection cannot be made. Application to the director for special permits authorizing shipment must establish an emergency in which delay may cause substantial financial injury to the applicant.

Source: Laws 1969, c. 20, § 15, p. 191.

2-1824 Department; official inspection and grade legend; adopt.

The department may adopt an official Nebraska inspection and grade legend, assign official inspection numbers to persons or establishments under inspection and require that such numbers be exclusive to them, and otherwise control the use of the official Nebraska legend. United States grade designations and authorized legends in connection therewith shall be used in accordance with the requirements of the United States Department of Agriculture.

Source: Laws 1969, c. 20, § 16, p. 191.

2-1825 Violations; penalties.

(1) Any person, firm, corporation, limited liability company, association, or officer or member thereof who (a) destroys or alters any official certificate, (b) ships or attempts to ship any potatoes out of any designated area where compulsory inspection is maintained without first obtaining a special permit or without first complying with section 2-1816, or (c) violates any other provision of the Nebraska Potato Inspection Act or the rules and regulations promulgated thereunder for which no specific penalty is provided shall be guilty of a Class III misdemeanor.

(2) Any inspector or agent of the director who fails to remit to the department all fees collected in his or her official capacity shall be guilty of a Class III misdemeanor.

(3) Any person, firm, corporation, limited liability company, association, or officer or member thereof who forges or counterfeits any official inspection legend or official certificate adopted by the director for use under the Nebraska Potato Inspection Act or who, not being an inspector or appointed agent of the director, attaches any certificate of inspection whether or not forged or counterfeited to any commercial shipment of potatoes shall be guilty of a Class IV felony.

Source: Laws 1969, c. 20, § 17, p. 191; Laws 1977, LB 40, § 19; Laws 1987, LB 20, § 3; Laws 1994, LB 884, § 5.

2-1826 Acts; how designated.

The Nebraska Potato Development Act and the Nebraska Potato Inspection Act shall become one act in two parts with the Nebraska Potato Development Act designated as Part I and the Nebraska Potato Inspection Act designated as Part II thereof and the Revisor of Statutes shall make appropriate changes in the statutes necessitated by such redesignation.

Source: Laws 1969, c. 20, § 18, p. 192; Laws 1987, LB 20, § 4.

Cross References

Nebraska Potato Development Act, see section 2-1801.
Nebraska Potato Inspection Act, see section 2-1813.

ARTICLE 19
DIVISION OF NEBRASKA RESOURCES

Section
2-1901. Repealed. Laws 1967, c. 566, § 15.
2-1902. Repealed. Laws 1967, c. 566, § 15.
2-1903. Repealed. Laws 1967, c. 566, § 15.
2-1904. Repealed. Laws 1967, c. 566, § 15.
2-1905. Repealed. Laws 1967, c. 566, § 15.
2-1906. Repealed. Laws 1967, c. 566, § 15.
2-1907. Repealed. Laws 1967, c. 566, § 15.
2-1908. Repealed. Laws 1967, c. 566, § 15.
2-1909. Repealed. Laws 1967, c. 566, § 15.
2-1910. Repealed. Laws 1967, c. 566, § 15.
2-1911. Repealed. Laws 1967, c. 566, § 15.
2-1912. Repealed. Laws 1967, c. 566, § 15.
2-1913. Repealed. Laws 1967, c. 566, § 15.

2-1901 Repealed. Laws 1967, c. 566, § 15.

2-1902 Repealed. Laws 1967, c. 566, § 15.

2-1903 Repealed. Laws 1967, c. 566, § 15.

2-1904 Repealed. Laws 1967, c. 566, § 15.

2-1905 Repealed. Laws 1967, c. 566, § 15.

2-1906 Repealed. Laws 1967, c. 566, § 15.

2-1907 Repealed. Laws 1967, c. 566, § 15.

2-1908 Repealed. Laws 1967, c. 566, § 15.

2-1909 Repealed. Laws 1967, c. 566, § 15.

2-1910 Repealed. Laws 1967, c. 566, § 15.

2-1911 Repealed. Laws 1967, c. 566, § 15.

2-1912 Repealed. Laws 1967, c. 566, § 15.

2-1913 Repealed. Laws 1967, c. 566, § 15.

ARTICLE 20
AGRICULTURAL ASSOCIATIONS

Section
2-2001. Formation; name; title.
2-2002. Annual statement; contents; filing.
2-2003. Annual report; failure to file; effect.
2-2004. Filing fee; waived.

2-2001 Formation; name; title.

Any agricultural association formed for the purpose of developing and improving some form of agriculture in this state which files with the Secretary

of State a copy of its constitution and bylaws, shall be declared a corporation under the name and title designated in such constitution.

Source: Laws 1949, c. 2, § 1, p. 57.

2-2002 Annual statement; contents; filing.

Each of such associations shall file with the Secretary of State prior to February 1 of each year an annual statement for the previous calendar year. The statement shall contain (1) a list of its members, (2) names and addresses of its officers, and (3) an itemization of its receipts and disbursements.

Source: Laws 1949, c. 2, § 2, p. 57.

2-2003 Annual report; failure to file; effect.

Any association formed as provided by section 2-2001 failing to file the annual statement as provided in section 2-2002 shall cease to exist as such.

Source: Laws 1949, c. 2, § 3, p. 58.

2-2004 Filing fee; waived.

No fee of any kind shall be required by the Secretary of State for any filings made under sections 2-2001 and 2-2002.

Source: Laws 1949, c. 2, § 4, p. 58.

ARTICLE 21

RURAL REHABILITATION CORPORATION

Section
2-2101. Nebraska Rural Rehabilitation Corporation; dissolved; acceptance of federal law.
2-2102. Director of Agriculture; agent.
2-2103. Director; authority.
2-2104. Director; powers; agreements authorized.
2-2105. Director; agreements with federal government; execute.
2-2106. Director; reports.
2-2107. Director; notice of acceptance.

2-2101 Nebraska Rural Rehabilitation Corporation; dissolved; acceptance of federal law.

The State of Nebraska hereby accepts the provisions of Public Law 499, enacted by the Eighty-first Congress of the United States, and entitled An Act to provide for the liquidation of the trusts under the transfer agreements with the state rural rehabilitation corporations, and for other purposes. In connection with such acceptance, the State of Nebraska finds and declares that the Nebraska Rural Rehabilitation Corporation has been dissolved.

Source: Laws 1951, c. 4, § 1, p. 64.

2-2102 Director of Agriculture; agent.

The State of Nebraska hereby designates the Director of Agriculture as the sole agent to represent the State of Nebraska in the administration of any funds made available under the provisions of the federal act specified in section 2-2101.

Source: Laws 1951, c. 4, § 2, p. 65.

2-2103 Director; authority.

The Director of Agriculture, on behalf of the State of Nebraska, is authorized to enter into an agreement with the Secretary of Agriculture of the United States, upon such terms and conditions and for such periods of time as may be mutually agreeable, to accept, administer, expend, and use in the State of Nebraska all or any part of the trust assets or any other funds made available under the provisions of the federal act specified in section 2-2101.

Source: Laws 1951, c. 4, § 3, p. 65.

2-2104 Director; powers; agreements authorized.

The Director of Agriculture, on behalf of the State of Nebraska, is specifically authorized to agree that:

(1) The State of Nebraska and the Director of Agriculture as its agent will abide by the determinations and apportionments of the Secretary of Agriculture of the United States provided for in the federal act specified in section 2-2101 and the payments made by the Secretary of Agriculture pursuant thereto;

(2) The returned assets of the Nebraska Rural Rehabilitation Corporation and the income therefrom will be used only for such of the rural rehabilitation purposes permissible under the charter of the Nebraska Rural Rehabilitation Corporation as may from time to time be agreed upon by the Director of Agriculture of Nebraska and the Secretary of Agriculture of the United States; and

(3) The Nebraska Rural Rehabilitation Corporation funds may be distributed to public colleges, universities, or vocational or technical schools exclusively owned and controlled by the State of Nebraska or a governmental subdivision thereof. The agreement may provide for the qualifications of recipients to be benefited by the funds and for the method of their selection, but nothing in this section shall be construed to limit the director from agreeing to any other reasonable provisions in such agreement. Administrative costs for the distribution of these funds shall not exceed five percent of the book value of the entire fund and the administrative costs may include clerical and administrative services.

The Director of Agriculture is further authorized and empowered, upon behalf of the State of Nebraska, to make such provisions as may be necessary to hold the United States and its Secretary of Agriculture free from liability by virtue of the transfer of the assets and income therefrom to him or her under sections 2-2101 to 2-2107.

Source: Laws 1951, c. 4, § 4, p. 65; Laws 1965, c. 15, § 1, p. 146; Laws 1972, LB 1036, § 1; Laws 1980, LB 633, § 1.

2-2105 Director; agreements with federal government; execute.

The Director of Agriculture is further authorized to enter into an agreement or agreements with the Secretary of Agriculture of the United States to use the assets and funds received under sections 2-2101 to 2-2107 to carry out the provisions of the Bankhead-Jones Farm Tenant Act, enacted by the Congress of the United States, and in accordance with the applicable provisions thereof.

Source: Laws 1951, c. 4, § 5, p. 66.

2-2106 Director; reports.

The Director of Agriculture shall make reports to the Secretary of Agriculture of the United States, in such form, and containing such information, as the secretary may from time to time reasonably require. The Secretary of Agriculture of the United States, upon request, shall be given access to the records upon which such information is based.

Source: Laws 1951, c. 4, § 6, p. 66.

2-2107 Director; notice of acceptance.

The State of Nebraska shall transmit, through the Director of Agriculture, to the Secretary of Agriculture of the United States notice of acceptance of the provisions of the federal act specified in section 2-2101, and accompany such acceptance with a certified copy of sections 2-2101 to 2-2107.

Source: Laws 1951, c. 4, § 7, p. 66.

ARTICLE 22

NEBRASKA SWINE PRODUCERS ASSOCIATION

Section
2-2201. Repealed. Laws 1980, LB 633, § 10.
2-2202. Repealed. Laws 1980, LB 633, § 10.
2-2203. Repealed. Laws 1980, LB 633, § 10.
2-2204. Repealed. Laws 1980, LB 633, § 10.
2-2205. Repealed. Laws 1980, LB 633, § 10.

2-2201 Repealed. Laws 1980, LB 633, § 10.

2-2202 Repealed. Laws 1980, LB 633, § 10.

2-2203 Repealed. Laws 1980, LB 633, § 10.

2-2204 Repealed. Laws 1980, LB 633, § 10.

2-2205 Repealed. Laws 1980, LB 633, § 10.

ARTICLE 23

WHEAT DEVELOPMENT

Section
2-2301. Act, how cited.
2-2302. Nebraska Wheat Development, Utilization, and Marketing Board; created; members.
2-2303. Terms, defined.
2-2304. Board; membership; qualifications; appointment; districts enumerated.
2-2305. Board; transitional provisions; vacancy; how filled; term.
2-2306. Board; voting members; expenses.
2-2307. Board; removal of member; grounds.
2-2308. Board; chairperson; meetings; conduct of business.
2-2309. Declaration of policy; board; powers and duties.
2-2310. Board; administrative office.
2-2311. Excise tax; amount; adjustment.
2-2312. Excise tax; not deducted from loan proceeds.
2-2313. Excise tax; stored wheat.
2-2314. Excise tax; federal government; sale; exception.
2-2315. Excise tax; first purchaser; records; reports; forms; remittance.
2-2316. Repealed. Laws 1981, LB 545, § 52.
2-2316.01. Repealed. Laws 1981, LB 11, § 38.

Section
2-2317. Nebraska Wheat Development, Utilization, and Marketing Fund; created; use; investment.
2-2318. Board; restriction on authority; cooperation with other entities, authorized.
2-2319. Violations; penalty.
2-2320. Repealed. Laws 1987, LB 1, § 16.
2-2321. Board; use of funds; restriction.

2-2301 Act, how cited.

Sections 2-2301 to 2-2321 shall be known and may be cited as the Nebraska Wheat Resources Act.

Source: Laws 1955, c. 5, § 1, p. 59; Laws 2012, LB905, § 1.

2-2302 Nebraska Wheat Development, Utilization, and Marketing Board; created; members.

There is hereby established the Nebraska Wheat Development, Utilization, and Marketing Board. Members shall be appointed by the Governor to the board pursuant to section 2-2305.

Source: Laws 1955, c. 5, § 2, p. 59; Laws 1981, LB 11, § 21; Laws 2012, LB905, § 2.

2-2303 Terms, defined.

For purposes of the Nebraska Wheat Resources Act, unless the context otherwise requires:

(1) Board means the Nebraska Wheat Development, Utilization, and Marketing Board;

(2) Commercial channels means the sale of wheat for any use when the buyer resells or intends to resell any such wheat or product produced from such wheat for a purpose other than for use as seed;

(3)(a) First purchaser means any individual or public or private corporation, association, partnership, limited liability company, or other business entity, if such individual or entity buys, accepts for shipment, or otherwise acquires the property in or to wheat from a grower for a purpose other than for use as seed.

(b) First purchaser shall not include a public or private mortgagee, pledgee, lienor, or other person having a claim against the grower when the actual or constructive possession of such wheat is taken as part payment or in satisfaction of a mortgage, pledge, lien, or claim;

(4) Grower means any landowner personally engaged in growing wheat, a tenant of the landowner personally engaged in growing wheat, and both the owner and the tenant jointly and includes an individual or a partnership, limited liability company, association, corporation, cooperative, trust, sharecropper, and other business units, devices, and arrangements;

(5) Net market price means the sales price, or other value, per volumetric unit received by a producer for wheat after adjustment for any premium or discount;

(6) Net market value means the value found by multiplying the net market price by the appropriate quantity of the volumetric units or the minimum value in a production contract received by a producer for wheat after adjustments for any premium or discount. For wheat pledged as collateral for a loan issued

under any Commodity Credit Corporation price support loan program, net market value means the principal amount of the loan; and

(7) Sale does not include a pledge or mortgage of wheat to any individual or public or private entity.

Source: Laws 1955, c. 5, § 3, p. 59; Laws 1981, LB 11, § 22; Laws 1987, LB 1, § 11; Laws 1993, LB 121, § 64; Laws 2012, LB905, § 3; Laws 2022, LB805, § 2.
Effective date July 21, 2022.

2-2304 Board; membership; qualifications; appointment; districts enumerated.

(1) The board shall be composed of seven members who shall (a) be citizens of Nebraska, (b) be at least twenty-one years of age, (c) have been actually engaged in growing wheat in this state for a period of at least five years, and (d) derive a substantial portion of their income from growing wheat. The Director of Agriculture and the vice chancellor of the University of Nebraska Institute of Agriculture and Natural Resources shall serve as nonvoting members of the board. With the exception of the nonvoting members, the Governor shall appoint the members to the board.

(2) The seven appointed members shall be appointed from the following districts:

(a) District 1: The counties of Sioux, Scotts Bluff, Dawes, Box Butte, Morrill, Sheridan, and Garden;

(b) District 2: The counties of Kimball, Banner, and Cheyenne;

(c) District 3: The counties of Perkins, Deuel, Keith, Arthur, McPherson, Logan, Grant, Hooker, Thomas, and Cherry;

(d) District 4: The counties of Lincoln, Chase, Dundy, Hayes, Hitchcock, and Frontier;

(e) District 5: The counties of Buffalo, Dawson, Phelps, Custer, Gosper, Kearney, Red Willow, Furnas, Harlan, and Franklin;

(f) District 6: The counties of Adams, Webster, Nuckolls, Thayer, Jefferson, Gage, Johnson, Nemaha, Pawnee, Richardson, Otoe, Cass, Lancaster, Seward, York, Hamilton, Hall, Sherman, Howard, Merrick, Nance, Polk, Butler, Saunders, Sarpy, Douglas, Washington, Dodge, Colfax, Platte, Burt, Cuming, Stanton, Madison, Boone, Valley, Greeley, Antelope, Pierce, Wayne, Thurston, Dakota, Dixon, Cedar, Knox, Wheeler, Garfield, Loup, Blaine, Brown, Rock, Holt, Boyd, Keya Paha, Clay, Fillmore, and Saline; and

(g) District 7: The at-large district.

Source: Laws 1955, c. 5, § 4, p. 60; Laws 1969, c. 21, § 1, p. 193; Laws 1981, LB 11, § 23; Laws 1991, LB 685, § 1; Laws 2002, LB 474, § 1.

2-2305 Board; transitional provisions; vacancy; how filled; term.

The member serving former district 1 will assume the role of serving new district 1 on February 28, 2002, and his or her term shall expire on June 30, 2004. The member serving former district 2 will assume the role of serving new district 2 on February 28, 2002, and his or her term shall expire on June 30, 2003. The term of the member serving district 3 shall expire on June 30, 2002.

The term of the member serving district 4 shall expire on June 30, 2006. The term of the member serving district 5 shall expire on June 30, 2005. The member serving former district 6 will assume the role of serving new district 6 on February 28, 2002, and his or her term shall expire on June 30, 2004. The member serving former district 7 will assume the role of serving new district 7 on February 28, 2002, and his or her term shall expire on June 30, 2005. As the terms of office of the members serving on February 28, 2002, expire as provided in this section, their successors shall be appointed to serve for terms of five years and until their successors are appointed and qualified. Terms of office shall commence on July 1. A member appointed to fill a vacancy, occurring before the expiration of the term of a member separated from the board for any cause, shall be appointed for the remainder of the term of the member whose office has been so vacated in the same manner as his or her predecessor.

Source: Laws 1955, c. 5, § 5, p. 61; Laws 1969, c. 21, § 2, p. 194; Laws 1981, LB 11, § 24; Laws 1991, LB 685, § 2; Laws 2002, LB 474, § 2.

2-2306 Board; voting members; expenses.

All voting members of the board shall be entitled to expenses as provided for in sections 81-1174 to 81-1177 while attending meetings of the board or while engaged in the performance of official responsibilities as determined by the board.

Source: Laws 1955, c. 5, § 6, p. 61; Laws 1981, LB 11, § 25; Laws 2012, LB905, § 4; Laws 2020, LB381, § 4.

2-2307 Board; removal of member; grounds.

A member of the board shall be removable by the Governor for cause. He or she shall first be given a copy of written charges against him or her and also an opportunity to be heard publicly. In addition to all other causes, a member ceasing to (1) be a resident of the state, (2) live in the district from which he or she was appointed, or (3) be actually engaged in growing wheat in the state shall be deemed sufficient cause for removal from office.

Source: Laws 1955, c. 5, § 7, p. 61; Laws 1981, LB 11, § 26.

2-2308 Board; chairperson; meetings; conduct of business.

At the first meeting of the board, it shall elect a chairperson from among its members. The board shall meet at least once every three months and at such other times as called by the chairperson or by any three members of the board. The majority of the members of the board shall constitute a quorum for transaction of business. The affirmative vote of the majority of all members of the board shall be necessary for the adoption of rules and regulations.

Source: Laws 1955, c. 5, § 8, p. 62; Laws 1981, LB 11, § 27.

2-2309 Declaration of policy; board; powers and duties.

It is hereby declared to be the public policy of the State of Nebraska to protect and foster the health, prosperity, and general welfare of its people by protecting and stabilizing the wheat industry and the economy of the areas producing wheat. The Nebraska Wheat Development, Utilization, and Market-

ing Board shall be the agency of the State of Nebraska for such purpose. In connection with and in furtherance of such purpose, such board shall have the power to:

(1) Formulate the general policies and programs of the State of Nebraska relating to the wheat industry, including:

(a) The discovery, promotion, and development of markets and industries for the utilization of wheat grown within the State of Nebraska;

(b) The acquisition of ownership rights, including intellectual property rights, to any variety of wheat; and

(c) The development, production, marketing, and sale of seed for any wheat variety owned by the board;

(2) Adopt and devise a program of education and publicity;

(3) Cooperate with local, state, or national organizations, whether public or private, in carrying out the purposes of the Nebraska Wheat Resources Act and to enter into such contracts as may be necessary;

(4) Adopt and promulgate such rules and regulations as are necessary to promptly and effectively enforce the Nebraska Wheat Resources Act. The rules and regulations shall include provisions which prescribe the procedure for adjustment of the excise tax by the board pursuant to section 2-2311;

(5) Conduct, in addition to the things enumerated, any other program for the development, utilization, and marketing of wheat grown in the State of Nebraska. Such programs may provide for cooperation with, grants to, or contracts with individuals or entities in the private sector or public sector for the following purposes:

(a) Research;

(b) Accumulation of data;

(c) Development of new varieties of wheat;

(d) Securing plant variety protection under federal law when possible;

(e) Securing intellectual property rights relating to development of new varieties of wheat when possible;

(f) Producing wheat for seed and selling such seed; and

(g) Construction of ethanol production facilities;

(6) Make refunds for overpayments of the excise tax according to rules and regulations adopted and promulgated by the board; and

(7) Employ personnel and contract for services which are necessary for the proper operation of the program.

Source: Laws 1955, c. 5, § 9, p. 62; Laws 1959, c. 8, § 1, p. 105; Laws 1981, LB 11, § 28; Laws 1983, LB 505, § 1; Laws 1986, LB 1230, § 17; Laws 1988, LB 963, § 1; Laws 2022, LB805, § 3.
Effective date July 21, 2022.

2-2310 Board; administrative office.

The board may establish an administrative office in the State of Nebraska at such place as may be suitable for the furtherance of the Nebraska Wheat Resources Act. The board shall not purchase, construct, or otherwise obtain

title to its own administrative office, but shall be limited to leasing state or commercial office space.

Source: Laws 1955, c. 5, § 10, p. 63; Laws 1981, LB 11, § 29; Laws 1987, LB 1, § 12; Laws 2012, LB905, § 5.

2-2311 Excise tax; amount; adjustment.

(1) Commencing July 1, 1990, the board may levy on growers of wheat an excise tax of not to exceed one and one-half cents per bushel upon all wheat sold through commercial channels in the State of Nebraska. Commencing on October 1, 2012, there is hereby levied an excise tax of four-tenths percent of the net market value of wheat sold through commercial channels in the State of Nebraska. The first purchaser of such wheat shall levy, impose, and collect the tax at the time of settlement for the wheat. Under the Nebraska Wheat Resources Act, no wheat is subject to the tax more than once.

(2) After October 1, 2014, the board may, whenever it determines that the excise tax levied by this section is yielding more or less than is required to carry out the intent and purposes of the Nebraska Wheat Resources Act, reduce or increase such levy for such period as it deems justifiable, but not less than one year, and such levy shall not exceed five-tenths percent of the net market value. Any adjustment to the levy shall be by rule and regulation adopted and promulgated by the board in accordance with the Administrative Procedure Act.

Source: Laws 1955, c. 5, § 11, p. 63; Laws 1977, LB 390, § 1; Laws 1981, LB 11, § 30; Laws 1983, LB 505, § 2; Laws 1987, LB 1, § 13; Laws 1987, LB 610, § 1; Laws 1988, LB 963, § 2; Laws 2012, LB905, § 6; Laws 2022, LB805, § 4.
Effective date July 21, 2022.

Cross References

Administrative Procedure Act, see section 84-920.

2-2312 Excise tax; not deducted from loan proceeds.

In the case of a pledge or mortgage of wheat as security for a loan under the federal price support program, no excise tax shall be deducted from the proceeds of such loan at the time the loan is made.

Source: Laws 1955, c. 5, § 12, p. 63; Laws 2022, LB805, § 5.
Effective date July 21, 2022.

2-2313 Excise tax; stored wheat.

The tax provided for by section 2-2311 shall be deducted as provided by the Nebraska Wheat Resources Act, whether such wheat is stored in this or any other state.

Source: Laws 1955, c. 5, § 13, p. 63; Laws 2012, LB905, § 7.

2-2314 Excise tax; federal government; sale; exception.

The tax, herein levied and imposed by the provisions of section 2-2311, shall not apply to the sale of wheat to the federal government for ultimate use or consumption by the people of the United States, where the State of Nebraska is

prohibited from imposing such tax by the Constitution of the United States and laws enacted pursuant thereto.

Source: Laws 1955, c. 5, § 14, p. 63.

2-2315 Excise tax; first purchaser; records; reports; forms; remittance.

(1) The first purchaser, at the time of settlement with a grower, shall deduct the wheat excise tax as provided in section 2-2311 and shall maintain a record of the excise tax for each purchase of wheat on the grain settlement form or check stub showing payment to the grower for each purchase.

(2) The first purchaser shall also maintain a record of all settlements in which an excise tax was not deducted from the payment to the grower.

(3) Such records maintained by the first purchaser shall provide the following information: (a) Name and address of the grower and seller; (b) the date of the purchase; (c) the number of bushels of wheat sold; (d) the net market value of the wheat sold; and (e) the amount of wheat excise tax collected on each purchase. Such records shall be open for inspection and audit by authorized representatives of the board during normal business hours observed by the purchaser.

(4) The first purchaser shall file with the board by the last day of each January, April, July, and October on forms prescribed by the board, a statement of the number of bushels of wheat purchased in Nebraska. Such statement shall include the number of bushels of wheat for which the first purchaser collected the excise tax. At the time the statement is filed, the purchaser shall pay and remit to the board the tax as provided for in section 2-2311.

Source: Laws 1955, c. 5, § 15, p. 63; Laws 1959, c. 8, § 2, p. 106; Laws 1965, c. 16, § 1, p. 148; Laws 1969, c. 21, § 3, p. 195; Laws 1981, LB 11, § 31; Laws 2022, LB805, § 6.
Effective date July 21, 2022.

2-2316 Repealed. Laws 1981, LB 545, § 52.

2-2316.01 Repealed. Laws 1981, LB 11, § 38.

2-2317 Nebraska Wheat Development, Utilization, and Marketing Fund; created; use; investment.

The Nebraska Wheat Development, Utilization, and Marketing Fund is created. All taxes collected by the board pursuant to the Nebraska Wheat Resources Act and any repayments relating to the fund, including license fees or royalties, shall be remitted to the State Treasurer for credit to the fund. The fund shall be used to carry out the act. The board shall at each regular meeting review and approve all expenditures made since its last regular meeting. 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 1955, c. 5, § 17, p. 64; Laws 1969, c. 584, § 30, p. 2359; Laws 1981, LB 11, § 33; Laws 1983, LB 53, § 1; Laws 1987, LB 1, § 14; Laws 1995, LB 7, § 11; Laws 2012, LB905, § 8.

Cross References

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

2-2318 Board; restriction on authority; cooperation with other entities, authorized.

(1) The Nebraska Wheat Development, Utilization, and Marketing Board shall not set up research units or agencies of its own. The board may cooperate with, provide grants to, or contract with any of the following for the purposes described in subdivisions (1) and (5) of section 2-2309, with preference given to private-sector individuals or entities:

(a) A business entity formed by one or more growers;

(b) The Department of Agriculture;

(c) The University of Nebraska Institute of Agriculture and Natural Resources; or

(d) Any other public or private local, state, or national organization.

(2) This section shall not be construed to prohibit the board from exercising its powers under subdivisions (1)(b) and (c) of section 2-2309, including its ability to produce and sell wheat for use as seed without cooperating with, providing grants to, or contracting with any of the individuals or entities described in subsection (1) of this section.

Source: Laws 1955, c. 5, § 18, p. 64; Laws 1981, LB 11, § 35; Laws 1987, LB 1, § 15; Laws 2012, LB905, § 9; Laws 2022, LB805, § 7. Effective date July 21, 2022.

2-2319 Violations; penalty.

Any person violating the Nebraska Wheat Resources Act shall be guilty of a Class III misdemeanor.

Source: Laws 1955, c. 5, § 19, p. 65; Laws 1977, LB 40, § 20; Laws 2012, LB905, § 10.

2-2320 Repealed. Laws 1987, LB 1, § 16.

2-2321 Board; use of funds; restriction.

No funds collected by the board shall be expended directly or indirectly to promote or oppose any candidate for public office or to influence state legislation. The board shall not expend more than twenty-five percent of its annual budget to influence federal legislation.

Source: Laws 1981, LB 11, § 34; Laws 1985, LB 60, § 1.

ARTICLE 24

WEATHER CONTROL

Section

2-2401. Repealed. Laws 1996, LB 966, § 4.
2-2402. Repealed. Laws 1996, LB 966, § 4.
2-2403. Repealed. Laws 1996, LB 966, § 4.
2-2404. Repealed. Laws 1982, LB 542, § 8.
2-2405. Repealed. Laws 1996, LB 966, § 4.
2-2406. Repealed. Laws 1996, LB 966, § 4.
2-2407. Repealed. Laws 1996, LB 966, § 4.
2-2408. Repealed. Laws 1996, LB 966, § 4.
2-2408.01. Repealed. Laws 1996, LB 966, § 4.
2-2408.02. Repealed. Laws 1996, LB 966, § 4.
2-2409. Repealed. Laws 1996, LB 966, § 4.

Section
2-2410. Repealed. Laws 1959, c. 9, § 24.
2-2411. Repealed. Laws 1959, c. 9, § 24.
2-2412. Repealed. Laws 1959, c. 9, § 24.
2-2413. Repealed. Laws 1959, c. 9, § 24.
2-2414. Repealed. Laws 1959, c. 9, § 24.
2-2415. Repealed. Laws 1959, c. 9, § 24.
2-2416. Repealed. Laws 1959, c. 9, § 24.
2-2417. Repealed. Laws 1959, c. 9, § 24.
2-2418. Repealed. Laws 1959, c. 9, § 24.
2-2419. Repealed. Laws 1959, c. 9, § 24.
2-2420. Repealed. Laws 1959, c. 9, § 24.
2-2421. Repealed. Laws 1959, c. 9, § 24.
2-2422. Repealed. Laws 1959, c. 9, § 24.
2-2423. Repealed. Laws 1959, c. 9, § 24.
2-2424. Repealed. Laws 1959, c. 9, § 24.
2-2425. Repealed. Laws 1959, c. 9, § 24.
2-2426. Repealed. Laws 1959, c. 9, § 24.
2-2427. Repealed. Laws 1959, c. 9, § 24.
2-2428. Repealed. Laws 1998, LB 1161, § 98.
2-2429. Repealed. Laws 1998, LB 1161, § 98.
2-2430. Repealed. Laws 1998, LB 1161, § 98.
2-2431. Repealed. Laws 1998, LB 1161, § 98.
2-2432. Repealed. Laws 1998, LB 1161, § 98.
2-2433. Repealed. Laws 1998, LB 1161, § 98.
2-2434. Repealed. Laws 1998, LB 1161, § 98.
2-2435. Repealed. Laws 1998, LB 1161, § 98.
2-2436. Repealed. Laws 1998, LB 1161, § 98.
2-2437. Repealed. Laws 1998, LB 1161, § 98.
2-2438. Repealed. Laws 1998, LB 1161, § 98.
2-2439. Repealed. Laws 1998, LB 1161, § 98.
2-2440. Repealed. Laws 1998, LB 1161, § 98.
2-2441. Repealed. Laws 1998, LB 1161, § 98.
2-2442. Repealed. Laws 1998, LB 1161, § 98.
2-2443. Repealed. Laws 1998, LB 1161, § 98.
2-2444. Repealed. Laws 1998, LB 1161, § 98.
2-2445. Repealed. Laws 1998, LB 1161, § 98.
2-2446. Repealed. Laws 1998, LB 1161, § 98.
2-2447. Repealed. Laws 1998, LB 1161, § 98.
2-2448. Repealed. Laws 1998, LB 1161, § 98.
2-2449. Repealed. Laws 1998, LB 1161, § 98.

2-2401 Repealed. Laws 1996, LB 966, § 4.

2-2402 Repealed. Laws 1996, LB 966, § 4.

2-2403 Repealed. Laws 1996, LB 966, § 4.

2-2404 Repealed. Laws 1982, LB 542, § 8.

2-2405 Repealed. Laws 1996, LB 966, § 4.

2-2406 Repealed. Laws 1996, LB 966, § 4.

2-2407 Repealed. Laws 1996, LB 966, § 4.

2-2408 Repealed. Laws 1996, LB 966, § 4.

2-2408.01 Repealed. Laws 1996, LB 966, § 4.

2-2408.02 Repealed. Laws 1996, LB 966, § 4.

2-2409 Repealed. Laws 1996, LB 966, § 4.

2-2410 Repealed. Laws 1959, c. 9, § 24.

2-2411 Repealed. Laws 1959, c. 9, § 24.

2-2412 Repealed. Laws 1959, c. 9, § 24.

2-2413 Repealed. Laws 1959, c. 9, § 24.

2-2414 Repealed. Laws 1959, c. 9, § 24.

2-2415 Repealed. Laws 1959, c. 9, § 24.

2-2416 Repealed. Laws 1959, c. 9, § 24.

2-2417 Repealed. Laws 1959, c. 9, § 24.

2-2418 Repealed. Laws 1959, c. 9, § 24.

2-2419 Repealed. Laws 1959, c. 9, § 24.

2-2420 Repealed. Laws 1959, c. 9, § 24.

2-2421 Repealed. Laws 1959, c. 9, § 24.

2-2422 Repealed. Laws 1959, c. 9, § 24.

2-2423 Repealed. Laws 1959, c. 9, § 24.

2-2424 Repealed. Laws 1959, c. 9, § 24.

2-2425 Repealed. Laws 1959, c. 9, § 24.

2-2426 Repealed. Laws 1959, c. 9, § 24.

2-2427 Repealed. Laws 1959, c. 9, § 24.

2-2428 Repealed. Laws 1998, LB 1161, § 98.

2-2429 Repealed. Laws 1998, LB 1161, § 98.

2-2430 Repealed. Laws 1998, LB 1161, § 98.

2-2431 Repealed. Laws 1998, LB 1161, § 98.

2-2432 Repealed. Laws 1998, LB 1161, § 98.

2-2433 Repealed. Laws 1998, LB 1161, § 98.

2-2434 Repealed. Laws 1998, LB 1161, § 98.

2-2435 Repealed. Laws 1998, LB 1161, § 98.

2-2436 Repealed. Laws 1998, LB 1161, § 98.

2-2437 Repealed. Laws 1998, LB 1161, § 98.

2-2438 Repealed. Laws 1998, LB 1161, § 98.

2-2439 Repealed. Laws 1998, LB 1161, § 98.

2-2440 Repealed. Laws 1998, LB 1161, § 98.

2-2441 Repealed. Laws 1998, LB 1161, § 98.

2-2442 Repealed. Laws 1998, LB 1161, § 98.

2-2443 Repealed. Laws 1998, LB 1161, § 98.

2-2444 Repealed. Laws 1998, LB 1161, § 98.

2-2445 Repealed. Laws 1998, LB 1161, § 98.

2-2446 Repealed. Laws 1998, LB 1161, § 98.

2-2447 Repealed. Laws 1998, LB 1161, § 98.

2-2448 Repealed. Laws 1998, LB 1161, § 98.

2-2449 Repealed. Laws 1998, LB 1161, § 98.

ARTICLE 25
AGRICULTURAL PRODUCTS RESEARCH AND DEVELOPMENT

Section
2-2501. Transferred to section 81-1278.
2-2502. Transferred to section 81-1279.
2-2503. Repealed. Laws 1967, c. 11, § 8.
2-2504. Transferred to section 81-1280.
2-2504.01. Repealed. Laws 1987, LB 1, § 16.
2-2505. Repealed. Laws 1989, LB 10, § 5.
2-2506. Repealed. Laws 1989, LB 10, § 5.
2-2507. Repealed. Laws 1987, LB 1, § 16.
2-2508. Transferred to section 2-3816.
2-2509. Transferred to section 2-3817.
2-2510. Transferred to section 2-3818.
2-2511. Transferred to section 2-3819.
2-2512. Transferred to section 2-3820.
2-2513. Transferred to section 2-3821.
2-2514. Transferred to section 2-3822.
2-2515. Transferred to section 2-3823.
2-2516. Transferred to section 2-3815.

2-2501 Transferred to section 81-1278.

2-2502 Transferred to section 81-1279.

2-2503 Repealed. Laws 1967, c. 11, § 8.

2-2504 Transferred to section 81-1280.

2-2504.01 Repealed. Laws 1987, LB 1, § 16.

2-2505 Repealed. Laws 1989, LB 10, § 5.

2-2506 Repealed. Laws 1989, LB 10, § 5.

2-2507 Repealed. Laws 1987, LB 1, § 16.

2-2508 Transferred to section 2-3816.

2-2509 Transferred to section 2-3817.

2-2510 Transferred to section 2-3818.

2-2511 Transferred to section 2-3819.

2-2512 Transferred to section 2-3820.

2-2513 Transferred to section 2-3821.

2-2514 Transferred to section 2-3822.

2-2515 Transferred to section 2-3823.

2-2516 Transferred to section 2-3815.

ARTICLE 26
PESTICIDES

Section
2-2601. Repealed. Laws 1993, LB 588, § 39.
2-2602. Repealed. Laws 1993, LB 588, § 39.
2-2603. Repealed. Laws 1993, LB 588, § 39.
2-2604. Repealed. Laws 1993, LB 588, § 39.
2-2605. Repealed. Laws 1993, LB 588, § 39.
2-2606. Repealed. Laws 1993, LB 588, § 39.
2-2607. Repealed. Laws 1993, LB 588, § 39.
2-2608. Repealed. Laws 1993, LB 588, § 39.
2-2609. Repealed. Laws 1993, LB 588, § 39.
2-2610. Repealed. Laws 1993, LB 588, § 39.
2-2611. Repealed. Laws 1993, LB 588, § 39.
2-2612. Repealed. Laws 1993, LB 588, § 39.
2-2613. Repealed. Laws 1993, LB 588, § 39.
2-2614. Repealed. Laws 1993, LB 588, § 39.
2-2615. Repealed. Laws 1978, LB 692, § 6.
2-2616. Repealed. Laws 1993, LB 588, § 39.
2-2617. Repealed. Laws 1993, LB 588, § 39.
2-2618. Repealed. Laws 1993, LB 588, § 39.
2-2619. Repealed. Laws 1993, LB 588, § 39.
2-2620. Repealed. Laws 1993, LB 588, § 39.
2-2621. Repealed. Laws 1993, LB 588, § 39.
2-2622. Act, how cited.
2-2623. Legislative intent.
2-2624. Terms, defined.
2-2625. Local ordinances and resolutions; preemption; regulatory functions; contracts authorized.
2-2626. Department; powers, functions, and duties.
2-2627. Pesticide Administrative Cash Fund; created; use; investment.
2-2628. Registration required; when.
2-2629. Registration; application; contents; department; powers; confidentiality; agent for service of process or consent to jurisdiction.
2-2630. Label; contents; requirements.
2-2631. Registration; expiration; renewal.
2-2632. Registration; denial or change in status; grounds; procedure.
2-2633. Registration for special local need; procedure.
2-2634. Registration and renewal fees; late registration fee.
2-2635. Pesticide dealer license; when required; application; fee; expiration; display; department; powers; disciplinary actions; restricted-use pesticides; records required; registered agent for service of process or consent to jurisdiction.
2-2636. Pesticide applicators; restrictions; department; duties; reciprocity.
2-2637. Commercial and noncommercial licenses; classification; testing; Cooperative Extension Service; conduct training sessions.

Section
2-2638. Commercial applicator license; when required; application; denial, when; fee; resident agent for service of process or consent to jurisdiction.
2-2639. Noncommercial applicator license; application; denial, when; resident agent for service of process or consent to jurisdiction.
2-2640. Commercial and noncommercial applicator licenses; examination required.
2-2641. Private applicator; qualifications; application for license; requirements; fee.
2-2642. Commercial, noncommercial, and private applicator licenses; expiration; renewal; procedure; noncertified applicator; restrictions.
2-2643. Records; requirements.
2-2643.01. License holder; prohibited acts.
2-2643.02. License holder; duties.
2-2643.03. License holder; disciplinary actions; procedure.
2-2644. Repealed. Laws 2002, LB 436, § 29.
2-2645. Violation of act; claim of damages; inspection; failure to file report or cooperate with department; effect.
2-2646. Prohibited acts.
2-2646.01. Pesticide business; owner or operator; liability.
2-2647. Violations; penalties; Attorney General or county attorney; duties.
2-2648. Violations; civil fine; jurisdiction; Attorney General or county attorney; duties.
2-2649. Violations; hearing; order.
2-2649.01. Violation warning letter; contents.
2-2649.02. Notice; requirements; hearings; procedure; request for new hearing.
2-2650. Violations; severity of penalty; considerations.
2-2651. Fines; distribution and collection.
2-2652. Final judgments; failure to satisfy; effect.
2-2653. Duties and responsibilities of department; subject to appropriation.
2-2654. Department order; appeal.
2-2655. Nebraska aerial pesticide business license; when required; liability; exempt operations.
2-2656. Nebraska aerial pesticide business license; application; form; contents; fee; resident agent or consent to jurisdiction.
2-2657. Nebraska aerial pesticide business license; reports and notice required.
2-2658. Nebraska aerial pesticide business license holder; responsibility; disciplinary actions; hearing.
2-2659. Aerial pesticide business; records.

2-2601 Repealed. Laws 1993, LB 588, § 39.

2-2602 Repealed. Laws 1993, LB 588, § 39.

2-2603 Repealed. Laws 1993, LB 588, § 39.

2-2604 Repealed. Laws 1993, LB 588, § 39.

2-2605 Repealed. Laws 1993, LB 588, § 39.

2-2606 Repealed. Laws 1993, LB 588, § 39.

2-2607 Repealed. Laws 1993, LB 588, § 39.

2-2608 Repealed. Laws 1993, LB 588, § 39.

2-2609 Repealed. Laws 1993, LB 588, § 39.

2-2610 Repealed. Laws 1993, LB 588, § 39.

2-2611 Repealed. Laws 1993, LB 588, § 39.

2-2612 Repealed. Laws 1993, LB 588, § 39.

2-2613 Repealed. Laws 1993, LB 588, § 39.

2-2614 Repealed. Laws 1993, LB 588, § 39.

2-2615 Repealed. Laws 1978, LB 692, § 6.

2-2616 Repealed. Laws 1993, LB 588, § 39.

2-2617 Repealed. Laws 1993, LB 588, § 39.

2-2618 Repealed. Laws 1993, LB 588, § 39.

2-2619 Repealed. Laws 1993, LB 588, § 39.

2-2620 Repealed. Laws 1993, LB 588, § 39.

2-2621 Repealed. Laws 1993, LB 588, § 39.

2-2622 Act, how cited.

Sections 2-2622 to 2-2659 shall be known and may be cited as the Pesticide Act.

Source: Laws 1993, LB 588, § 1; Laws 2002, LB 436, § 1; Laws 2010, LB254, § 1.

2-2623 Legislative intent.

The intent of the Pesticide Act is to regulate, in the public interest, the labeling, distribution, storage, transportation, use, application, and disposal of pesticides for the protection of human health and the environment. The Legislature hereby finds that pesticides are valuable to our state's agricultural production and to the protection of humans and the environment from insects, rodents, weeds, and other forms of life which may be pests but that it is essential to the public health and the welfare that pesticides be regulated to prevent adverse effects on humans and the environment. New pesticides are continually being discovered, synthesized, or developed which are valuable for the control of pests and for use as defoliants, desiccants, and plant regulators, but such pesticides may be ineffective, may cause injury to humans, or may cause unreasonably adverse effects on the environment if not properly used. Pesticides may injure humans or animals, either by direct poisoning or by gradual accumulation of pesticide residues in the tissues. Crops or other plants may also be injured by improper use of pesticides, and the drifting or washing of pesticides into streams or lakes may cause appreciable damage to aquatic life. A pesticide used for the purpose of exerting pesticidal action in a crop which is not itself injured by the pesticide may drift and injure other crops or nontarget organisms with which it comes in contact. The monitoring of pesticides in ground water and surface water is essential for human health and the environment. Therefor, it is deemed necessary to provide for regulation of pesticides.

Source: Laws 1993, LB 588, § 2; Laws 2002, LB 436, § 2.

2-2624 Terms, defined.

For purposes of the Pesticide Act:

(1) Active ingredient means:

(a) In the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient that prevents, destroys, repels, or mitigates a pest;

(b) In the case of a plant regulator, an ingredient that, through physiological action, accelerates or retards the rate of growth or rate of maturation or otherwise alters the behavior of an ornamental or crop plant or a product of an ornamental or crop plant;

(c) In the case of a defoliant, an ingredient that causes leaves or foliage to drop from a plant; or

(d) In the case of a desiccant, an ingredient that artificially accelerates the drying of plant tissue;

(2) Administrator means the Administrator of the United States Environmental Protection Agency;

(3) Adulterated means:

(a) That the strength or concentration is not accurately expressed on the labeling under which a pesticide is sold;

(b) That any substance is substituted wholly or in part for the pesticide; or

(c) That any valuable constituent of the pesticide has been wholly or in part abstracted;

(4) Animal means a vertebrate or invertebrate species, including humans, other mammals, birds, fish, and shellfish;

(5) Antidote means a practical treatment used in preventing or lessening ill effects from poisoning, including first aid;

(6) Biological control agent means any living organism applied to or introduced into the environment that is intended to function as a pesticide against another organism;

(7) Bulk means any distribution of a pesticide in a refillable container designed and constructed to accommodate the return and refill of greater than fifty-five gallons of liquid measure or one hundred pounds of dry net weight of the product;

(8) Commercial applicator means any applicator required by the act to obtain a commercial applicator license;

(9) Dealer means any manufacturer, registrant, or distributor who is required to be licensed as such under section 2-2635;

(10) Defoliant means a substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission;

(11) Department means the Department of Agriculture;

(12) Desiccant means a substance or mixture of substances intended to artificially accelerate the drying of plant tissue;

(13) Device means an instrument or contrivance, other than a firearm, that is used to trap, destroy, repel, or mitigate a pest or other form of plant or animal life, other than a human or a bacteria, virus, or other microorganism on or in living humans or other living animals. Device does not include equipment intended to be used for the application of pesticides when sold separately from a pesticide;

(14) Director means the Director of Agriculture or his or her designee;

(15) Distribute means to offer for sale, hold for sale, sell, barter, exchange, supply, deliver, offer to deliver, ship, hold for shipment, deliver for shipment, or release for shipment;

(16) Environment includes water, air, land, plants, humans, and other animals living in or on water, air, or land and interrelationships which exist among these;

(17) Federal act means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq., and any regulations adopted and promulgated under it, as the act and regulations existed on January 1, 2019;

(18) Federal agency means the United States Environmental Protection Agency;

(19) Fungus means any non-chlorophyll-bearing thallophyte, including rust, smut, mildew, mold, yeast, and bacteria, but does not include non-chlorophyll-bearing thallophytes on or in living humans or other living animals or those on or in a processed food or beverage or pharmaceuticals;

(20) Inert ingredient means an ingredient that is not an active ingredient;

(21) Ingredient statement means a statement which contains the name and percentage of each active ingredient and the total percentage of all inert ingredients in the pesticide;

(22) Insect means any of the numerous small invertebrate animals generally having a segmented body and for the most part belonging to the class Insecta, comprising six-legged, usually winged forms such as beetles, bugs, bees, and flies. Insect includes allied classes of arthropods, the members of which are wingless and usually have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice;

(23) Label means the written, printed, or graphic matter on or attached to a pesticide or device or any of its containers or wrappers;

(24) Labeling means all labels and any other written, printed, or graphic matter (a) accompanying the pesticide or device at any time or (b) to which reference is made on a label or in literature accompanying or referring to a pesticide or device, including information distributed in any electronic format, except accurate, nonmisleading references made to a current official publication of a federal or state institution or agency authorized by law to conduct research in the field of pesticides;

(25) License holder means any person licensed under the Pesticide Act;

(26) Licensed certified applicator means any person licensed and certified under the act as a commercial applicator, noncommercial applicator, or private applicator;

(27) Misbranded means that any pesticide meets one or more of the following criteria:

(a) Its labeling bears any statement, design, or graphic representation relative to the pesticide or to its ingredients which is false or misleading in any particular;

(b) It is contained in a package or other container or wrapping which does not conform to the standards established by the administrator pursuant to 7 U.S.C. 136w(c) of the federal act;

(c) It is an imitation of or distributed under the name of another pesticide;

(d) Its label does not bear the registration number assigned under 7 U.S.C. 136e of the federal act to each establishment in which it was produced;

(e) Any word, statement, or other information required by or under authority of the Pesticide Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(f) The labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under 7 U.S.C. 136a(d) of the federal act, are adequate to protect health and the environment;

(g) The label does not contain a danger, warning, symbol, or cautionary statement which may be necessary and if complied with, together with any requirements imposed under the Pesticide Act or 7 U.S.C. 136a(d) of the federal act, is adequate to protect health and the environment;

(h) In the case of a pesticide not registered in accordance with sections 2-2628 and 2-2629 and intended for export, the label does not contain, in words prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, as to render it likely to be noted by the ordinary individual under customary conditions of purchase and use, the words Not Registered for Use in the United States of America;

(i) The label does not bear an ingredient statement on that part of the immediate container, and on the outside container or wrapper of the retail package, if any, through which the ingredient statement on the immediate container cannot be clearly read, which is presented or displayed under customary conditions of purchase, except that a pesticide is not misbranded under this subdivision if:

(i) The size or form of the immediate container or the outside container or wrapper of the retail package makes it impracticable to place the ingredient statement on the part which is presented or displayed under customary conditions of purchase; and

(ii) The ingredient statement appears prominently on another part of the immediate container or outside container or wrapper, permitted by the administrator;

(j) The labeling does not contain a statement of the use classification under which the product is registered;

(k) There is not affixed to its container, and to the outside container or wrapper of the retail package, if any, through which the required information on the immediate container cannot be clearly read, a label bearing:

(i) The name and address of the producer, registrant, or person for whom produced;

(ii) The name, brand, or trademark under which the pesticide is sold;

(iii) The net weight or measure of the content, except that the administrator may permit reasonable variations; and

(iv) When required by regulations of the administrator to effectuate the purposes of the federal act, the registration number assigned to the pesticide under such act and the use classification; or

(l) The pesticide contains any substance or substances in quantities highly toxic to humans, unless the label bears, in addition to any other matter required by the Pesticide Act:

(i) The skull and crossbones;

(ii) The word poison prominently in red on a background of distinctly contrasting color; and

(iii) A statement of a practical first-aid or other treatment in case of poisoning by the pesticide;

(28) Nematode means an invertebrate animal of the phylum Nemathelminthes and class Nematode, an unsegmented roundworm with an elongated, fusiform, or sac-like body covered with cuticle, inhabiting soil, water, plants, or plant parts;

(29) Noncommercial applicator means (a) any applicator who is not a commercial applicator or a private applicator and uses restricted-use pesticides only on property owned or controlled by his or her employer or for a federal entity, state agency, political subdivision of the state, or postsecondary educational institution in this state or (b) any employee or other person acting on behalf of a political subdivision of the state who is not a commercial applicator or a private applicator who uses pesticides for outdoor vector control;

(30) Person means any individual, partnership, limited liability company, association, corporation, or organized group of persons, whether incorporated or not;

(31) Pest means any destructive, detrimental, or undesirable:

(a) Insect, snail, slug, rodent, bird, nematode, fungus, weed, or other form of terrestrial or aquatic plant or animal life, excluding humans; or

(b) Virus, bacteria, or other microorganism, other than a virus, bacteria, or microorganism in or on living humans or other living animals;

(32) Pesticide means a substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, including any biological control agent. Pesticide does not include any article that is a new animal drug within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321(v), as the section existed on January 1, 2019;

(33) Pesticide management plan means a management plan for a specific, identified pesticide to implement a strategy to prevent, monitor, evaluate, and mitigate (a) any occurrence of the pesticide or pesticide breakdown products in ground water and surface water in the state or (b) any other unreasonable adverse effect of the pesticide on humans or the environment;

(34) Plant regulator means a substance or mixture of substances intended through physiological action to accelerate or retard the rate of growth or rate of maturation or otherwise to alter the behavior of an ornamental or crop plant or the product of an ornamental or crop plant but does not include a substance to the extent that it is intended as a plant nutrient, trace element, nutritional chemical, plant inoculant, or soil amendment;

(35) Pollute means to alter the physical, chemical, or biological quality of or to contaminate water in the state, which alteration or contamination renders the water harmful, detrimental, or injurious to humans, the environment, or the public health, safety, or welfare;

(36) Private applicator means an applicator who is not a commercial applicator or a noncommercial applicator and uses or supervises the use of any restricted-use pesticide for purposes of producing any agricultural commodity on property owned, rented by, or under the general control of him or her or his or her employer, or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person. To meet the definition of a private applicator, an employee of an employer described under this subdivision may only provide labor for the pesticide use. An employee who provides restricted-use pesticides or equipment used to apply restricted-use pesticides is a commercial applicator;

(37) Property means any land or water area, including airspace, and any plant, animal, structure, building, contrivance, commodity, or machinery, whether fixed or mobile, appurtenant to or situated on a land or water area or airspace, including any vehicle used for transportation;

(38) Restricted-use pesticide means a pesticide classified as a restricted-use pesticide by the federal agency or any pesticide for which an exemption under 7 U.S.C. 136p of the federal act has been granted;

(39) State management plan means a generic plan developed by the department to implement a strategy to prevent, monitor, evaluate, and mitigate any occurrence of pesticides in ground water and surface water in the state and any specific plans developed when an occurrence has been detected;

(40) State pesticide applicator certification plan means the plan developed by the department to enter into a cooperative agreement with the federal agency to assume the responsibility for the primary enforcement of pesticide use and the training and licensing of certified applicators;

(41) State-limited-use pesticide means any pesticide included on a list of state-limited-use pesticides established by the department pursuant to a pesticide management plan;

(42) Unreasonable adverse effect on humans or the environment means any unreasonable risk to humans or the environment taking into account the severity and longevity of adverse effects of use of the pesticide and also taking into account the economic, social, and environmental costs and benefits of the use of the pesticide. The costs and benefits of a pesticide used for public health purposes shall also weigh any risks of the use of the pesticide against the health risks to be mitigated or controlled by the use of the pesticide;

(43) Vector means any organism capable of transmitting the causative agent of human disease or capable of producing human or animal discomfort or injury, including mosquitoes, flies, fleas, cockroaches, ticks, mites, other insects, mice, and rats; and

(44) Weed means any plant that grows where not wanted.

Source: Laws 1993, LB 267, § 32; Laws 1993, LB 588, § 3; Laws 1994, LB 884, § 7; Laws 2002, LB 436, § 3; Laws 2003, LB 157, § 1; Laws 2006, LB 874, § 2; Laws 2013, LB69, § 1; Laws 2019, LB320, § 1.

2-2625 Local ordinances and resolutions; preemption; regulatory functions; contracts authorized.

Except as specifically provided in the Pesticide Act, the provisions of the act shall preempt ordinances and resolutions by political subdivisions that prohibit or regulate any matter relating to the registration, labeling, distribution, sale, handling, use, application, or disposal of pesticides. The department may contract with a city of the metropolitan or primary class it deems qualified to conduct, on a case-by-case basis, any regulatory functions authorized pursuant to the act relating to the disposal of pesticides except those functions relating to the issuance, suspension, or revocation of permits or any order of probation, suspension, immediate suspension, or revocation.

Source: Laws 1993, LB 588, § 4; Laws 2002, LB 436, § 4.

2-2626 Department; powers, functions, and duties.

The department shall have the following powers, functions, and duties:

(1) To administer, implement, and enforce the Pesticide Act and serve as the lead state agency for the regulation of pesticides. The department shall involve the natural resources districts and other state agencies, including the Department of Environment and Energy or the Department of Natural Resources, in matters relating to water quality. Nothing in the act shall be interpreted in any way to affect the powers of any other state agency or of any natural resources district to regulate for ground water quality or surface water quality as otherwise provided by law;

(2) To be responsible for the development and implementation of a state management plan and pesticide management plans. The Department of Environment and Energy shall be responsible for the adoption of standards for pesticides in surface water, ground water, and drinking water. These standards shall be established as action levels in the state management plan and pesticide management plans at which prevention and mitigation measures are implemented. Such action levels may be set at or below the maximum contaminant level set for any product as set by the federal agency under the federal Safe Drinking Water Act, 42 U.S.C. 300f et seq., as the act existed on January 1, 2021. The Department of Agriculture shall cooperate with and use existing expertise in other state agencies when developing the state management plan and pesticide management plans and shall not hire a hydrologist within the department for such purpose;

(3) After notice and public hearing, to adopt and promulgate rules and regulations providing lists of state-limited-use pesticides for the entire state or for a designated area within the state, subject to the following:

(a) A pesticide shall be included on a list of state-limited-use pesticides if:

(i) The Department of Agriculture determines that the pesticide, when used in accordance with its directions for use, warnings, and cautions and for uses for which it is registered, may without additional regulatory restrictions cause unreasonable adverse effects on humans or the environment, including injury to the applicator or other persons because of acute dermal or inhalation toxicity of the pesticides;

(ii) The water quality standards set by the Department of Environment and Energy pursuant to this section are exceeded; or

(iii) The Department of Agriculture determines that the pesticide requires additional restrictions to meet the requirements of the Pesticide Act, the federal act, or any plan adopted under the Pesticide Act or the federal act;

(b) The Department of Agriculture may regulate the specific time, locations, and conditions restricting the use of a state-limited-use pesticide, including allowable quantities or concentrations, and may require that it be purchased or possessed only with permission or under the direct supervision of the department or its designee;

(c) The Department of Agriculture may require a person authorized to distribute or use a state-limited-use pesticide to maintain records of the person's distribution or use and may require that the records be kept separate from other business records;

(d) The state management plan and pesticide management plans shall be coordinated with the Department of Agriculture and other state agency plans and with other state agencies and with natural resources districts;

(e) The state management plan and pesticide management plans may impose progressively more rigorous pesticide management practices as pesticides are detected in ground water or surface water at increasing fractions of the standards adopted by the Department of Environment and Energy; and

(f) A pesticide management plan may impose progressively more rigorous pesticide management practices to address any unreasonable adverse effect of pesticides on humans or the environment. When appropriate, a pesticide management plan may establish action levels for imposition of such progressively more rigorous management practices based upon measurable indicators of the adverse effect on humans or the environment;

(4) To adopt and promulgate such rules and regulations as are necessary for the enforcement and administration of the Pesticide Act. The regulations may include, but not be limited to, regulations providing for:

(a) The collection of samples, examination of records, and reporting of information by persons subject to the act;

(b) The safe handling, transportation, storage, display, distribution, use, and disposal of pesticides and their containers;

(c) Labeling requirements of all pesticides required to be registered under provisions of the act, except that such regulations shall not impose any requirements for federally registered labels contrary to those required pursuant to the federal act;

(d) Classes of devices which shall be subject to the Pesticide Act;

(e) Reporting and record-keeping requirements for persons distributing or using pesticide products made available under 7 U.S.C. 136i-1 of the federal act and for persons required to keep records under the Pesticide Act;

(f) Methods to be used in the application of pesticides when the Department of Agriculture finds that such regulations are necessary to carry out the purpose and intent of the Pesticide Act. Such regulations may include methods to be used in the application of a restricted-use pesticide or state-limited-use pesticide, may relate to the time, place, manner, methods, materials, amounts, and concentrations in connection with the use of the pesticide, may restrict or prohibit use of the pesticides in designated areas during specified periods of time, and may provide specific examples and technical interpretations of subdivision (4) of section 2-2646. The regulations shall encompass all reason-

able factors which the department deems necessary to prevent damage or injury by drift or misapplication to (i) plants, including forage plants, or adjacent or nearby property, (ii) wildlife in the adjoining or nearby areas, (iii) fish and other aquatic life in waters in reasonable proximity to the area to be treated, (iv) surface water or ground water, and (v) humans, animals, or beneficial insects. In adopting and promulgating such regulations, the department shall give consideration to pertinent research findings and recommendations of other agencies of the state, the federal government, or other reliable sources. The department may, by regulation, require that notice of a proposed use of a pesticide be given to landowners whose property is adjacent to the property to be treated or in the immediate vicinity thereof if the department finds that such notice is necessary to carry out the purpose of the act;

(g) State-limited-use pesticides for the state or for designated areas in the state;

(h) Establishment of the amount of any fee or fine as directed by the act;

(i) Establishment of the components of any state management plan or pesticide management plan;

(j) Establishment of categories for licensed pesticide applicators in addition to those established in 40 C.F.R. part 171, as such regulations existed on January 1, 2019; and

(k) Establishment of a process for the issuance of permits for emergency-use pesticides made available under 7 U.S.C. 136p of the federal act;

(5) To enter any public or private premises at any reasonable time to:

(a) Inspect and sample any equipment authorized or required to be inspected under the Pesticide Act or to inspect the premises on which the equipment is kept or stored;

(b) Inspect or sample any area exposed or reported to be exposed to a pesticide or where a pesticide use has occurred;

(c) Inspect and sample any area where a pesticide is disposed of or stored;

(d) Observe the use and application of and sample any pesticide;

(e) Inspect and copy any records relating to the distribution or use of any pesticide or the issuance of any license, permit, or registration under the act; or

(f) Inspect, examine, or take samples from any application equipment, building, or place owned, controlled, or operated by any person engaging in an activity regulated by the act if, from probable cause, it appears that the application equipment, building, or place contains a pesticide;

(6) To sample, inspect, make analysis of, and test any pesticide found within this state;

(7) To issue and enforce a written or printed order to stop the sale, removal, or use of a pesticide if the Department of Agriculture has reason to believe that the pesticide or use of the pesticide is in violation of any provision of the act. The department shall present the order to the owner or custodian of the pesticide. The person who receives the order shall not distribute, remove, or use the pesticide until the department determines that the pesticide or its use is in compliance with the act. This subdivision shall not limit the right of the department to proceed as authorized by any other provision of the act;

(8)(a) To sue in the name of the director to enjoin any violation of the act. Venue for such action shall be in the county in which the alleged violation occurred, is occurring, or is threatening to occur; and

(b) To request the county attorney or the Attorney General to bring suit to enjoin a violation or threatened violation of the act;

(9) To impose or levy an administrative fine of not more than five thousand dollars for each violation on any person who has violated any provision, requirement, condition, limitation, or duty imposed by the act or rules and regulations adopted and promulgated pursuant to the act. A violation means each action which violates any separate or distinct provision, requirement, condition, limitation, or duty imposed by the act or rules and regulations adopted and promulgated pursuant to the act;

(10) To cause a violation warning letter to be served upon the alleged violator or violators pursuant to the act;

(11) To take reasonable measures to assess and collect all fees and fines prescribed by the act and the rules or regulations adopted under the act;

(12) To access, inspect, and copy all books, papers, records, bills of lading, invoices, and other information relating to the use, manufacture, repackaging, and distribution of pesticides necessary for the enforcement of the act;

(13) To seize, for use as evidence, without formal warrant if probable cause exists, any pesticide which is in violation of the act or is not approved by the Department of Agriculture or which is found to be used or distributed in the violation of the act or the rules and regulations adopted and promulgated under it;

(14) To adopt classifications of restricted-use pesticides as determined by the federal agency under the federal act. In addition to the restricted-use pesticides classified by the administrator, the Department of Agriculture may also determine state-limited-use pesticides for the state or for designated areas within the state as provided in subdivision (3) of this section;

(15) To receive grants-in-aid from any federal entity, and to enter into cooperative agreements with any federal entity, any agency of this state, any subdivision of this state, any agency of another state, any Indian tribe, or any private person for the purpose of obtaining consistency with or assistance in the implementation of the Pesticide Act. The Department of Agriculture may reimburse any such entity from the Pesticide Administrative Cash Fund for the work performed under the cooperative agreement. The department may delegate its administrative responsibilities under the act to cities of the metropolitan and primary classes if it reasonably believes that such cities can perform the responsibilities in a manner consistent with the act and the rules and regulations adopted and promulgated under it;

(16) To prepare and adopt such plans as are necessary to implement any requirements of the federal agency under the federal act;

(17) To request the assistance of the Attorney General or the county attorney in the county in which a violation of the Pesticide Act has occurred with the prosecution or enforcement of any violation of the act;

(18) To enter into a settlement agreement with any person regarding the disposition of any license, permit, registration, or administrative fine;

(19) To issue a cease and desist order pursuant to section 2-2649;

(20) To deny an application or cancel, suspend, or modify the registration of a pesticide pursuant to section 2-2632;

(21) To issue, cancel, suspend, modify, or place on probation any license or permit issued pursuant to the act; and

(22) To make such reports to the federal agency as are required under the federal act.

Source: Laws 1993, LB 588, § 5; Laws 1996, LB 1044, § 38; Laws 2000, LB 900, § 50; Laws 2002, LB 93, § 1; Laws 2002, LB 436, § 5; Laws 2006, LB 874, § 3; Laws 2007, LB296, § 17; Laws 2010, LB254, § 7; Laws 2013, LB69, § 2; Laws 2019, LB302, § 11; Laws 2019, LB320, § 2; Laws 2021, LB148, § 39.

2-2627 Pesticide Administrative Cash Fund; created; use; investment.

The Pesticide Administrative Cash Fund is hereby created. The fund shall be used by the department to aid in defraying the expenses of administering the act. Any money in the Pesticide Administrative Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1993, LB 588, § 6; Laws 1994, LB 1066, § 5; Laws 2001, LB 329, § 3; Laws 2006, LB 874, § 4.

Cross References

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

2-2628 Registration required; when.

(1) Except as provided by subsection (2), (3), or (4) of this section, no pesticide shall be distributed in this state or delivered for transportation or transported in intrastate commerce or between points within the state through a point outside the state unless it is registered with the department pursuant to section 2-2629. The manufacturer or other person whose name appears on the label of the pesticide shall register the pesticide.

(2) Registration shall not be required for the transportation of a pesticide through the state without being unloaded or stored at any point or from one plant or warehouse to another plant or warehouse operated by the same person if the pesticide is used solely at the second plant or warehouse as a constituent of a pesticide that is registered under such section.

(3) Registration shall not be required if the pesticide is distributed under the provisions of an experimental-use permit issued by the federal agency.

(4) Registration may not be required, as determined by the department, if the pesticide is not required to be registered by the federal agency.

Source: Laws 1993, LB 588, § 7; Laws 2019, LB320, § 3.

2-2629 Registration; application; contents; department; powers; confidentiality; agent for service of process or consent to jurisdiction.

(1) The application for registration of a pesticide shall include:

(a) The name and address of the applicant and the name and address of the person whose name shall appear on the pesticide label, if not the applicant's;

(b) The trade name of the pesticide;

(c) A complete copy of all labeling to accompany the pesticide, including any websites or other locations where electronic information about the pesticide may be found, and a statement of all claims to be made for it, including the directions for use;

(d) The use classification, whether for restricted or general use, as provided by the federal act;

(e) The use classification proposed by the applicant if the pesticide is not required by federal law to be registered under a use classification;

(f) Either a designation of a resident agent for service of process or a consent by the applicant to the jurisdiction of this state, for actions taken in the administration and enforcement of the Pesticide Act; and

(g) Other information required by the department for determining the eligibility for registration.

(2) Application information may be provided in electronic format acceptable to the department.

(3) The department may require the applicant to submit the complete formula for a pesticide, including active and inert ingredients, as a prerequisite to registration.

(4) The department may require additional information including a full description of the tests conducted and the results of the tests on which claims are based, either before or after approving the registration of a pesticide. The department may request that additional tests or field monitoring be conducted in Nebraska ecosystems, or reasonably similar ecosystems, in order to determine the validity of assumptions used to register pesticides under the federal act.

(5) Information collected under subsection (3) or (4) of this section shall not be public records. The department shall not reveal such information to other than representatives of the department, the Attorney General or other legal representative of the department when relevant in any judicial proceeding, or any other officials of another Nebraska agency, the federal government, or other states who are similarly prohibited from revealing this information.

Source: Laws 1993, LB 267, § 33; Laws 1993, LB 588, § 8; Laws 2002, LB 436, § 6; Laws 2006, LB 874, § 5; Laws 2009, LB100, § 1; Laws 2013, LB69, § 3; Laws 2019, LB320, § 4.

2-2630 Label; contents; requirements.

(1) Each pesticide distributed in this state shall bear a label containing the following information relating to the pesticide:

(a) The name, brand, or trademark under which the pesticide is distributed;

(b) The name and percentage of each active ingredient and the total percentage of inert ingredients;

(c) Directions for use that are necessary for effecting the purpose for which the product is intended and, if complied with, are adequate for the protection of health and the environment;

(d) The federal agency's designated registration and establishment numbers for the pesticide;

(e) The name and address of the manufacturer, registrant, or person for whom the pesticide was manufactured;

(f) Numbers or other symbols to identify the lot or batch of the manufacturer of the contents of the package; and

(g) A clear display of appropriate dangers, warnings, symbols, and cautionary statements commensurate with the toxicity or use classification of the pesticide.

(2) The labeling of each pesticide distributed in this state shall state the use classification for which the product is registered.

(3) The label bearing the ingredient statement under subdivision (1)(b) of this section shall be on or attached to that part of the immediate container that is presented or displayed under customary conditions of purchase and, if the ingredient statement cannot be clearly read without removing the outer wrapping, on any outer container or wrapper of a retail package.

(4) Any word, statement, or information required by the Pesticide Act to appear on a label or in labeling of a pesticide or device shall be prominently and conspicuously placed so that, if compared with other material on the label or in the labeling, it is likely to be understood by the ordinary individual under customary condition of use.

Source: Laws 1993, LB 588, § 9; Laws 2019, LB320, § 5.

2-2631 Registration; expiration; renewal.

Registration of a pesticide shall expire annually on December 31 unless sooner canceled. A person who applies for renewal of registration shall include in the renewal application only information that is different from the information furnished at the time of the most recent registration or renewal. A registration in effect on December 31 for which a renewal application has been filed and renewal fees have been paid shall continue in effect until the department notifies the applicant that the registration has been renewed or denied renewal.

Source: Laws 1993, LB 588, § 10.

2-2632 Registration; denial or change in status; grounds; procedure.

(1) The department may deny an application for registration of a pesticide under the Pesticide Act or may cancel, suspend, or modify such registration if the department finds that:

(a) The composition of the pesticide does not warrant the proposed claims made for it;

(b) The pesticide, its labeling, or other materials required to be submitted do not comply with the requirements of the Pesticide Act; or

(c) The department has reason to believe that any use of a registered pesticide is in violation of a provision of the Pesticide Act or the federal act or is dangerous or harmful.

(2) The department shall issue written notice of its denial, cancellation, suspension, or modification and shall give such registrant or applicant an opportunity to make necessary corrections or to have a hearing pursuant to the procedure in section 2-2649.02.

(3) After an opportunity at a hearing for presentation of evidence by interested parties, the department may deny, cancel, suspend, or modify the registration of the pesticide if the department finds that:

(a) Use of the pesticide has demonstrated uncontrollable adverse environmental effects;

(b) Use of the pesticide is a detriment to the environment that outweighs the benefits derived from its use;

(c) Even if properly used, the pesticide is detrimental to vegetation except weeds, to domestic animals, or to public health and safety;

(d) A false or misleading statement about the pesticide has been made or implied by the registrant or the registrant's agent, in writing, verbally, or through any form of advertising literature;

(e) The registrant has not complied or the pesticide or its labeling or submitted material does not comply with a requirement of the Pesticide Act, the rules and regulations adopted and promulgated under the act, or the federal act; or

(f) The composition of the pesticide does not warrant the proposed claims made for it.

Source: Laws 1993, LB 588, § 11; Laws 2002, LB 436, § 7; Laws 2019, LB320, § 6.

2-2633 Registration for special local need; procedure.

(1) The department may register a pesticide for additional uses and methods of application not covered by federal regulation but not inconsistent with federal law for the purpose of meeting a special local need.

(2) Before approving a registration under this section, the department shall determine that the applicant meets the other requirements of the Pesticide Act and that a special local need exists.

(3) The department shall notify the federal agency of the issuance of any special local need registration. If the federal agency disapproves of any special local need registration within ninety days after issuance, such registration shall not be effective longer than such time.

Source: Laws 1993, LB 588, § 12.

2-2634 Registration and renewal fees; late registration fee.

(1) As a condition to registration or renewal of registration as required by sections 2-2628 to 2-2633, an applicant shall pay to the department a fee of one hundred sixty dollars for each pesticide to be registered, except that the fee may be increased or decreased by rules and regulations adopted and promulgated pursuant to the Pesticide Act. In no event shall such fee exceed two hundred ten dollars for each pesticide to be registered.

(2) All fees collected under subsection (1) of this section shall be remitted to the State Treasurer for credit as follows:

(a) Thirty dollars of such fee to the Noxious Weed Cash Fund as provided in section 2-958;

(b) Fifty dollars of such fee to the Buffer Strip Incentive Fund as provided in section 2-5106;

(c) Fifty-five dollars of such fee to the Natural Resources Water Quality Fund; and

(d) The remainder of such fee to the Pesticide Administrative Cash Fund.

(3) If a person fails to apply for renewal of registration before January 1 of any year, such person, as a condition to renewal, shall pay a late registration fee equal to twenty-five percent of the fee due and owing per month, not to exceed one hundred percent, for each product to be renewed in addition to the renewal fee. The purpose of the late registration fee is to cover the administrative costs associated with collecting fees, and all money collected as a late registration fee shall be remitted to the State Treasurer for credit to the Pesticide Administrative Cash Fund.

Source: Laws 1993, LB 588, § 13; Laws 1998, LB 1126, § 12; Laws 2001, LB 329, § 4; Laws 2006, LB 874, § 6; Laws 2013, LB69, § 4; Laws 2021, LB90, § 1.

2-2635 Pesticide dealer license; when required; application; fee; expiration; display; department; powers; disciplinary actions; restricted-use pesticides; records required; registered agent for service of process or consent to jurisdiction.

(1) Except as provided in subsection (2) of this section, a person shall not distribute at wholesale or retail or possess pesticides with an intent to distribute them without a pesticide dealer license for each distribution location. Any manufacturer, registrant, or distributor who has no pesticide dealer outlet licensed within this state and who distributes such pesticides directly into this state shall obtain a pesticide dealer license for his, her, or its principal out-of-state location or outlet.

(2) The requirements of subsection (1) of this section shall not apply to:

(a) A commercial applicator or noncommercial applicator licensed under sections 2-2636 to 2-2642 who uses restricted-use pesticides only as an integral part of a pesticide application service and does not distribute any unapplied pesticide;

(b) A federal, state, county, or municipal agency using restricted-use pesticides only for its own program; or

(c) Persons who sell only pesticide products in containers holding fifty pounds or less by weight or one gallon or less by volume and do not sell any restricted-use pesticides or bulk pesticides.

(3) A pesticide dealer may distribute restricted-use pesticides only to:

(a) A licensed pesticide dealer;

(b) A licensed certified applicator issued a license with the appropriate category for using the restricted-use pesticide being distributed;

(c) An applicator issued a license by another state with the appropriate category for using the restricted-use pesticide being distributed;

(d) A noncertified applicator authorized by the Pesticide Act to apply restricted-use pesticides if the licensed certified applicator supervising the noncertified applicator is issued a license with the appropriate category for using the restricted-use pesticide being distributed; or

(e) Any other person if the pesticide dealer maintains records set out in rules and regulations adopted and promulgated pursuant to the act requiring the person to verify in writing that:

(i) The restricted-use pesticide will be delivered to an applicator described in subdivision (3)(b), (c), or (d) of this section; and

(ii) The applicator receiving the restricted-use pesticide acknowledges and agrees to the distribution.

(4) A pesticide dealer license shall expire on December 31 of each year, unless it is suspended or revoked before that date. Such license shall not be transferable to another person or location and shall be prominently displayed to the public in the pesticide dealer's place of business.

(5) If the pesticide dealer has had a license suspended or revoked, or has otherwise had a history of violations of the Pesticide Act, the department may require an additional demonstration of dealer qualifications prior to issuance or renewal of a license to such person.

(6) Application for an initial pesticide dealer license shall be submitted to the department prior to commencing business as a pesticide dealer. Application for renewal of a pesticide dealer license shall be submitted to the department by January 1 of each year. All applications shall be accompanied by an annual license fee of twenty-five dollars. The fee may be increased by the director by rules and regulations adopted and promulgated pursuant to the act. The fee shall not exceed one hundred dollars per license. Application shall be on a form prescribed by the department and shall include the full name of the person applying for such license. If such applicant is a partnership, limited liability company, association, corporation, or organized group of persons, the full name of each member of the firm, partnership, or limited liability company or of the principal officers of the association or corporation shall be given on the application. Such application shall further state the address of each outlet to be licensed, the principal business address of the applicant, the name of the person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the department.

An applicant located outside this state shall file with the department either a written designation of a resident agent for service of process or a written consent to the jurisdiction of this state for actions taken in the administration and enforcement of the act.

If an application for renewal of a pesticide dealer license is not filed before January 1 of the year for which the license is to be issued, an additional fee equal to twenty-five percent of the fee due and owing per month, not to exceed one hundred percent, shall be paid by the applicant before the license may be issued. The purpose of the additional fee is to cover the administrative costs associated with collecting fees.

All fees collected pursuant to this subsection shall be remitted to the State Treasurer for credit to the Pesticide Administrative Cash Fund.

(7) Each licensed pesticide dealer shall be responsible for the acts of each person employed by him or her in the solicitation and distribution of pesticides and all claims and recommendations for use of pesticides. The dealer's license shall be subject to denial, suspension, modification, or revocation after a hearing for any violation of the act, whether committed by the dealer or by the dealer's officer, agent, or employee.

(8) The department shall require each pesticide dealer to maintain records of the dealer's purchases and distribution of all restricted-use pesticides and may require such records to be kept separate from other business records. The department may prescribe by rules and regulations the information to be included in the records. The dealer shall keep such records for a period of three

years and shall provide the department access to examine such records and a copy of any record on request.

Source: Laws 1993, LB 267, § 34; Laws 1993, LB 588, § 14; Laws 1994, LB 884, § 8; Laws 1997, LB 752, § 54; Laws 2001, LB 329, § 5; Laws 2002, LB 436, § 8; Laws 2013, LB69, § 5; Laws 2019, LB320, § 7.

2-2636 Pesticide applicators; restrictions; department; duties; reciprocity.

(1) The department shall license pesticide applicators involved in the categories established in 40 C.F.R. part 171, as the regulation existed on January 1, 2019, and any other categories established pursuant to rules and regulations necessary to meet the requirements of the state. The department may issue a reciprocal license to a pesticide applicator licensed or certified in another state or by a federal agency. Residents of the State of Nebraska are not eligible for reciprocal certification. The department may waive part or all of any license certification examination requirements for a reciprocal license if the other state or federal agency that licensed or certified the pesticide applicator has substantially the same certification examination standards and procedural requirements as required under the Pesticide Act.

(2) A person shall not use a restricted-use pesticide unless the person is:

(a) At least eighteen years of age except as provided in subsection (6) of section 2-2642;

(b) Licensed and authorized by the license to use the restricted-use pesticide in the category covering the proposed pesticide use; or

(c) Working under the direct supervision of a licensed certified applicator pursuant to subsection (5) of section 2-2642.

(3) A person shall not use lawn care or structural pest control general-use pesticides on the property of another person for hire or compensation unless the person is:

(a) Licensed as a commercial applicator; or

(b) At least sixteen years of age and working under the direct supervision of a licensed certified applicator pursuant to subsection (4) of section 2-2642.

(4) An employee or other person acting on behalf of any political subdivision of the state shall not use general-use pesticides for outdoor vector control unless the applicator is:

(a) Licensed as a commercial applicator or a noncommercial applicator; or

(b) At least sixteen years of age and working under the direct supervision of a licensed certified applicator pursuant to subsection (4) of section 2-2642.

Source: Laws 1993, LB 588, § 15; Laws 2002, LB 436, § 9; Laws 2006, LB 874, § 7; Laws 2009, LB100, § 2; Laws 2013, LB69, § 6; Laws 2019, LB320, § 8.

2-2637 Commercial and noncommercial licenses; classification; testing; Cooperative Extension Service; conduct training sessions.

(1) The department may classify commercial and noncommercial licenses under categories according to the subject, method, or place of pesticide application and establish separate testing requirements for certification and licensing in each category. All written examinations for certification shall be the

property of the department. Any person taking such an examination shall return the examination to the director's authorized agent prior to leaving the examination site.

(2) The Cooperative Extension Service of the University of Nebraska (Nebraska Extension), through its county extension educators and specialists in the State of Nebraska, shall conduct training sessions on the use of restricted-use pesticides for private, commercial, and noncommercial applicators which meet the requirements for private applicator certification training established in 40 C.F.R. 171.105, and provide all trainees with thorough comprehension and knowledge on the safe use of restricted-use pesticides and general-use pesticides used by applicators required to be certified pursuant to sections 2-2636 to 2-2642. The Nebraska Extension shall schedule regular and frequent training sessions and shall issue recommendations to the director of satisfactory training for private, commercial, and noncommercial applicators completing the training.

(3) All candidates for certification or recertification shall present valid government-issued identification at training sessions and certification or recertification examinations.

Source: Laws 1993, LB 588, § 16; Laws 2002, LB 436, § 10; Laws 2019, LB320, § 9.

2-2638 Commercial applicator license; when required; application; denial, when; fee; resident agent for service of process or consent to jurisdiction.

(1) An individual who uses restricted-use pesticides on the property of another person in the State of Nebraska for hire or compensation shall meet all certification requirements of the Pesticide Act and the rules and regulations adopted and promulgated under the act and shall be a commercial applicator license holder of a license issued for the categories in which the pesticide use is to be made.

(2) Any person who uses lawn care or structural pest control general-use pesticides on the property of another person in the State of Nebraska for hire or compensation shall be a commercial applicator license holder, except as provided in subsection (3) of section 2-2636, regardless of whether such person uses any restricted-use pesticide.

(3) Application for an original or renewal commercial applicator license shall be made to the department on forms prescribed by the department. The application shall include information as required by the director and be accompanied by a license fee of ninety dollars. The application shall include the applicant's date of birth. The fee may be increased by the director by rules and regulations adopted and promulgated pursuant to the act. The fee shall not exceed one hundred fifty dollars per license. All fees collected shall be remitted to the State Treasurer for credit to the Natural Resources Water Quality Fund.

(4) The department may deny a commercial applicator license if it has determined that:

(a) The applicant has had a license as a licensed certified applicator issued by this state or another state revoked within the last two years;

(b) The applicant has been unable to satisfactorily fulfill certification or licensing requirements;

(c) The applicant for any other reason cannot be expected to be able to fulfill the provisions of the Pesticide Act applicable to the category for which application is made; or

(d) An applicant for an original commercial applicator license has not passed an examination under sections 2-2637 and 2-2640.

(5) An individual to whom a commercial applicator license is issued shall be a licensed certified applicator authorized to use restricted-use pesticides in the categories in which the individual is licensed.

(6) As a condition to issuance of a commercial applicator license, an applicant located outside this state shall file with the department either a written designation of a resident agent for service of process or a written consent to the jurisdiction of this state for actions taken in the administration and enforcement of the act.

Source: Laws 1993, LB 588, § 17; Laws 1997, LB 752, § 55; Laws 2001, LB 329, § 6; Laws 2002, LB 436, § 11; Laws 2006, LB 874, § 8; Laws 2009, LB100, § 3; Laws 2013, LB69, § 7; Laws 2019, LB320, § 10.

2-2639 Noncommercial applicator license; application; denial, when; resident agent for service of process or consent to jurisdiction.

(1) A noncommercial applicator shall meet all certification requirements of the Pesticide Act and shall be a noncommercial applicator license holder of a license issued for the categories in which the pesticide use is to be made.

(2) Application for an original or renewal noncommercial applicator license shall be made to the department on forms prescribed by the department. The application shall include the applicant's date of birth. The department shall not charge a noncommercial applicant a license fee.

(3) The director shall not issue an original noncommercial applicator license before the applicant has passed the applicable examination under sections 2-2637 and 2-2640.

(4) A person to whom a noncommercial applicator license is issued shall be a licensed certified applicator authorized to use restricted-use pesticides in the categories in which the individual is licensed.

(5) The department may deny a noncommercial applicator license if it determines that the applicant:

(a) Has had a license as a licensed certified applicator issued by this state or another state revoked within the last two years;

(b) Has been unable to satisfactorily fulfill certification or licensing requirements;

(c) For any other reason is unable to fulfill the provisions of the Pesticide Act applicable to the category for which application is made;

(d) For an original noncommercial applicator license, has not passed an examination under sections 2-2637 and 2-2640; or

(e) Meets the definition of a private applicator.

(6) As a condition to issuance of a noncommercial applicator license, an applicant located outside this state shall file with the department either a written designation of a resident agent for service of process or a written

consent to the jurisdiction of this state for actions taken in the administration and enforcement of the Pesticide Act.

Source: Laws 1993, LB 588, § 18; Laws 1997, LB 752, § 56; Laws 2002, LB 436, § 13; Laws 2006, LB 874, § 9; Laws 2009, LB100, § 4; Laws 2013, LB69, § 8; Laws 2019, LB320, § 11.

2-2640 Commercial and noncommercial applicator licenses; examination required.

Each person applying for a license as a commercial or noncommercial applicator shall meet the certification requirement of passing an examination demonstrating that the person:

(1) Is properly qualified to perform functions associated with pesticide use to a degree directly related to the nature of the activity and the associated responsibility; and

(2) Has knowledge of the use and effects of restricted-use pesticides in the categories in which the person is to be licensed.

Source: Laws 1993, LB 588, § 19; Laws 2002, LB 436, § 14; Laws 2019, LB320, § 12.

2-2641 Private applicator; qualifications; application for license; requirements; fee.

(1) An individual applying for a license as a private applicator shall meet the certification requirement of (a) undertaking a training session approved by the department or (b) passing an examination showing that the person is properly qualified to perform functions associated with pesticide use to a degree directly related to the nature of the activity and the associated responsibility. The examination shall be approved by the department and monitored by the department or its authorized agent. The application shall include the applicant's date of birth.

(2) All candidates for certification or recertification must present valid government-issued identification at training sessions and certification or recertification examinations.

(3) Application for an original or renewal private applicator license shall be made to the department on forms prescribed by the department and shall be accompanied by a license fee of twenty-five dollars. All fees collected shall be remitted to the State Treasurer for credit to the Natural Resources Water Quality Fund.

Source: Laws 1993, LB 588, § 20; Laws 1997, LB 752, § 57; Laws 2001, LB 329, § 7; Laws 2002, LB 436, § 15; Laws 2006, LB 874, § 10; Laws 2009, LB100, § 5; Laws 2013, LB69, § 9; Laws 2019, LB320, § 13.

2-2642 Commercial, noncommercial, and private applicator licenses; expiration; renewal; procedure; noncertified applicator; restrictions.

(1) Each commercial, noncommercial, and private applicator license shall expire on April 15 following the third year in which it was issued.

(2) Except as provided by subsection (3) of this section, a person having a valid commercial or noncommercial applicator license may renew the license for another three-year period by:

(a) Paying to the department an amount equal to the license fee required by section 2-2638 for commercial applicator licenses or section 2-2639 for noncommercial applicator licenses, if any; and

(b)(i) Undertaking the training approved by the department; or

(ii) Submitting to retesting prior to renewal of the license.

(3) Any person who allows his or her commercial or noncommercial applicator license to expire shall be required to submit to testing prior to the renewal of the license.

(4) A noncertified applicator required by the Pesticide Act to be a licensed certified commercial or noncommercial applicator may use general-use pesticides as a noncertified applicator prior to obtaining an initial license for only one consecutive sixty-day period of time if:

(a) The individual or his or her employer applies to the department for a license as a licensed certified applicator within ten days of making the first pesticide use. Such license application shall include the name and license number of the licensed certified applicator who is supervising the noncertified applicator;

(b) All pesticide uses made by an individual as a noncertified applicator are made under the direct supervision of a licensed certified applicator meeting the requirements of 40 C.F.R. 171.201;

(c) The noncertified applicator has received training meeting the requirements of 40 C.F.R. 171.201; and

(d) The supervising certified applicator remains accessible by voice or electronic means to provide further instructions at all times during the noncertified applicator's use of the pesticide and is able to be physically on the site, should the need arise, where the pesticide use or storage is taking place within a reasonable period of time as established by the director by rules and regulations. Both the licensed certified applicator and noncertified applicator shall be responsible for the acts of the noncertified applicator and each shall be subject to all fines, license actions, and other enforcement actions prescribed by the Pesticide Act for violations under the act. The department may deny or suspend the use of pesticides by a noncertified applicator if it has reasonable cause to believe that such person may not become eligible to become a licensed certified applicator or uses any pesticide in violation of the act.

(5) A noncertified applicator required by the Pesticide Act to be a licensed certified commercial or noncommercial applicator may use a restricted-use pesticide which is not a fumigant, sodium cyanide, or sodium fluoroacetate as a noncertified applicator prior to obtaining an initial license for only one consecutive sixty-day period of time if:

(a) The noncertified applicator complies with the requirements of subsection (4) of this section; and

(b) The noncertified applicator does not apply the restricted-use pesticides aerially.

(6) A noncertified applicator required by the Pesticide Act to be a licensed certified private applicator may apply restricted-use pesticides for the purpose of producing agricultural commodities on property owned or rented by his or her immediate family for one consecutive twenty-four-month period if:

(a) The noncertified applicator is at least sixteen years of age and working under the direct supervision of a licensed private applicator who is an immediate family member;

(b) The noncertified applicator has received training through a training session meeting the requirements of 40 C.F.R. 171.201; and

(c) The supervising certified applicator is in compliance with the requirements of 40 C.F.R. 171.201.

Source: Laws 1993, LB 588, § 21; Laws 2002, LB 436, § 16; Laws 2013, LB69, § 10; Laws 2019, LB320, § 14.

2-2643 Records; requirements.

(1) All applicators applying restricted-use pesticides are required to maintain records of the use of all restricted-use pesticides. Licensed certified applicators who supervise noncertified applicators are required to document and maintain or verify the existence of and have access to the records required to be maintained by 40 C.F.R. 171.201. The department may by rules and regulations prescribe the information to be included in the records.

(2) The department may require a license holder to keep records of the licensee's use of general-use pesticides. The department may by rules and regulations prescribe the information to be included in the records.

(3) The license holder shall keep records required under this section for a period of three years from the date of the pesticide use.

(4) The license holder shall provide the department access to such records and a copy of any requested record pertaining to the use of pesticides.

Source: Laws 1993, LB 588, § 22; Laws 2002, LB 436, § 17; Laws 2019, LB320, § 15.

2-2643.01 License holder; prohibited acts.

A license holder shall not:

(1) Make a pesticide recommendation or use a pesticide in a manner inconsistent with the pesticide's labeling or with the restrictions on the use of the pesticide imposed by the state, the federal agency, or the federal act;

(2) Operate in a faulty, careless, or negligent manner;

(3) Refuse or neglect to keep and maintain the records required by the Pesticide Act or to make reports as required;

(4) Make false or fraudulent records, invoices, or reports;

(5) Use fraud or misrepresentation in making an application for a license or renewal of a license; or

(6) Aid or abet a license holder or an unlicensed person to evade the Pesticide Act, conspire with a license holder or an unlicensed person to evade the act, or allow the license holder's license to be used by another person.

Source: Laws 2002, LB 436, § 18.

2-2643.02 License holder; duties.

A license holder shall comply with the Pesticide Act, the rules and regulations adopted and promulgated pursuant to the act, and any order of the director issued pursuant to the act. A license holder shall not interfere with the

department in the performance of its duties. A license holder acting as a supervisor to a noncertified applicator is required to comply with the requirements of subsections (4), (5), and (6) of section 2-2642.

Source: Laws 2002, LB 436, § 19; Laws 2019, LB320, § 16.

2-2643.03 License holder; disciplinary actions; procedure.

(1) A license holder may be put on probation requiring such person to comply with the conditions set out in an order of probation issued by the director or be ordered to cease and desist from failing to comply or be ordered to pay an administrative fine pursuant to subdivision (9) of section 2-2626 after: (a) The director determines the license holder has not complied with section 2-2643.02; (b) the license holder 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 license holder.

(2) A license issued under the Pesticide Act may be modified or suspended until the license holder complies with the conditions set out in an order issued by the director or for a specific period of time after: (a) The director determines the license holder has not complied with section 2-2643.02; (b) the license holder is given written notice to comply and written notice of the right to a hearing to show cause why the license should not be modified or suspended; and (c) the director finds that issuing an order modifying or suspending the license is appropriate based on the hearing record or on the available information if the hearing is waived by the license holder.

(3) A license may be immediately suspended prior to hearing if: (a) The director determines an immediate danger to the public health, safety, or welfare exists; and (b) the license holder 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. If a license is suspended under this subsection, the license holder may request a date and time for hearing. The director shall accommodate the requested date and time, if possible. In any event, if the license holder requests that the hearing be held within two business days, the director shall set the date and time for the hearing within two business days of the request. If a license holder does not request a hearing date within fifteen days after the suspension, the director shall establish a hearing date and shall notify the license holder of the date and time of such hearing.

(4) A license may be revoked after: (a) The director determines the license holder has committed serious, repeated, or multiple violations of any of the requirements of section 2-2643.02; (b) the license holder 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 license holder.

(5) Any license holder who has a license which has been suspended shall cease operating as a license holder until the license is reinstated. Any license holder who has a license which has been revoked shall cease operating as a license holder until a new license is issued.

(6) The director may terminate any proceedings to suspend or revoke a license or to subject a license holder to an order of the director 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 license holder may no longer be subject to an order of the director if the director determines the conditions which prompted the suspension, revocation, or probation no longer exist.

(7) Proceedings for license modification, suspension, revocation, or probation shall not preclude the department from pursuing other administrative, civil, or criminal actions.

Source: Laws 2002, LB 436, § 20; Laws 2006, LB 874, § 11.

2-2644 Repealed. Laws 2002, LB 436, § 29.

2-2645 Violation of act; claim of damages; inspection; failure to file report or cooperate with department; effect.

(1) A person claiming damages from a pesticide use may file with the department a written report claiming that the person has been damaged. The report shall be filed as soon as possible following the day of the alleged occurrence.

(2) Except as otherwise provided in the Pesticide Act, upon receipt of a report if the department has reasonable cause to believe that a violation of the act has occurred, it shall investigate such report to determine if any violation has occurred and if any enforcement action shall be taken under the act. The department is not required to investigate any complaint that the department determines is made more than ninety days after the person complaining knew of the incident or damages, is outside the scope of the Pesticide Act, or is determined by the department to involve a matter which is frivolous, minor, or insignificant under the intent of the act. If a complaint is investigated, the department shall notify the licensee, owner, or lessee of the property on which the alleged act occurred and any other person who may be charged with responsibility for the damages claimed. The department shall furnish copies of the report to such licensee, owner, lessee, or other person upon receiving a written request. Nothing in this subsection shall be construed to require the department to take enforcement action in any matter.

(3) The department shall inspect damages whenever possible and shall report its findings to the person claiming damage and to the person alleged to have caused the damage. The claimant shall permit the department and the licensee to inspect, within reasonable hours, the property alleged to have been damaged. If the claimant refuses to permit the department to inspect the property alleged to have been damaged, or fails to provide additional information regarding the allegation when requested by the department, the department may decline to investigate the claim.

(4) Failure to file a report shall not bar maintenance of a civil or criminal action. If a person fails to file a report or cooperate with the department and is the only person claiming injury from the particular use of a pesticide, the department may, if in the public interest, refuse to take action or hold a hearing for the denial, suspension, or revocation of a license issued under the act to the person alleged to have caused the damage.

Source: Laws 1993, LB 588, § 24; Laws 2002, LB 436, § 23; Laws 2009, LB100, § 6; Laws 2019, LB320, § 17.

2-2646 Prohibited acts.

It shall be unlawful for any person:

(1) To distribute within the state or deliver for transportation or transport in intrastate commerce or between points within this state through a point outside this state, any of the following:

(a) A pesticide that has not been registered or whose registration has been canceled or suspended under the Pesticide Act;

(b) A pesticide that has a claim, a direction for its use, or labeling that differs from the representations made in connection with its registration;

(c) A pesticide that is not in the registrant's or manufacturer's unbroken immediate container and that is not labeled with the information and in the manner required by the act and any regulations adopted under the act;

(d) A pesticide that is adulterated;

(e) A pesticide or device that is misbranded;

(f) A pesticide in a container that is unsafe due to damage;

(g) A pesticide which differs from its composition as registered; or

(h) A pesticide that has not been colored or discolored as required by the Pesticide Act or the federal act;

(2) To detach, alter, deface, or destroy, wholly or in part, any label or labeling provided for by the Pesticide Act or a rule or regulation adopted under the act;

(3) To add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of the act or any rule or regulation adopted and promulgated under the act;

(4) To use or cause to be used a pesticide contrary to the act, to the labeling of the pesticide, or to a rule or regulation of the department limiting the use of the pesticide, except that it shall not be unlawful to:

(a) Use a pesticide at any dosage, concentration, or frequency less than that specified or recommended on the labeling if the labeling does not specifically prohibit deviation from the specified or recommended dosage, concentration, or frequency or, if the pesticide is a termiticide, it is not used at a rate below the minimum concentration specified or recommended on the label for preconstruction treatments;

(b) Use a pesticide against any target pest not specified on the labeling if the use is for the crop, animal, or site specified or recommended on the labeling and the labeling does not specifically state that the pesticide may be used only for the pests specified or recommended on the labeling;

(c) Employ any method of use not prohibited by the labeling if (i) the labeling does not specifically state that the product may be used only by the methods specified or recommended on the labeling, (ii) the method of use is consistent with the method specified on labeling, and (iii) the method of use does not more than minimally increase the exposure of the pesticide to humans or the environment;

(d) Mix a pesticide or pesticides with a fertilizer or water when such mixture is not prohibited by the labeling if such mixing is consistent with the method of application specified or recommended on the labeling and does not more than minimally increase the exposure of the pesticide to humans or the environment;

(e) Use a pesticide in conformance with 7 U.S.C. 136c, 136p, or 136v of the federal act or section 2-2626; or

(f) Use a pesticide in a manner that the director determines to be consistent with the purposes of the Pesticide Act;

(5) To use a pesticide at any dosage, concentration, or frequency greater than specified or recommended on the labeling unless the labeling allows the greater dosage, concentration, or frequency;

(6) To handle, transport, store, display, advertise, recommend, or distribute a pesticide in a manner that violates any provision of the Pesticide Act or a rule or regulation adopted and promulgated under the act;

(7) To use, cause to be used, dispose, discard, or store a pesticide or pesticide container in a manner that the person knows or should know is:

(a) Likely to adversely affect or cause injury to humans, the environment, vegetation, crops, livestock, wildlife, or pollinating insects;

(b) Likely to pollute a water supply or waterway; or

(c) A violation of the Environmental Protection Act or a rule or regulation adopted and promulgated pursuant to the act;

(8) To use for the person's advantage or reveal, other than to a properly designated state or federal official or employee, to a physician, or in an emergency to a pharmacist or other qualified person for the preparation of an antidote, any information relating to pesticide formulas, trade secrets, or commercial or financial information acquired under the Pesticide Act and marked as privileged or confidential by the registrant;

(9) To commit an act for which a licensed certified applicator's license may be suspended, modified, revoked, or placed on probation under the Pesticide Act whether or not the person committing the act is a licensed certified applicator;

(10) To knowingly or intentionally use, cause to be used, handle, store, or dispose of a pesticide in a manner that causes bodily injury to or the death of a human or that pollutes ground water, surface water, or a water supply;

(11) To fail to obtain a license or to pay all fees and fines as prescribed by an order of the director, the act, and the rules and regulations adopted and promulgated pursuant to the act;

(12) To fail to keep or refuse to make available for examination and copying by the department all books, papers, records, and other information necessary for the enforcement of the act;

(13) To hinder, obstruct, or refuse to assist the director in the performance of his or her duties;

(14) To violate any state management plan or pesticide management plan developed or approved by the department;

(15) To distribute or advertise any restricted-use pesticide for some other purpose other than in accordance with the Pesticide Act and the federal act;

(16) To use any pesticide which is under an experimental-use or emergency-use permit which is contrary to the provisions of such permit;

(17) To fail to follow any order of the department;

(18) Except as authorized by law, to knowingly or intentionally use, cause to be used, handle, store, or dispose of a pesticide on property without the permission of the owner or lawful tenant. Applications for outdoor vector control authorized by a federal or state agency or political subdivision shall not

be in violation of this subdivision when the application is made from public access property and cannot practically be confined to public property;

(19) To knowingly falsify all or part of any application for registration or licensing or any other records required to be maintained pursuant to the Pesticide Act;

(20) To alter or falsify all or part of a license issued by the department; and

(21) To violate any other provision of the act.

Source: Laws 1993, LB 588, § 25; Laws 2002, LB 436, § 24; Laws 2003, LB 157, § 2; Laws 2006, LB 874, § 12; Laws 2009, LB100, § 7; Laws 2010, LB254, § 8; Laws 2013, LB69, § 11; Laws 2019, LB320, § 18.

Cross References

Environmental Protection Act, see section 81-1532.

2-2646.01 Pesticide business; owner or operator; liability.

Any person who owns or operates a business that uses pesticides on the property of another person for hire or compensation shall be responsible for the acts or omissions of anyone using a pesticide for such business. Such person shall be subject to the same fines, license actions, and other enforcement actions prescribed by the Pesticide Act for violations under the act as the applicator.

Source: Laws 2002, LB 436, § 12; Laws 2013, LB69, § 12.

2-2647 Violations; penalties; Attorney General or county attorney; duties.

(1) Any person who commits an unlawful act under the Pesticide Act, any rules and regulations adopted and promulgated under the act, or any final order of the department shall (a) be guilty of a Class III misdemeanor and, upon a subsequent conviction thereof, be guilty of a Class I misdemeanor and (b) be subject to a restraining order, a temporary or permanent injunction, or a mandatory injunction if such person has violated, is violating, or is threatening to violate the act, the rules and regulations adopted and promulgated pursuant to the act, or any final order of the department. The district court of the county where the violation has occurred, is occurring, or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(2) It shall be the duty of the Attorney General or the county attorney of the county in which the violation of the act has occurred, is occurring, or is about to occur, when notified by the director of such violation or threatened violation, to pursue appropriate proceedings without delay pursuant to this section.

(3) 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.

Source: Laws 1993, LB 588, § 26.

2-2648 Violations; civil fine; jurisdiction; Attorney General or county attorney; duties.

(1) Any person who violates any provision of the Pesticide Act, the rules and regulations adopted and promulgated under the act, or any final order of the department may be subject to a civil fine of not more than fifteen thousand dollars for each offense, and in the case of a continuing violation, each day of violation shall constitute a separate offense. The district court of the county where the violation has occurred, is occurring, or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(2) It shall be the duty of the Attorney General or the county attorney of the county in which the violation of the act has occurred, is occurring, or is about to occur, when notified by the director of such violation or threatened violation, to pursue appropriate proceedings without delay pursuant to this section.

Source: Laws 1993, LB 588, § 27.

2-2649 Violations; hearing; order.

Whenever the director has reason to believe that any person has violated any provision of the Pesticide Act, any rule or regulation adopted and promulgated pursuant to the act, or any order of the department, the director may issue a notice of hearing as provided for in section 2-2649.02 requiring the person to appear before the director (1) to show cause why an order should not be entered requiring such person to cease and desist from the violation charged. If after a hearing the director finds such person to be in violation of the act or the rules and regulations, he or she shall enter an order requiring the person to cease and desist from the specific act, practice, or omission, (2) to determine whether an administrative fine should be imposed or levied against the person pursuant to subdivision (9) of section 2-2626, or (3) to determine whether the license of such person should be denied. Proceedings initiated pursuant to this section shall not preclude the department from pursuing other administrative, civil, or criminal actions.

Source: Laws 1993, LB 588, § 28; Laws 2002, LB 436, § 25; Laws 2006, LB 874, § 13.

2-2649.01 Violation warning letter; contents.

Whenever the director has reason to believe that a violation of any provision of the Pesticide Act, any rule or regulation adopted and promulgated pursuant to the act, or any order of the director has occurred, the director may issue a violation warning letter. A violation warning letter shall specify all provisions of the act, rules and regulations, or order alleged to have been violated and the acts or omissions with which the person named in the violation warning letter is charged. A violation warning letter shall become final unless the person named in the violation warning letter, within twenty days after receiving the violation warning letter, requests a hearing before the director. Whenever a hearing is requested pursuant to this section, the director shall issue a notice of hearing as provided for in section 2-2649.02.

Source: Laws 2002, LB 436, § 21.

2-2649.02 Notice; requirements; hearings; procedure; request for new hearing.

Under the Pesticide Act:

(1) Any notice or order shall be personally served on the license holder, the person named in the notice, or a person authorized by the license holder to receive notices and orders of the department or shall be sent by registered or certified mail, return receipt requested, to the last-known address of the license holder, the person named in the notice, or the person authorized to receive such notices and orders. A copy of the notice and the order shall be filed in the records of the department;

(2) A notice to comply under the act shall set forth the acts or omissions with which the license holder or person named in the notice is charged;

(3) A notice of the right of the license holder or person named in the notice to a hearing shall set forth the time and place of the hearing except as provided in subsection (3) of section 2-2643.03. A notice of such right to a hearing shall include notice that the right to a hearing may be waived pursuant to subsection (5) of this section. A notice of the right to a hearing shall include notice of the potential actions that may be taken against the license holder or person named in the notice;

(4) The hearings shall be conducted by the director at the time and place he or she designates. The director shall make a final finding based upon the complete hearing record and issue an order. If the director has suspended a license pursuant to subsection (3) of section 2-2643.03, the director shall sustain, modify, or rescind the order. All hearings shall be in accordance with the Administrative Procedure Act;

(5) A license holder or person named in the notice shall be deemed to waive the right to a hearing if such license holder or person does not come to the hearing at the time and place set forth in the notice described in subsection (3) of this section without requesting the director at least two days before the designated time to change the time and place for the hearing, except that before an order of the director becomes final, the director may designate a different time and place for the hearing if the license holder or person named in the notice shows the director that he or she 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 license holder or person named in the notice waives the right to a hearing, the director shall make a final finding based upon the available information and issue an order. If the director has suspended a license pursuant to subsection (3) of section 2-2643.03, the director shall sustain, modify, or rescind the order; and

(6) 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. An order of the director becomes final upon the expiration of ten days after the entry of the order if no request for a new hearing is made.

Source: Laws 2002, LB 436, § 22.

Cross References

Administrative Procedure Act, see section 84-920.

2-2650 Violations; severity of penalty; considerations.

Whenever a violation of the Pesticide Act has occurred, the following shall be considered when determining the severity or amount of any administrative or

civil fine, the issuance of a cease and desist order, or the disposition of any license:

(1) The culpability and good faith of and any past violations by such person;

(2) The seriousness of the violation, including the amount of any actual or potential risk to human health or environment; and

(3) The extent to which the person derived financial gain as a result of permitting or committing the violation, including a determination of the size of the company itself and the impact on it.

Source: Laws 1993, LB 588, § 29.

2-2651 Fines; distribution and collection.

(1) All money collected as a civil or an administrative fine shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(2) Any civil or administrative fine which remains unpaid for more than sixty days shall constitute a debt to the State of Nebraska which may be collected by lien foreclosure or sued for and recovered in any proper forum 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 1993, LB 588, § 30; Laws 2006, LB 874, § 14.

2-2652 Final judgments; failure to satisfy; effect.

(1) A pesticide dealer or a commercial, noncommercial, or private applicator or an applicant for any such license shall not allow a final judgment against the applicant or licensee for damages arising from a violation of a provision of the Pesticide Act to remain unsatisfied for a period of more than thirty days.

(2) Failure to satisfy within thirty days a final judgment resulting from any activity regulated under the act shall result in automatic suspension or denial of the applicable license.

Source: Laws 1993, LB 588, § 31.

2-2653 Duties and responsibilities of department; subject to appropriation.

Notwithstanding any other provision of the Pesticide Act, the duties and responsibilities of the department under the act shall be subject to adequate federal, cash, and general funding appropriation being made by the Legislature. If adequate funds are not made available under the act, the department shall submit a revised state pesticide applicator certification plan to the federal agency outlining the current program.

Source: Laws 1993, LB 588, § 32; Laws 2019, LB320, § 19.

2-2654 Department order; appeal.

Any person aggrieved by any order of the department may appeal such order to the district court. Such appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1993, LB 588, § 33.

Cross References

Administrative Procedure Act, see section 84-920.

2-2655 Nebraska aerial pesticide business license; when required; liability; exempt operations.

(1) A person shall not apply pesticides by use of an aircraft or cause or arrange aerial pesticide spraying operations to occur on the property of another unless such person holds a Nebraska aerial pesticide business license for the principal departure location of the aircraft to be used. Any person applying pesticides without a principal departure location licensed in this state and who applies pesticides by use of an aircraft within this state may obtain a Nebraska aerial pesticide business license for the principal out-of-state departure location. An individual licensed as a commercial applicator shall apply pesticides by use of an aircraft only under the direct supervision of a person holding a Nebraska aerial pesticide business license. Such supervising license holder is jointly liable with the commercial applicator for any damages caused by the commercial applicator. An individual who is licensed as a commercial applicator with an aerial pest control category may perform aerial operations without the supervision by a person holding a Nebraska aerial pesticide business license if the commercial aerial applicator acquires a Nebraska aerial pesticide business license. For purposes of sections 2-2655 to 2-2659, unless utilizing a licensed aerial pesticide business to perform the application of pesticides by use of an aircraft, a person causing or arranging aerial pesticide spraying operations shall include a person performing billing and collection of payment for aerial spraying services performed, employing or contracting with pilots to perform aerial applications, assigning aerial spraying work orders to pilots, or paying compensation to pilots for aerial spraying services performed whether or not such person is licensed as a commercial applicator.

(2) Sections 2-2655 to 2-2659 shall not apply to aerial spraying operations conducted by federal, state, or local government with public aircraft.

Source: Laws 2010, LB254, § 2.

2-2656 Nebraska aerial pesticide business license; application; form; contents; fee; resident agent or consent to jurisdiction.

(1) An application for an initial or renewal Nebraska aerial pesticide business license shall be submitted to the department prior to the commencement of aerial spraying operations, and an application for renewal of a Nebraska aerial pesticide business license shall be submitted to the department before commencement of application of pesticides. The application shall be accompanied by an annual license fee of one hundred dollars. The license fee may be increased by the director after a public hearing is held outlining the reason for any proposed change in the fee, except that the fee shall not exceed one hundred fifty dollars. All fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Pesticide Administrative Cash Fund. The application shall be on a form prescribed by the department and shall include the following:

(a) The full name and permanent mailing address of the person applying for such license. If such applicant is an individual, the application shall include the applicant's personal mailing address. If such applicant is not an individual, the full name of each partner or member or the full name of the principal officers shall be given on the application;

(b) The location of the applicant's principal departure location and any additional departure locations utilized for aerial spraying operations to be

conducted within Nebraska identified by one of the following: Global Positioning System coordinates, legal description, local address of the site, or airport identifier;

(c) A copy of the applicant's agricultural aircraft operator certificate issued pursuant to 14 C.F.R. part 137 or evidence the applicant holds such a certificate issued by the Federal Aviation Administration;

(d) The aircraft registration number issued by the Federal Aviation Administration pursuant to 14 C.F.R. part 47 of all aircraft owned, rented, or leased by the applicant to be utilized for aerial pesticide applications and all other aircraft utilized in aerial spraying operations conducted by the applicant;

(e) The Nebraska commercial applicator certificate number and current Federal Aviation Administration commercial pilot certificate number of all persons operating aircraft for the aerial application of pesticides during any aerial spraying operations conducted by the applicant; and

(f) Such other information as deemed necessary by the director to determine the suitability of the applicant for licensure as an aerial pesticide business.

(2) An applicant located outside this state shall file with the department either a written designation of a resident agent for service of process or a written consent to the jurisdiction of this state for actions taken in the administration and enforcement of the Pesticide Act.

Source: Laws 2010, LB254, § 3; Laws 2013, LB69, § 13; Laws 2019, LB320, § 20.

2-2657 Nebraska aerial pesticide business license; reports and notice required.

Prior to commencing aerial spraying operations, a person holding a Nebraska aerial pesticide business license shall immediately report all aircraft, pilots, and departure locations utilized for the operation if different from or in addition to the information provided in the person's initial or renewal license application. If a pilot or aircraft is to be utilized for seasonal operations or on a temporary basis, the license holder shall notify the director of the approximate dates of commencement and termination of the utilization of supplemental pilots or aircraft.

Source: Laws 2010, LB254, § 4.

2-2658 Nebraska aerial pesticide business license holder; responsibility; disciplinary actions; hearing.

Each Nebraska aerial pesticide business license holder is responsible for the acts of each person applying pesticides on lands within this state under the direction and supervision of the business. The aerial pesticide business's license is subject to denial, suspension, modification, or revocation after a hearing for any violation of the Pesticide Act, whether committed by the license holder, the license holder's agent, or the license holder's employee.

Source: Laws 2010, LB254, § 5.

2-2659 Aerial pesticide business; records.

Each aerial pesticide business shall maintain records of applications of pesticides by use of an aircraft that are required by the department, and the department may require such records to be kept separate from other business

records. The department may adopt and promulgate rules and regulations regarding the information to be included in the records. The aerial pesticide business shall keep such records for a period of at least three years, provide the department with access to examine such records, and provide the department a copy of any such record upon request.

Source: Laws 2010, LB254, § 6.

ARTICLE 27
TRACTOR TESTS

Section
2-2701. Current tractor model; testing required; application; procedure; sales and use tax exemption; eligibility; temporary permit; failure to meet requirements; effect.
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2-2701.02. Sales permit; information required; notice to purchaser; liability for damages.
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2-2705. Tractor model tests; fees; University of Nebraska Tractor Test Cash Fund; created; use; investment.
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2-2710. Sales without permit; penalty; limitation on claim.
2-2711. Department; enforcement; rules and regulations.
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2-2713. Repealed. Laws 1986, LB 768, § 15.

2-2701 Current tractor model; testing required; application; procedure; sales and use tax exemption; eligibility; temporary permit; failure to meet requirements; effect.

(1) No person shall be permitted to sell or dispose of any current tractor model of one hundred or more horsepower in the State of Nebraska without first having (a) made application for a permit and obtained a permit to sell the tractor model, (b) the model tested by the University of Nebraska onsite or offsite or by any Organization for Economic Cooperation and Development test station, and (c) the model passed upon by the board.

(2) A person may obtain a permit to sell or dispose of a current tractor model of less than one hundred horsepower by meeting the permit requirements of sections 2-2701 to 2-2711. A purchaser of a current tractor model is not eligible to claim the exemption from sales and use tax for agricultural machinery and equipment under section 77-2704.36 unless the current tractor model has been permitted for sale pursuant to sections 2-2701 to 2-2711.

(3) Each and every tractor model presented for testing shall be a stock model and shall not be equipped with any special accessory unless regularly supplied to the trade. Any tractor model not complying with this section shall not be tested under sections 2-2701 to 2-2711. Applications shall be made to the board and shall be accompanied by specifications of the tractor model required by the board and by the applicable fees specified in sections 2-2705 and 2-2705.01.

(4) If an official test application, with the required specifications and fees, is submitted to any Organization for Economic Cooperation and Development test station or to the University of Nebraska and an application for a temporary permit and the fee prescribed in section 2-2705.01 are submitted, the department, with the approval of the board, may issue a temporary permit for the sale of the tractor model specified in the official test application. The date on which the temporary permit terminates shall be fixed by the board. All temporary permits shall be conditioned upon such tractor model being tested at a mutually agreed-upon date, and the person to whom a temporary permit has been issued shall submit a tractor model for testing which conforms to the specifications filed with the official test application. Such tractor model shall be delivered for testing at the mutually agreed-upon date. Upon failure so to do, all such fees deposited by such person shall be forfeited to the University of Nebraska Tractor Test Cash Fund, except that the fee imposed in section 2-2705.01 shall be deposited in and forfeited to the Tractor Permit Cash Fund, and in addition such person shall not be issued any temporary permit for a period of five years from the date such tractor was to be delivered for testing and until such person meets the obligations required under subsection (5) of this section to the department's satisfaction.

(5) All sales of tractors upon which a temporary permit has been issued shall be made subject to the final official test and approval of the tractor model as follows:

(a) If a tractor model upon which a temporary permit has been issued was not submitted for the official test and approval on the mutually agreed-upon date, the person to whom the temporary permit was issued shall repurchase any such tractor sold in Nebraska under the temporary permit. A claim by a purchaser under this subdivision shall be brought within two years after the date of the expiration of the temporary permit; and

(b) If a tractor model upon which a temporary permit has been issued fails in the official test to meet the specifications of the tractor model which were filed with the application and fees, the person to whom the temporary permit was issued shall send a notice, as approved by the department, to any person in Nebraska who has purchased a tractor sold under the temporary permit. The person to whom the temporary permit was issued shall either modify the tractor to meet the specifications filed with the board or remedy to the satisfaction of the purchaser any injury incurred by the purchaser which was caused by the failure of the tractor to meet the specifications claimed. Such person shall be prohibited from modifying sales literature, advertisement claims, or specifications of the tractor to avoid such notice.

Source: Laws 1963, c. 425, art. III, § 36, p. 1394; R.R.S.1943, § 75-336; Laws 1967, c. 480, § 1, p. 1486; Laws 1971, LB 692, § 1; Laws 1986, LB 768, § 2; Laws 2012, LB907, § 1.

2-2701.01 Terms, defined.

For purposes of sections 2-2701 to 2-2711, unless the context otherwise requires:

(1) Board means the University of Nebraska Board of Tractor Test Engineers which shall consist of three engineers under the control of the university;

(2) Current tractor model means any model included in the manufacturer's annual price list of tractors being offered for sale by its dealers or distributors;

(3) Department means the Department of Agriculture;

(4) Director means the Director of Agriculture or his or her authorized representative;

(5) Person means bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, and associations; and

(6) Tractor means a traction machine designed and advertised primarily to supply power to agricultural implements and farmstead equipment. An agricultural tractor propels itself and provides a force in the direction of travel and may provide mechanical, hydraulic, and electrical power and control to enable attached soil-engaging and other agricultural implements to perform their intended function.

Source: Laws 1986, LB 768, § 1; Laws 1989, LB 381, § 1; Laws 1993, LB 121, § 67; Laws 2012, LB907, § 2.

2-2701.02 Sales permit; information required; notice to purchaser; liability for damages.

(1) Any person who applies for a permit to sell a tractor model in the state shall provide to the department at the time of application information on the availability and accessibility of service and replacement parts for such tractor model. Such information shall include the names and addresses of any regional service, parts, or supply dealers, instructions on how to order parts and supplies, and any limitations as to the availability and accessibility of service and replacement parts. Any person who fails to provide the information required in this section shall not be issued a sales permit for the tractor model. The information received by the department pursuant to this section shall be public information.

(2) Any person who initially sells to the ultimate consumer a current tractor model for which a sales permit has been issued after April 17, 1986, shall provide to the purchaser written notice that the information required in subsection (1) of this section has been filed with and is available at the department. Any remedy for failure to comply with this subsection shall be as provided in subsection (3) of this section.

(3) Any person who provides to the department information required in subsection (1) of this section which is inaccurate at the time of application shall be liable for damages to any injured purchaser of the tractor for which a sales permit has been issued, and any person who fails to provide the notice required in subsection (2) of this section shall be liable for damages to the person who purchased such tractor from such person. For purposes of this section, damages may include, but shall not be limited to, loss of profits, the additional cost of shipment of parts, and the additional cost of obtaining parts or services from another provider. In any action brought under this section, the court may award reasonable attorney's fees to the prevailing party.

Source: Laws 1986, LB 768, § 3.

2-2702 Board of Regents of the University of Nebraska; powers and duties.

(1)(a) The Board of Regents of the University of Nebraska shall adopt and promulgate rules and regulations setting forth codes for the official testing of tractors.

(b) The Board of Regents of the University of Nebraska shall adopt procedures for the official testing of agricultural tractors as prescribed by the Organization for Economic Cooperation and Development.

(c) The Board of Regents of the University of Nebraska shall also adopt and promulgate rules and regulations for the testing of tractors as published by the Society of Automotive Engineers and the American Society of Agricultural Engineers.

(2) In addition to the powers and duties prescribed in sections 2-2701 to 2-2711, the University of Nebraska shall have the power to:

(a) Authorize the use of the Nebraska Tractor Testing Laboratory facilities to conduct Organization for Economic Cooperation and Development testing;

(b) Cooperate with the United States Department of Commerce when planning and conducting Organization for Economic Cooperation and Development testing;

(c) Conduct offsite tractor tests; and

(d) Submit and certify tractor test results to the federal government.

Source: Laws 1963, c. 425, art. III, § 37, p. 1395; R.R.S.1943, § 75-337; Laws 1967, c. 480, § 2, p. 1487; Laws 1971, LB 692, § 2; Laws 1986, LB 768, § 4.

2-2703 Tractor model test results; board; duties.

After a tractor model has been duly tested by the University of Nebraska or by any Organization for Economic Cooperation and Development test station, the board shall submit the results of such test to the department. Prior to the issuance of a permanent sales permit by the department to any person for the sale of a tractor model, the board shall compare the test results with the manufacturer's representations as to power, fuel, and other ratings of the tractor model. If any such representations are found to be false, the board shall recommend that the department deny a permit for the sale of such tractor model. Any representation which a person makes with regard to the performance of its tractor at other than the customarily used power outlets shall be subject to test at the option of the board.

Source: Laws 1963, c. 425, art. III, § 38, p. 1395; R.R.S.1943, § 75-338; Laws 1967, c. 480, § 3, p. 1487; Laws 1971, LB 692, § 3; Laws 1986, LB 768, § 5.

2-2703.01 Supplemental sale permit; issuance; testing; when required.

Upon application by any person and payment of the fee required in section 2-2705.01, the board may recommend to the department that a supplemental permit be issued to such person for the sale of a new tractor model based upon the official test results of a previous tractor model. The specifications and performance representations of the new tractor model shall be compared to the official test results of the previous tractor model, and if there are no substantial changes in specifications, performance representations, and the capacity of the new tractor model to meet such specifications and representations of performance, the board shall recommend to the department the issuance of a supplemental permit. The board may require further testing of the new tractor model upon which a permit is sought and may require the person making application to provide for reimbursement for the cost of such tests pursuant to section

2-2705. If further testing is performed, the board shall certify the results of such tests and forward them to the department.

Source: Laws 1986, LB 768, § 6.

2-2704 Repealed. Laws 1986, LB 768, § 15.

2-2705 Tractor model tests; fees; University of Nebraska Tractor Test Cash Fund; created; use; investment.

Application to the board for the testing of a tractor model by the University of Nebraska shall be accompanied by the fee prescribed in section 2-2705.01 and such fee as is prescribed by the Board of Regents of the University of Nebraska as a partial reimbursement for making the application.

Fees collected for the testing of tractors by the Nebraska Tractor Testing Laboratory shall be credited to the University of Nebraska Tractor Test Cash Fund, which fund is hereby created. The fund shall be used by the Nebraska Tractor Testing Laboratory to defray the expenses of testing tractors. Any accrued interest shall also be credited to the fund, except that the cash carryover of such fund from one biennium to the next biennium shall not exceed, by more than fifteen percent, the total cash fund expenditures for the average of the five preceding years. Any amount in excess of such fifteen percent shall be forwarded to the University of Nebraska. 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 Board of Regents of the University of Nebraska may establish and change from time to time as it determines advisable a schedule of fees for such tractor tests, except that such fee schedule shall not include the application fee prescribed in section 2-2705.01.

Source: Laws 1963, c. 425, art. III, § 40, p. 1396; R.R.S.1943, § 75-340; Laws 1967, c. 480, § 5, p. 1488; Laws 1971, LB 692, § 5; Laws 1986, LB 768, § 7; Laws 1995, LB 7, § 13.

Cross References

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

2-2705.01 Application fee; Tractor Permit Cash Fund; created; use; investment.

There is hereby imposed a fee of fifty dollars for each application for any permit made to the board pursuant to sections 2-2701 to 2-2711. Such fee shall be in addition to the fees provided for in section 2-2705 and shall be paid to the department. All fees collected by the department pursuant to this section shall be remitted to the State Treasurer for credit to the Tractor Permit Cash Fund, which fund is hereby created. The fund shall be used by the department to defray the expenses of administering sections 2-2701 to 2-2711. 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 1986, LB 768, § 8; Laws 1995, LB 7, § 14.

Cross References

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

2-2706 Tractor model; failure to meet specifications; retesting permitted; effect on sale of other models; permit specify model.

The failure of any tractor model to meet the specifications and representations made by the applicant shall not prevent the applicant from placing on the market other tractor models that do comply with the permit requirements of sections 2-2701 to 2-2711. Any tractor model that fails in the official test to meet the applicant's own specifications and representations may be retested upon submission of a new test application and the fees prescribed in sections 2-2705 and 2-2705.01. Each and every permit issued under sections 2-2701 to 2-2711 shall specify the model or models included in such permit to sell.

Source: Laws 1963, c. 425, art. III, § 41, p. 1396; R.R.S.1943, § 75-341; Laws 1967, c. 480, § 6, p. 1488; Laws 1971, LB 692, § 6; Laws 1986, LB 768, § 9.

2-2707 Tractor model tests; report; publication; public record.

The report of the official test required by section 2-2701 shall be published by the board and made available in the Biological Systems Engineering Department of the University of Nebraska and in such other places as may be designated by the board. All information pertaining to the official testing of a tractor shall be public record and available for inspection during normal business hours.

Source: Laws 1963, c. 425, art. III, § 42, p. 1397; R.R.S.1943, § 75-342; Laws 1967, c. 480, § 7, p. 1488; Laws 1971, LB 692, § 7; Laws 1972, LB 1284, § 11; Laws 1986, LB 768, § 10; Laws 2012, LB907, § 3.

2-2708 Tractor model tests results; improper use; penalty.

No person shall use the results of such tests in such manner as would cause it to appear that the University of Nebraska or the department intended to recommend the use of any given tractor model in preference to any other model. For any violation of this section the department may suspend any permit issued to that person or deny such person the right of obtaining future permits to sell tractors in the state.

Source: Laws 1963, c. 425, art. III, § 43, p. 1397; R.R.S.1943, § 75-343; Laws 1967, c. 480, § 8, p. 1489; Laws 1971, LB 692, § 8; Laws 1986, LB 768, § 11.

2-2709 Tractor model testing order; discrimination prohibited; exception.

Except when a temporary permit has been issued pursuant to subsection (4) of section 2-2701, tractors shall be tested by the board in the order in which they are presented for such tests, and no discrimination shall be made for or against any person in any manner whatsoever. Complaints alleging a violation of this section shall be heard by the department.

Source: Laws 1963, c. 425, art. III, § 44, p. 1397; R.R.S.1943, § 75-344; Laws 1967, c. 480, § 9, p. 1489; Laws 1971, LB 692, § 9; Laws 1986, LB 768, § 12; Laws 2012, LB907, § 4.

2-2710 Sales without permit; penalty; limitation on claim.

Any person selling a current tractor model of one hundred or more horsepower for use in the State of Nebraska without a permit issued by the department for such tractor model shall be required to repurchase any such tractor model sold in Nebraska for which a permit has not been issued. A claim by a purchaser under this section shall be brought within two years from the date of purchase.

Source: Laws 1963, c. 425, art. III, § 45, p. 1397; R.R.S.1943, § 75-345; Laws 1967, c. 480, § 10, p. 1489; Laws 1971, LB 692, § 10; Laws 1977, LB 40, § 24; Laws 1986, LB 768, § 13; Laws 2012, LB907, § 5.

2-2711 Department; enforcement; rules and regulations.

The department shall have full authority to enforce sections 2-2701 to 2-2711 both by denial of a permit to sell tractors in the state and by injunctive relief in the district court having jurisdiction. The department shall adopt and promulgate rules and regulations as are necessary to enforce the intent and purposes of such sections.

Source: Laws 1963, c. 425, art. III, § 46, p. 1398; R.R.S.1943, § 75-346; Laws 1967, c. 480, § 11, p. 1490; Laws 1971, LB 692, § 11; Laws 1986, LB 768, § 14.

2-2712 Repealed. Laws 1986, LB 768, § 15.

2-2713 Repealed. Laws 1986, LB 768, § 15.

ARTICLE 28

AGRICULTURAL ORGANIZATIONS

Section
2-2801. Agricultural organizations; purpose.
2-2802. Qualifying organizations; constitution and bylaws or articles of incorporation; file; Attorney General; duties.
2-2803. Qualifying organizations; enumerated.
2-2804. Nebraska Dairymen's Association; purpose.
2-2805. State Horticultural Society; purpose.
2-2806. Nebraska Livestock Feeders and Breeders Association; purpose.
2-2807. Nebraska Home Economics Association of Organized Agriculture; purpose.
2-2808. Nebraska Crop Improvement Association; purpose.
2-2809. Western Nebraska Organized Agriculture Association; purpose.
2-2810. Nebraska Poultry Improvement Association; purpose.
2-2811. Nebraska Potato Council; purpose.
2-2812. Appropriations; use; budget.
2-2813. Repealed. Laws 1981, LB 545, § 52.

2-2801 Agricultural organizations; purpose.

The purpose of sections 2-2801 to 2-2812 is to provide for the organization, procedure, and financial support of associations or societies of Nebraska citizens who seek (1) to improve segments of the agricultural industry, homes, and communities of the state, and (2) to cooperate with and to supplement and complement the programs of the University of Nebraska Institute of Agriculture and Natural Resources and other state or local organizations.

Source: Laws 1969, c. 2, § 1, p. 62.

2-2802 Qualifying organizations; constitution and bylaws or articles of incorporation; file; Attorney General; duties.

Qualifying organizations shall adopt and file with the Secretary of State a constitution and bylaws or articles of incorporation which are consistent with the purposes of sections 2-2801 to 2-2812. The Attorney General shall render an opinion as to the eligibility of each association or society to receive and use appropriated funds.

Source: Laws 1969, c. 2, § 2, p. 62.

2-2803 Qualifying organizations; enumerated.

Qualifying organizations shall include, but not be limited to the Nebraska Dairymen's Association, the State Horticultural Society, the Nebraska Livestock Feeders and Breeders Association, the Nebraska Home Economics Association of Organized Agriculture, the Nebraska Crop Improvement Association, the Western Nebraska Organized Agriculture Association, the Nebraska Poultry Improvement Association, and the Nebraska Potato Council.

Source: Laws 1969, c. 2, § 3, p. 63.

2-2804 Nebraska Dairymen's Association; purpose.

The general purposes of the Nebraska Dairymen's Association are (1) to encourage efficient and profitable production through an awards program that recognizes outstanding production in herds and individual animals, (2) to provide dairymen with latest technical and research information to help them improve their herds, and (3) to generate interest in youth by encouraging their participation in junior dairy programs and recognizing their achievements.

Source: Laws 1969, c. 2, § 4, p. 63.

2-2805 State Horticultural Society; purpose.

The general purposes of the State Horticultural Society are (1) to unify horticulturists and organizations throughout the state in cooperation with the University of Nebraska for mutual development, and (2) to promote and develop horticulture in the state through education and research with producers and processors in the areas of ornamentals, fruits and vegetables.

Source: Laws 1969, c. 2, § 5, p. 63.

2-2806 Nebraska Livestock Feeders and Breeders Association; purpose.

The general purposes of the Nebraska Livestock Feeders and Breeders Association are (1) to disseminate information on the principles and practices of improved breeding, feeding, management and marketing of all classes of livestock and livestock products, (2) to assist in the promotion of the general interests of the livestock industry of Nebraska, and (3) to improve the quality of Nebraska livestock products, by cooperation with processors and increase their acceptance by consumers.

Source: Laws 1969, c. 2, § 6, p. 63.

2-2807 Nebraska Home Economics Association of Organized Agriculture; purpose.

The general purpose of the Nebraska Home Economics Association of Organized Agriculture is to acquaint homemakers with new developments in home economics and to stimulate interest in home economics. The program carried on by such organization to achieve this purpose shall be (1) to hold an annual Home Economics Day for homemakers with well-qualified speakers discussing research and new trends in home economics, (2) to prepare exhibits and other visuals for use at the annual meeting and other state and district meetings to acquaint the public with home economics information, and (3) to recognize volunteer leaders in the home economics extension program.

Source: Laws 1969, c. 2, § 7, p. 63.

2-2808 Nebraska Crop Improvement Association; purpose.

The general purposes of the Nebraska Crop Improvement Association are (1) to carry on all activities incident to the certification of crop seeds as authorized by the University of Nebraska Institute of Agriculture and Natural Resources under rules and regulations approved by such college, (2) to maintain and make available to the public, through certification, high quality seeds of superior crop varieties so grown and distributed as to ensure genetic identity and genetic purity, (3) to publicize, advertise, and otherwise promote the merits and use of certified seed, and (4) to carry on educational work for improving the agronomic practices and furthering agricultural interests in the state.

Source: Laws 1969, c. 2, § 8, p. 64.

2-2809 Western Nebraska Organized Agriculture Association; purpose.

The general purpose of the Western Nebraska Organized Agriculture Association is to cooperate with the State of Nebraska, the University of Nebraska Institute of Agriculture and Natural Resources, and other organizations by bringing to the people of rural communities assistance in solving the problems peculiar to western Nebraska through educational meetings, exhibits, demonstrations, and other means.

Source: Laws 1969, c. 2, § 9, p. 64.

2-2810 Nebraska Poultry Improvement Association; purpose.

The general purpose of the Nebraska Poultry Improvement Association is to foster, promote, improve, and protect all branches of the poultry, turkey, egg, and allied industries. For uses appropriate to its purpose and business, such association may take by gift, purchase, devise, or bequest real and personal property, and may handle, manage, control, sell, lease, and mortgage the same. It may employ such necessary agents, servants, fiduciaries, and assistants as may be necessary to care for its business and property.

Source: Laws 1969, c. 2, § 10, p. 64.

2-2811 Nebraska Potato Council; purpose.

The general purpose of the Nebraska Potato Council is to coordinate the interests and objectives of all segments of the Nebraska potato industry. It shall be the official organization representing potato growers, shippers, processors, and dealers in specialized supplies within the state. The council shall foster

improvements in the production and marketing of seed and table stock and the processing of potatoes, and shall sponsor the annual Nebraska Potato Show.

Source: Laws 1969, c. 2, § 11, p. 65.

Cross References

Nebraska Potato Development Act, see section 2-1801.

2-2812 Appropriations; use; budget.

Funds may be appropriated by the Legislature for the use of the qualifying organizations enumerated in section 2-2803 and shall be made available through the University of Nebraska budgeting and accounting facilities or such other channel as the Legislature may direct. Each organization shall electronically file a separate biennial budget request with the Legislature.

Source: Laws 1969, c. 2, § 12, p. 65; Laws 2012, LB782, § 5.

2-2813 Repealed. Laws 1981, LB 545, § 52.

ARTICLE 29
PREDATOR CONTROL AIDE

Section
2-2901. Repealed. Laws 1987, LB 102, § 9.
2-2902. Repealed. Laws 1987, LB 102, § 9.
2-2903. Repealed. Laws 1987, LB 102, § 9.
2-2904. Repealed. Laws 1987, LB 102, § 9.
2-2905. Repealed. Laws 1987, LB 102, § 9.
2-2906. Repealed. Laws 1987, LB 102, § 9.
2-2907. Repealed. Laws 1987, LB 102, § 9.
2-2908. Repealed. Laws 1987, LB 102, § 9.

2-2901 Repealed. Laws 1987, LB 102, § 9.

2-2902 Repealed. Laws 1987, LB 102, § 9.

2-2903 Repealed. Laws 1987, LB 102, § 9.

2-2904 Repealed. Laws 1987, LB 102, § 9.

2-2905 Repealed. Laws 1987, LB 102, § 9.

2-2906 Repealed. Laws 1987, LB 102, § 9.

2-2907 Repealed. Laws 1987, LB 102, § 9.

2-2908 Repealed. Laws 1987, LB 102, § 9.

ARTICLE 30
POULTRY DISEASE CONTROL

Section
2-3001. Repealed. Laws 2020, LB344, § 82.
2-3002. Repealed. Laws 2020, LB344, § 82.
2-3003. Repealed. Laws 2020, LB344, § 82.
2-3004. Repealed. Laws 2020, LB344, § 82.
2-3005. Repealed. Laws 2020, LB344, § 82.
2-3006. Repealed. Laws 2020, LB344, § 82.

Section
2-3007. Repealed. Laws 2020, LB344, § 82.
2-3008. Repealed. Laws 2020, LB344, § 82.

2-3001 Repealed. Laws 2020, LB344, § 82.

2-3002 Repealed. Laws 2020, LB344, § 82.

2-3003 Repealed. Laws 2020, LB344, § 82.

2-3004 Repealed. Laws 2020, LB344, § 82.

2-3005 Repealed. Laws 2020, LB344, § 82.

2-3006 Repealed. Laws 2020, LB344, § 82.

2-3007 Repealed. Laws 2020, LB344, § 82.

2-3008 Repealed. Laws 2020, LB344, § 82.

ARTICLE 31
SOIL AND PLANT ANALYSIS LABORATORIES

Section
2-3101. Act, how cited.
2-3102. Terms, defined.
2-3103. Registration; application; renewal; fees.
2-3104. Enforcement of act; inspection; hindrance; unlawful.
2-3105. Proficiency testing; samples; check; report; fees.
2-3106. Samples; results; rules and regulations; standards; conform.
2-3107. Registration; disciplinary actions; procedure; appeal.
2-3108. Director of Agriculture; rules and regulations.
2-3109. Violations; penalty; enforcement.
2-3110. Soil and Plant Analysis Laboratory Cash Fund; created; use; investment.

2-3101 Act, how cited.

Sections 2-3101 to 2-3110 may be cited as the Nebraska Soil and Plant Analysis Laboratory Act.

Source: Laws 1969, c. 8, § 1, p. 96.

2-3102 Terms, defined.

As used in the Nebraska Soil and Plant Analysis Laboratory Act, unless the context otherwise requires:

(1) Authorized proficiency testing service means proficiency testing done by the department or any person the department approves to perform proficiency testing;

(2) Department means the Department of Agriculture;

(3) Director means the Director of Agriculture or his or her designated employee, representative, or authorized agent;

(4) Laboratory includes, but is not restricted to, facilities or parts of facilities maintained and utilized for the purpose of performing soil and plant analysis and may be either fixed or mobile;

(5) Person includes an individual, partnership, limited liability company, firm, association, corporation, or body corporate or any officer or member of the same;

(6) Proficiency testing means the process of providing check samples to laboratories, collecting check sample test results from the laboratories, and compiling and analyzing check sample test results; and

(7) Soil and plant analysis means the use of biological, chemical, or physical procedures in determining amounts of elements or compounds in the soil or in plants for the express purpose of providing a basis for plant nutrient application.

Source: Laws 1969, c. 8, § 2, p. 96; Laws 1993, LB 121, § 69; Laws 1999, LB 198, § 1.

2-3103 Registration; application; renewal; fees.

It shall be unlawful for any person to operate a laboratory in this state for conducting soil and plant analysis for others unless such laboratory is registered with the department. Application for registration shall be made to the director upon forms furnished by him or her for that purpose. On each initial or renewal application for registration, the director may cause the laboratory facilities, methods, procedures, and equipment to be inspected and shall review the qualifications of personnel. Each application shall specify the types of analysis to be conducted and the names of the analytical methods used. All registrations shall be personal to the holder thereof and shall be nontransferable. Registrations shall expire on June 30 of each year. Each initial and renewal application for registration shall be accompanied by a fee of one hundred dollars.

Source: Laws 1969, c. 8, § 3, p. 97; Laws 1980, LB 633, § 2; Laws 1995, LB 356, § 1.

2-3104 Enforcement of act; inspection; hindrance; unlawful.

The director may appoint qualified personnel to enforce the provisions of the Nebraska Soil and Plant Analysis Laboratory Act and any duly authorized representative of the director may at any reasonable time enter any laboratory for the purpose of reviewing qualifications of personnel, for examination of equipment in use for soil and plant analysis, and for inspection of the laboratory facilities, methods, and procedures. Every laboratory shall be inspected at least once every two years. It shall be unlawful to hinder, impede, or prevent entry by the director or his or her authorized representatives for the performance of their duties.

Source: Laws 1969, c. 8, § 4, p. 97; Laws 1995, LB 356, § 2.

2-3105 Proficiency testing; samples; check; report; fees.

(1) Each laboratory shall be required by the department to participate in proficiency testing provided by an authorized proficiency testing service four times each calendar year. The authorized proficiency testing service shall require the laboratory to analyze at least three soil samples and one plant sample supplied quarterly by the authorized proficiency testing service. Each laboratory receiving check samples shall report check sample test results to the authorized proficiency testing service pursuant to the requirements of such

service. The authorized proficiency testing service shall submit to the director all check sample test results. The director may require each laboratory to submit to the department a copy of the check sample test results reported to the authorized proficiency testing service. The director shall evaluate check sample test results submitted by each laboratory or the authorized proficiency testing service to determine if the laboratory's analysis is accurate within an acceptable range.

(2) When the department is the authorized proficiency testing service, the director shall fix and collect fees for the proficiency testing, which charges shall not exceed the cost of such testing.

Source: Laws 1969, c. 8, § 5, p. 98; Laws 1995, LB 356, § 3; Laws 1999, LB 198, § 2.

2-3106 Samples; results; rules and regulations; standards; conform.

All results obtained from all soil or plant analysis shall be reported in accordance with standard reporting units as established by rule and regulation. Such standard units shall conform insofar as is practical to uniform standards which may be adopted on a regional or national basis.

Source: Laws 1969, c. 8, § 6, p. 98; Laws 1995, LB 356, § 4.

2-3107 Registration; disciplinary actions; procedure; appeal.

If the director determines that a laboratory does not meet the requirements, as established by rule and regulation, with respect to qualified personnel, quality assurance procedures, reporting format, laboratory facilities, equipment, or analytical procedures or methods or that analysis being performed by a laboratory is inaccurate as evidenced by analytical results which are outside of an acceptable range, he or she may issue an order for a hearing pursuant to and in accordance with the Administrative Procedure Act. Following the hearing, the director may suspend or revoke registration or issue a compliance order against the respondent laboratory. Any person aggrieved by the decision of the director may appeal the decision, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1969, c. 8, § 7, p. 98; Laws 1988, LB 352, § 5; Laws 1995, LB 356, § 5; Laws 1999, LB 198, § 3.

Cross References

Administrative Procedure Act, see section 84-920.

2-3108 Director of Agriculture; rules and regulations.

The director is authorized and directed to adopt and promulgate rules and regulations for the establishment of minimum standards for laboratories, equipment, personnel, reporting format, and procedures and methods used in soil or plant analysis to ensure that test results will be accurate within an acceptable range and such other rules and regulations as are necessary to the proper administration and enforcement of the Nebraska Soil and Plant Analysis Laboratory Act. In formulating proposed rules and regulations, the director shall consult with representatives of the fertilizer industry, representatives of the laboratories in this state, and the University of Nebraska Institute of Agriculture and Natural Resources. All rules and regulations shall be estab-

lished in accordance with the procedure defined in the Administrative Procedure Act.

Source: Laws 1969, c. 8, § 8, p. 99; Laws 1988, LB 871, § 3; Laws 1991, LB 663, § 31; Laws 1995, LB 356, § 6; Laws 1999, LB 198, § 4.

Cross References

Administrative Procedure Act, see section 84-920.

2-3109 Violations; penalty; enforcement.

(1) Any person who violates any provision of the Nebraska Soil and Plant Analysis Laboratory Act for which no specific penalty is provided or any rule or regulation made pursuant thereto shall be guilty of a Class IV misdemeanor.

(2) 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 (3) of this section without delay.

(3) In order to insure compliance with the Nebraska Soil and Plant Analysis Laboratory 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 the act. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

Source: Laws 1969, c. 8, § 9, p. 99; Laws 1977, LB 40, § 26; Laws 1988, LB 871, § 4.

2-3110 Soil and Plant Analysis Laboratory Cash Fund; created; use; investment.

All fees collected by the director under the Nebraska Soil and Plant Analysis Laboratory Act shall be remitted to the State Treasurer for credit to the Soil and Plant Analysis Laboratory Cash Fund, which fund is hereby created. Such fund shall be used by the department to aid in defraying the expenses of administering the Nebraska Soil and Plant Analysis Laboratory Act. Any money in the Soil and Plant Analysis Laboratory Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1969, c. 8, § 10, p. 99; Laws 1988, LB 871, § 5; Laws 1995, LB 7, § 15.

Cross References

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

ARTICLE 32

NATURAL RESOURCES

Cross References

Nebraska Natural Resources Commission, see Chapter 2, article 15.
Sales tax exemption, natural resources districts, see section 77-2704.15.

Section
2-3201. Natural resources, declaration of intent.
2-3202. Terms, defined.
2-3203. Natural resources districts; establishment.
2-3203.01. Repealed. Laws 1982, LB 592, § 2.
2-3203.02. Repealed. Laws 2000, LB 900, § 256.
2-3204. Budget.
2-3205. Repealed. Laws 1987, LB 1, § 16.
2-3206. Districts; assumption of assets and liabilities; apportionment; taxes; special fund.
2-3207. Districts; change of boundaries, division, or merger.
2-3208. Districts; proposed changes; procedure.
2-3209. Repealed. Laws 1988, LB 1045, § 12.
2-3210. Districts; change of boundaries, division, or merger; notice.
2-3211. Districts; change of boundaries, division, or merger; hearing; order; notice.
2-3211.01. Districts; change of boundaries, division, or merger; assets, liabilities, obligations, and tax receipts; treatment.
2-3211.02. Districts; change of boundaries, division, or merger; naming or renaming.
2-3211.03. Districts; change of boundaries, division, or merger; commission; duties.
2-3212. Districts; change of boundaries, division, or merger; application; contents; filing; when effective; Secretary of State; duties.
2-3212.01. Merger and transfer of existing districts or boards; effect.
2-3213. Board of directors; membership; number of directors; executive committee; terms.
2-3214. Board of directors; nomination; election; subdistricts; oath.
2-3215. Board; vacancy; how filled.
2-3216. Repealed. Laws 1984, LB 975, § 14.
2-3216.01. Repealed. Laws 1986, LB 548, § 15.
2-3216.02. Repealed. Laws 1986, LB 548, § 15.
2-3216.03. Repealed. Laws 1986, LB 548, § 15.
2-3216.04. Repealed. Laws 1986, LB 548, § 15.
2-3216.05. Repealed. Laws 1986, LB 548, § 15.
2-3216.06. Repealed. Laws 1986, LB 548, § 15.
2-3217. Officers; election; bond; premium.
2-3218. Members of board; compensation; expenses.
2-3219. Board; meetings; time; place; notice.
2-3220. Board; minutes; records; monthly publication of expenditures; publication fee; public inspection.
2-3221. Repealed. Laws 1972, LB 543, § 18.
2-3222. Board; copy of certain documents; furnish to department.
2-3223. Fiscal year; audit; filing; failure to file; withhold funds.
2-3223.01. Audit; failure to file; publication of failure; individuals responsible; penalty.
2-3224. Funds of districts; disbursement; treasurer's bond; secretary report changes.
2-3225. Districts; tax; levies; limitation; use; collection.
2-3226. Districts; bonds; issuance.
2-3226.01. River-flow enhancement bonds; authorized; natural resources districts; powers and duties; acquisition of water rights by purchase or lease; agreements; contents.
2-3226.02. River-flow enhancement bonds; termination of authority; effect on existing bonds and refunding bonds.
2-3226.03. River-flow enhancement bonds; board issuing bonds; powers; terms and conditions.
2-3226.04. River-flow enhancement bonds; use of proceeds.
2-3226.05. River-flow enhancement bonds; costs and expenses of qualified projects; occupation tax authorized; exemption; collection; accounting; lien; foreclosure.
2-3226.06. Repealed. Laws 2014, LB 906, § 23.
2-3226.07. Repealed. Laws 2014, LB 906, § 23.
2-3226.08. Repealed. Laws 2014, LB 906, § 23.
2-3226.09. Repealed. Laws 2014, LB 906, § 23.

Section
2-3226.10. Flood protection and water quality enhancement bonds; authorized; natural resources district; powers and duties; special bond levy authorized.
2-3226.11. Flood protection and water quality enhancement bonds; use of proceeds; certain projects; county board; powers.
2-3226.12. Flood protection and water quality enhancement bonds; warrants authorized.
2-3226.13. Flood protection and water quality enhancement bonds; fees to fiscal agents authorized; warrants and bonds; conditions.
2-3226.14. Flood protection and water quality enhancement bonds; authority to issue; termination.
2-3227. Districts; funds; investment.
2-3228. Districts; powers; Nebraska Association of Resources Districts; retirement plan reports; duties.
2-3229. Districts; purposes.
2-3230. Districts; facilities and works; powers.
2-3230.01. Natural resources districts; construction; approval of other special-purpose district affected.
2-3231. Districts; contracts; powers.
2-3232. Districts; studies, investigations, surveys, and demonstrations; powers.
2-3233. Districts; water rights, waterworks, and property; acquisition; disposal.
2-3234. Districts; eminent domain; powers.
2-3234.01. Districts; grant easements.
2-3234.02. Trails; procedures.
2-3234.03. Trails; terms, defined.
2-3234.04. Trails; public hearing; considerations.
2-3234.05. Trails; establishment; district; powers; findings.
2-3234.06. Trails; right of access.
2-3234.07. Trails; applicability of other law.
2-3234.08. Trails; owner or lessee; duties; negotiated written agreement; requirements.
2-3234.09. Trails; decision of district board; appeal.
2-3235. Districts; cooperation; agreements; authorized; contributions; materials and services to landowners; terms.
2-3236. Districts; appointment as fiscal agent of United States; powers.
2-3237. Districts; weather modification programs; authorized.
2-3238. Districts; develop, store, and transport water; water service; powers; limitation.
2-3239. Districts; assessment of benefits; powers.
2-3240. Districts; certain activities; laws, rules, and regulations applicable.
2-3241. Districts; additional powers.
2-3242. Districts; water projects; powers.
2-3243. Districts; lands owned or controlled by state; preventive and control measures; powers.
2-3244. Repealed. Laws 1986, LB 474, § 16.
2-3245. Repealed. Laws 1986, LB 474, § 16.
2-3246. Repealed. Laws 1986, LB 474, § 16.
2-3247. Repealed. Laws 1986, LB 474, § 16.
2-3248. Repealed. Laws 1986, LB 474, § 16.
2-3249. Repealed. Laws 1986, LB 474, § 16.
2-3250. Repealed. Laws 1986, LB 474, § 16.
2-3251. Repealed. Laws 1972, LB 543, § 18.
2-3252. Districts; improvement project areas; powers; project funding.
2-3252.01. Repealed. Laws 1978, LB 783, § 7.
2-3253. Improvement project areas; petition; contents; hearing.
2-3254. Improvement project areas; petition; hearing; notice; findings of board; apportionment of benefits; lien.
2-3254.01. Improvement project; determination of special benefits; effect.
2-3254.02. Improvement project; bonds; issued; when.
2-3254.03. Improvement project; financed with bonds; requirements; warrants issued; when.
2-3254.04. Improvement project areas; issuance of bonds; special assessment levy; hearing; notice; delinquent; interest.

Section

2-3254.05. Improvement project; special assessment proceeds; sinking fund; use.
2-3254.06. Improvement project; special assessments; lien; delinquency; foreclosure; sale final; when.
2-3254.07. Improvement project; issuance of warrants or bonds; conditions.
2-3255. Improvement projects; apportionment of benefits; appeal.
2-3256. Structural works; supervision by licensed engineer; when.
2-3257. Structural works; design; submit to department; approve or disapprove.
2-3258. Repealed. Laws 1987, LB 1, § 16.
2-3259. Transferred to section 2-3212.01.
2-3260. Repealed. Laws 1985, LB 18, § 1.
2-3261. Repealed. Laws 1977, LB 510, § 10.
2-3262. Repealed. Laws 1994, LB 480, § 31.
2-3263. Transferred to section 2-1586.
2-3264. Transferred to section 2-1587.
2-3265. Transferred to section 2-1588.
2-3266. Transferred to section 2-1589.
2-3267. Transferred to section 2-1590.
2-3268. Transferred to section 2-1591.
2-3269. Transferred to section 2-1592.
2-3270. Transferred to section 2-1593.
2-3271. Transferred to section 2-1594.
2-3272. Transferred to section 2-1595.
2-3273. Transferred to section 2-1596.
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2-3282. Transferred to section 2-1599.
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2-3201 Natural resources, declaration of intent.

The Legislature hereby recognizes and declares that it is essential to the health and welfare of the people of the State of Nebraska to conserve, protect, develop, and manage the natural resources of this state. The Legislature further recognizes the significant achievements that have been made in the conservation, protection, development, and management of our natural resources and declares that the most efficient and economical method of accelerating these achievements is by creating natural resources districts encompassing all of the area of the state. The Legislature further declares that the functions performed by soil and water conservation districts, watershed conservancy districts, watershed districts, advisory watershed improvement boards, and watershed planning boards shall be consolidated and made functions of natural resources districts. The governing boards of such districts and boards shall complete, before July 1, 1972, the necessary transfers and other arrangements so that such boards may on that date begin the operation of natural resources districts. The Legislature further declares that other special-purpose districts, including rural water districts, drainage districts, reclamation districts, and irrigation districts, are hereby encouraged to cooperate with and, if appropriate, to merge with natural resources districts.

Source: Laws 1969, c. 9, § 1, p. 100; Laws 1971, LB 544, § 1; Laws 1972, LB 543, § 1; Laws 1973, LB 335, § 1; Laws 1991, LB 15, § 1; Laws 1998, LB 896, § 1.

This statute does not expressly grant or imply the power to represent the public interest in litigation in which a natural resources district does not otherwise have standing. Metropolitan Utilities Dist. v. Twin Platte NRD, 250 Neb. 442, 550 N.W.2d 907 (1996).

The statutes providing for natural resources districts held to be constitutional. Neeman v. Nebraska Nat. Resources Commission, 191 Neb. 672, 217 N.W.2d 166 (1974).

2-3202 Terms, defined.

For purposes of Chapter 2, article 32, unless the context otherwise requires:

(1) Commission means the Nebraska Natural Resources Commission;

(2) Natural resources district or district means a natural resources district operating pursuant to Chapter 2, article 32;

(3) Board means the board of directors of a district;

(4) Director means a member of the board;

(5) Other special-purpose districts means rural water districts, drainage districts, reclamation districts, and irrigation districts;

(6) Manager means the chief executive hired by a majority vote of the board to be the supervising officer of the district; and

(7) Department means the Department of Natural Resources.

Source: Laws 1969, c. 9, § 2, p. 101; Laws 1972, LB 543, § 2; Laws 1973, LB 335, § 2; Laws 1984, LB 861, § 1; Laws 1988, LB 1045, § 1; Laws 1994, LB 480, § 1; Laws 1998, LB 896, § 2; Laws 2000, LB 900, § 51; Laws 2006, LB 1113, § 13; Laws 2007, LB701, § 5.

Cross References

Department of Natural Resources, see Chapter 61, article 2.
Nebraska Natural Resources Commission, see section 2-1504.

2-3203 Natural resources districts; establishment.

In furtherance of the policy set forth in section 2-3201, the entire area of the State of Nebraska shall be divided into natural resources districts. The Nebraska Natural Resources Commission is hereby authorized and directed to determine and establish the exact number, and the boundaries of such districts. Boundaries of natural resources districts shall be established on or before October 1, 1971. When establishing such boundaries the commission shall employ the following guidelines and criteria:

(1) The primary objective shall be to establish boundaries which provide effective coordination, planning, development and general management of areas which have related resources problems. Such areas shall be determined according to the hydrologic patterns. The recognized river basins of the state shall be utilized in determining and establishing the boundaries for districts and where necessary for more efficient development and general management two or more districts shall be created within a basin;

(2) Boundaries of districts shall follow approximate hydrologic patterns except where doing so would divide a section, a city or village, or produce similar incongruities which might hinder the effective operation of the districts;

(3) Existing boundaries of political subdivisions or voting precincts may be followed wherever feasible. Districts shall be of sufficient size to provide adequate finances and administration for plans of improvement; and

(4) The number of districts shall be not less than sixteen nor more than twenty-eight.

Source: Laws 1969, c. 9, § 3, p. 101; Laws 1971, LB 538, § 1.

2-3203.01 Repealed. Laws 1982, LB 592, § 2.

2-3203.02 Repealed. Laws 2000, LB 900, § 256.

2-3204 Budget.

A natural resources district may adopt either an annual or a biennial budget pursuant to the Nebraska Budget Act.

Source: Laws 2015, LB164, § 1.

Cross References

Nebraska Budget Act, see section 13-501.

2-3205 Repealed. Laws 1987, LB 1, § 16.

2-3206 Districts; assumption of assets and liabilities; apportionment; taxes; special fund.

(1) Each district established pursuant to section 2-3203 shall assume, on July 1, 1972, all assets, liabilities, and obligations of any soil and water conservation district, watershed conservancy district, watershed district, advisory watershed improvement board, and watershed planning board, whose territory is included within the boundaries of such natural resources district. When the jurisdiction of any soil and water conservation district, watershed conservancy district, watershed district, advisory watershed improvement board, or watershed planning board, is included within two or more natural resources districts, the commission shall determine the apportionment of any assets, liabilities, and obligations. Such apportionment shall be based on the proportionate land area included in each district. Physical assets attached to the land shall be assumed by the district in which they are located. The value of attached physical assets shall be considered in the apportionment of the assets, liabilities and obligations, and any such assets may be encumbered or otherwise liquidated by the assuming district to effect the proper apportionment. When any other special-purpose district is merged with a natural resources district as contemplated by section 2-3201 and in the manner provided in sections 2-3207 to 2-3212, the assets, liabilities, and obligations of such special-purpose district shall similarly be assumed by the natural resources district.

(2) All taxes levied in 1971 by the counties of this state pursuant to sections 2-1560 and 31-827 for watershed districts and watershed conservancy districts shall be treated as assets of such watershed districts and watershed conservancy districts and when funds are not available or paid to such districts on account of such levies until after July 1, 1972, such funds shall be paid to the order of the natural resources district or districts within the boundaries of which such watershed district or watershed conservancy district lies, and in the proportionate amounts as other assets are to be divided. Tax funds in possession of or payable to each watershed district and watershed conservancy district at the time of merger shall be put in a special fund of the natural resources district or districts receiving the assets of such watershed district or watershed conservancy district and such funds shall be expended within the boundaries of such watershed district or watershed conservancy district and for projects begun or planned by such districts.

Source: Laws 1969, c. 9, § 6, p. 104; Laws 1971, LB 544, § 3; Laws 1972, LB 543, § 4.

2-3207 Districts; change of boundaries, division, or merger.

With the approval of the affected natural resources districts, the commission may change the boundaries of natural resources districts, merge two or more such districts into a single district, divide one district into two or more new districts, or divide and merge one district into two or more other existing districts. The commission may also provide for the merger with such districts of other special-purpose districts as enumerated in section 2-3201. In exercising such powers, the commission shall be bound by the criteria and procedures provided by sections 2-3201 to 2-3212.

Source: Laws 1969, c. 9, § 7, p. 105; Laws 1972, LB 543, § 5; Laws 1988, LB 1045, § 2.

2-3208 Districts; proposed changes; procedure.

A hearing by the commission on proposed changes as provided by section 2-3207 may be initiated by any of the following methods:

(1) By the commission on its own motion;

(2) By written request of a majority of the directors of any or each natural resources district the boundaries of which are proposed to be changed or which is proposed to be merged or divided;

(3) By petition, signed by twenty-five percent of the legal voters residing within an area proposed to be transferred from one district to an adjoining district by a change in boundaries; or

(4) By formal written request of a majority of the directors or supervisors of any other special-purpose district wishing to merge with a natural resources district.

Such proposals shall be filed with the department and shall set forth any proposed new boundaries and such other information as the commission requires.

Source: Laws 1969, c. 9, § 8, p. 106; Laws 1988, LB 1045, § 3; Laws 2000, LB 900, § 52.

2-3209 Repealed. Laws 1988, LB 1045, § 12.

2-3210 Districts; change of boundaries, division, or merger; notice.

Within sixty days after such proposal for a change of boundaries, division, or merger is made and filed with the department, the department shall begin publication of the notices for a public hearing by the commission on the question. Notice requirements shall be satisfied by publishing such notice at least once a week for three consecutive weeks in a legal newspaper published or of general circulation in the areas affected. A public hearing shall then be held as set forth in the notice and in accord with law and the rules and regulations of the commission.

Source: Laws 1969, c. 9, § 10, p. 106; Laws 1988, LB 1045, § 4; Laws 2000, LB 900, § 53.

2-3211 Districts; change of boundaries, division, or merger; hearing; order; notice.

After the hearing, as provided in section 2-3210, the commission shall determine, upon the basis of the proposed change, upon the facts and evidence presented at such hearing, upon consideration of the standards provided in section 2-3203 relative to the organization of districts, and upon such other relevant facts and information as may be available, whether such changes in boundaries, division, or merger would promote the public interest and would be administratively and financially practicable and feasible. The commission shall make and record such determination and shall make such other determinations as are required by sections 2-3211.01 and 2-3211.02. The department shall notify the boards of the affected districts of such determinations in writing. No change in boundaries, division, or merger as provided for by

sections 2-3207 to 2-3212 shall take place unless the boards of the affected districts favor such change, division, or merger.

Source: Laws 1969, c. 9, § 11, p. 107; Laws 1988, LB 1045, § 5; Laws 2000, LB 900, § 54.

2-3211.01 Districts; change of boundaries, division, or merger; assets, liabilities, obligations, and tax receipts; treatment.

(1) Each new natural resources district established by merging two or more natural resources districts in their entirety shall assume all assets, liabilities, and obligations of such merged districts on the effective date of the merger.

(2) Whenever a change of boundaries, division of one district into two or more new districts, or division and merger of one district into two or more existing districts takes place, the commission shall determine the apportionment of any assets, liabilities, and obligations. Such apportionment shall be based on all relevant factors, including, but not limited to, the proportionate land areas involved in the change, division, or merger and the extent to which particular assets, liabilities, or obligations are related to specific land areas. Interests in real estate and improvements to real estate shall be assumed by the district in which they are located on the effective date of the change, division, or merger. The value of such interests in real estate and improvements shall be considered in the apportionment, and any such assets may be encumbered or otherwise liquidated by the assuming district to effect the proper apportionment.

(3) All taxes levied pursuant to section 2-3225 and all assessments levied pursuant to sections 2-3254 to 2-3254.06 prior to the change of boundaries, division, or merger shall be apportioned by the commission on the basis of the relationship between the intended uses of such taxes or assessments and the land areas involved in the change, division, or merger. Taxes or assessments levied pursuant to sections 2-3254 to 2-3254.06 which are in the possession of or payable to a district at the time of the change, division, or merger and taxes or assessments in the possession of or payable to any other special-purpose district merged into a natural resources district shall be put into a special fund by the district receiving such assets and shall be expended as nearly as practicable for the purposes for which they were levied or assessed.

Source: Laws 1988, LB 1045, § 6; Laws 1996, LB 108, § 3; Laws 1996, LB 1114, § 16.

2-3211.02 Districts; change of boundaries, division, or merger; naming or renaming.

If a change of boundaries, division, or merger requires the naming of a newly created natural resources district or the renaming of one or more existing districts, names shall be given by the commission at the time the change, division, or merger is approved. The board of directors of a district may recommend that a specific name be approved.

Source: Laws 1988, LB 1045, § 7.

2-3211.03 Districts; change of boundaries, division, or merger; commission; duties.

In making the determinations required by sections 2-3211 to 2-3211.02, the commission shall, whenever consistent with applicable law and the state's interests, give effect to the desires of the affected natural resources districts including the terms of any written agreements between or among such districts.

Source: Laws 1988, LB 1045, § 8.

2-3212 Districts; change of boundaries, division, or merger; application; contents; filing; when effective; Secretary of State; duties.

If the boards of the affected districts favor a change of boundaries, division, or merger as provided by sections 2-3211 to 2-3211.02, the various affected district boards shall each present to the Secretary of State an application, signed by them, for a certificate evidencing the change, division, or merger. The application shall be filed with the Secretary of State accompanied with a statement by the department certifying that the change, division, or merger is in accordance with the procedures prescribed in sections 2-3207 to 2-3212 and setting forth any new boundary line or other information as in the judgment of the department and Secretary of State is adequate to describe such change, division, or merger. When the application and statement have been filed with the Secretary of State, the change, division, or merger shall be deemed effective and the Secretary of State shall issue to the directors of each of the districts a certificate evidencing the change, division, or merger.

Source: Laws 1969, c. 9, § 12, p. 107; Laws 1988, LB 1045, § 9; Laws 2000, LB 900, § 55.

2-3212.01 Merger and transfer of existing districts or boards; effect.

Mergers and transfers of existing districts or boards into natural resources districts pursuant to sections 2-3207 to 2-3212 shall not be construed as being discontinuances or dissolutions of those districts or boards as may be provided for by statute outside such sections.

Source: Laws 1969, c. 9, § 59, p. 134; R.S.1943, (1987), § 2-3259; Laws 1994, LB 480, § 3; Laws 1998, LB 896, § 3; Laws 1999, LB 436, § 1.

2-3213 Board of directors; membership; number of directors; executive committee; terms.

(1) Except as provided in subsections (2), (3), and (4) of this section, each district shall be governed by a board of directors of five, seven, nine, eleven, thirteen, fifteen, seventeen, nineteen, or twenty-one members. The board of directors shall determine the number of directors and in making such determination shall consider the complexity of the foreseeable programs and the population and land area of the district. Districts shall be political subdivisions of the state, shall have perpetual succession, and may sue and be sued in the name of the district.

(2) Except as provided by subsection (7) of this section, at least six months prior to the primary election, the board of directors of any natural resources district may change the number of directors for the district and may change subdistrict boundaries to accommodate the increase or decrease in the number of directors.

(3) The board of directors shall utilize the criteria found in subsection (1) of this section and in subsection (2) of section 2-3214 when changing the number of directors. Except as provided in subsection (6) of this section, no director's term of office shall be shortened as a result of any change in the number of directors. Any reduction in the number of directors shall be made as directors take office during the two succeeding elections or more quickly if the reduction can be made by not filling vacancies on the board and if desired by the board. If necessary to preserve staggered terms for directors when the reduction in number is made in whole or in part through unfilled vacancies, the board may provide for a one-time election of one or more directors for a two-year term. The board of directors shall inform the Secretary of State whenever any such one-time elections have been approved. Notwithstanding subsection (1) of this section, the district may be governed by an even number of directors during the two-year transition to a board of reduced number.

(4) Whenever any change of boundaries, division, or merger results in a natural resources district director residing in a district other than the one to which such director was elected to serve, such director shall automatically become a director of the board of the district in which he or she then resides. Except as provided in subsection (6) of this section, all such directors shall continue to serve in office until the expiration of the term of office for which they were elected. Directors or supervisors of other special-purpose districts merged into a natural resources district shall not become members of the natural resources district board but may be appointed as advisors in accordance with section 2-3228. No later than six months after any change, division, or merger, each affected board, in accordance with the procedures and criteria found in this section and section 2-3214, shall determine the number of directors for the district as it then exists, the option chosen for nomination and election of directors, and, if appropriate, new subdistrict boundaries.

(5) To facilitate the task of administration of any board increased in size by a change of boundaries or merger, such board may appoint an executive committee to conduct the business of the board in the interim until board size reductions can be made in accordance with this section. An executive committee shall be empowered to act for the full board in all matters within its purview unless specifically limited by the board in the establishment and appointment of the executive committee.

(6) Notwithstanding the provisions of section 2-3214 and subsections (4) and (5) of this section, the board of directors of any natural resources district established by merging two or more districts in their entirety may provide that all directors be nominated and elected at the first primary and general elections following the year in which such merger becomes effective. In districts which have one director elected from each subdistrict, each director elected from an even-numbered subdistrict shall be elected for a two-year term and each director from an odd-numbered district and any member to be elected at large shall be elected for a four-year term. In districts which have two directors elected from each subdistrict, the four candidates receiving the highest number of votes at the primary election shall be carried over to the general election, and at such general election the candidate receiving the highest number of votes shall be elected for a four-year term and the candidate receiving the second highest number of votes shall be elected for a two-year term. Thereafter each director shall be elected for a four-year term.

(7) Following the release of the 2020 Census of Population data by the United States Department of Commerce, Bureau of the Census, as required by Public Law 94-171, any natural resources district that will have a change to the number of directors as a result of any adjustment to the boundaries of election districts shall provide to the election commissioner or county clerk (a) written notice of the need and necessity of his or her office to perform such adjustments and (b) a revised election district boundary map that has been approved by the board of directors and subjected to all public review and challenge ordinances of the natural resources district by December 30, 2021.

Source: Laws 1969, c. 9, § 13, p. 108; Laws 1971, LB 544, § 4; Laws 1972, LB 543, § 6; Laws 1973, LB 335, § 3; Laws 1978, LB 411, § 2; Laws 1981, LB 81, § 1; Laws 1986, LB 302, § 1; Laws 1986, LB 124, § 1; Laws 1987, LB 148, § 2; Laws 1988, LB 1045, § 10; Laws 1994, LB 76, § 458; Laws 1994, LB 480, § 4; Laws 2021, LB285, § 1.

2-3214 Board of directors; nomination; election; subdistricts; oath.

(1) District directors shall be elected as provided in section 32-513. Elections shall be conducted as provided in the Election Act. Registered voters residing within the district shall be eligible for nomination as candidates for any at-large position or, in those districts that have established subdistricts, as candidates from the subdistrict within which they reside.

(2) The board of directors may choose to: (a) Nominate candidates from subdistricts and from the district at large who shall be elected by the registered voters of the entire district; (b) nominate and elect each candidate from the district at large; or (c) nominate and elect candidates from subdistricts of substantially equal population except that any at-large candidate would be nominated and elected by the registered voters of the entire district. Unless the board of directors determines that the nomination and election of all directors will be at large, the board shall strive to divide the district into subdistricts of substantially equal population, except that no subdistrict shall have a population greater than three times the population of any other subdistrict within the district. Such subdistricts shall be consecutively numbered and shall be established with due regard to all factors including, but not limited to, the location of works of improvement and the distribution of population and taxable values within the district. Except as provided by subsection (7) of this section, the boundaries and numbering of such subdistricts shall be designated at least six months prior to the primary election. Unless the district has been divided into subdistricts with substantially equal population, all directors shall be elected by the registered voters of the entire district and all registered voters shall vote on the candidates representing each subdistrict and any at-large candidates. If a district has been divided into subdistricts with substantially equal population, the board of directors may determine that directors shall be elected only by the registered voters of the subdistrict except that an at-large director may be elected by registered voters of the entire district.

(3) Except in districts which have chosen to have a single director serve from each subdistrict, the number of subdistricts for a district shall equal a number which is one less than a majority of directors for the district. In districts which have chosen to have a single director serve from each subdistrict, the number of subdistricts shall equal a number which is equal to the total number of

directors of the district or which is one less than the total number of directors for the district if there is an at-large candidate. If the number of directors to be elected exceeds the number of subdistricts or if the term of the at-large director expires in districts which have chosen to have a single director serve from each subdistrict, candidates may file as a candidate from the district at large. Registered voters may each cast a number of votes not larger than the total number of directors to be elected.

(4) Elected directors shall take their oath of office in the same manner provided for county officials.

(5) At least six months prior to the primary election, the board of directors may choose to have a single director serve from each subdistrict.

(6) The board of directors shall certify to the Secretary of State and the election commissioners or county clerks the number of directors to be elected at each election and the length of their terms as provided in section 32-404.

(7) Following the release of the 2020 Census of Population data by the United States Department of Commerce, Bureau of the Census, as required by Public Law 94-171, any board of directors requesting the adjustment of the boundaries of election districts shall provide to the election commissioner or county clerk (a) written notice of the need and necessity of his or her office to perform such adjustments and (b) a revised election district boundary map that has been approved by the board and subjected to all public review and challenge ordinances of the natural resources district by December 30, 2021.

Source: Laws 1969, c. 9, § 14, p. 110; Laws 1972, LB 543, § 7; Laws 1974, LB 641, § 1; Laws 1986, LB 302, § 2; Laws 1987, LB 148, § 3; Laws 1994, LB 76, § 459; Laws 1994, LB 480, § 5; Laws 2021, LB285, § 2.

Cross References

Election Act, see section 32-101.

2-3215 Board; vacancy; how filled.

(1) In addition to the events listed in section 32-560, a vacancy on the board shall exist in the event of the removal from the district or subdistrict of any director. After notice and hearing, a vacancy shall also exist in the event of the absence of any director from more than two consecutive regular meetings of the board unless such absences are excused by a majority of the remaining board members.

(2) In the event of a vacancy from any of such causes or otherwise, the board of directors shall give notice of the date the vacancy occurred, the office vacated, and the length of the unexpired term (a) in writing to the Secretary of State and (b) to the public by a notice published in a newspaper of general circulation within the district or by posting in three public places in the district. The vacancy shall be filled by the board of directors. The person so appointed shall have the same qualifications as the person whom he or she succeeds. Such appointments shall be in writing and until a successor is elected and qualified. The written appointment shall be filed with the Secretary of State.

(3)(a) If the vacancy occurs during the first year of the unexpired term or prior to August 1 of the second year of the unexpired term, the appointee shall serve until the first Thursday after the first Tuesday in January next succeeding the next regular general election and at such regular general election a director

shall be elected to succeed the appointee and serve the remainder of the unexpired term.

(b) If the vacancy occurs on or after August 1 of the second year of the unexpired term or during the third or fourth year of the unexpired term, the appointee shall serve until the term expires.

Source: Laws 1969, c. 9, § 15, p. 112; Laws 1972, LB 543, § 8; Laws 1985, LB 569, § 1; Laws 1988, LB 1045, § 11; Laws 1994, LB 76, § 460; Laws 2011, LB154, § 1.

2-3216 Repealed. Laws 1984, LB 975, § 14.

2-3216.01 Repealed. Laws 1986, LB 548, § 15.

2-3216.02 Repealed. Laws 1986, LB 548, § 15.

2-3216.03 Repealed. Laws 1986, LB 548, § 15.

2-3216.04 Repealed. Laws 1986, LB 548, § 15.

2-3216.05 Repealed. Laws 1986, LB 548, § 15.

2-3216.06 Repealed. Laws 1986, LB 548, § 15.

2-3217 Officers; election; bond; premium.

The board shall elect the officers of the district, including a chairman, vice-chairman, secretary, and treasurer. The offices of secretary and treasurer may be held by one person, and such person need not be a member of the board. The officers and employees of the district authorized to handle funds shall furnish and maintain a corporate surety bond in an amount not less than fifty thousand dollars, nor more than the amount of all money coming into their possession or control, to be determined by the governing board. Such bond shall be in a form and with sureties approved by the board of directors, and after approval shall be filed with the Secretary of State. The premium on such bond shall be paid by the district.

Source: Laws 1969, c. 9, § 17, p. 112; Laws 1973, LB 206, § 2.

2-3218 Members of board; compensation; expenses.

Board members shall be reimbursed for their actual and necessary expenses incurred in connection with their duties. Each board may provide a per diem payment for directors not to exceed seventy dollars for each day that a director attends meetings of the board or is engaged in matters concerning the district, but no director shall receive more than three thousand six hundred dollars in any one year. Such per diem payments shall be in addition to and separate from reimbursement for expenses.

Source: Laws 1969, c. 9, § 18, p. 113; Laws 1972, LB 543, § 9; Laws 1981, LB 204, § 10; Laws 1986, LB 374, § 1; Laws 1991, LB 264, § 1; Laws 2001, LB 134, § 1; Laws 2006, LB 32, § 1.

2-3219 Board; meetings; time; place; notice.

(1) The board shall hold regularly scheduled monthly meetings. A majority of the voting members of the board shall constitute a quorum, and the concurrence of a majority of a quorum shall be sufficient to take action and make

determinations. Within ninety days after the creation of any natural resources district, the board thereof shall, by appropriate rules and regulations, designate the regular time and place such meetings are to be held. At the first meeting of each year, the board shall review its program for the preceding year and outline its plans for the following year. At the first regularly scheduled meeting after the completion of the yearly audit required by section 2-3223, it shall present a report of the financial condition of the district and open discussion relevant to the same. Notice shall be given of all board meetings pursuant to section 84-1411.

(2) The boards of directors of the natural resources districts within each river basin shall meet jointly at least twice a year at such times and places as may be mutually agreed upon for the purpose of receiving and coordinating their efforts for the maximum benefit of the basin.

Source: Laws 1969, c. 9, § 19, p. 113; Laws 1972, LB 543, § 10; Laws 1988, LB 812, § 1; Laws 1994, LB 480, § 6; Laws 1998, LB 896, § 4; Laws 1999, LB 436, § 2.

2-3220 Board; minutes; records; monthly publication of expenditures; publication fee; public inspection.

The board shall cause to be kept accurate minutes of its meetings and accurate records and books of account, conforming to approved methods of bookkeeping prescribed by the Auditor of Public Accounts, clearly setting out and reflecting the entire operation, management and business of the district. It shall be the duty of the board to prepare and publish each month in a newspaper or newspapers which provide general coverage of the district, a detailed list of all expenditures of the district for the preceding month. Any newspaper utilized by the district shall publish such list of expenditures for a fee no greater than the rate provided by law for the publication of proceedings of county boards. Such publication shall set forth the amount of each claim approved, the purpose of the claim, and the name of the claimant. Such books and records shall be kept at the principal office of the district or at such other regularly maintained office or offices of the district as shall be designated by the board, with due regard to the convenience of the district, its customers, and electors. Such books and records shall at reasonable business hours be open to public inspection.

Source: Laws 1969, c. 9, § 20, p. 114; Laws 1975, LB 404, § 2.

2-3221 Repealed. Laws 1972, LB 543, § 18.

2-3222 Board; copy of certain documents; furnish to department.

The board shall furnish to the department copies of its rules, regulations, audits, meeting minutes, and other documents as the department may require in the performance of its duties.

Source: Laws 1969, c. 9, § 22, p. 114; Laws 1994, LB 480, § 7; Laws 1998, LB 896, § 5; Laws 1999, LB 436, § 3; Laws 2000, LB 900, § 56.

2-3223 Fiscal year; audit; filing; failure to file; withhold funds.

The fiscal year of the district shall begin July 1 and end June 30. The board of directors, at the close of each year's business, shall cause an audit of the books,

records and financial affairs of the district to be made by a public accountant or firm of such accountants, who shall be selected by the district. The audit shall be in a form prescribed by the Auditor of Public Accounts. Such audits shall show (1) the gross income from all sources of the district for the previous year; (2) the amount expended during the previous year for maintenance; (3) the amount expended during the previous year for improvements and other such programs, including detailed information on bidding and notices of requests for bids and the disposition thereof; (4) the amount of depreciation of the property of the district during the previous year; (5) the number of employees as of June 30 of each year; (6) the salaries paid employees; and (7) all other facts necessary to give an accurate and comprehensive view of the cost of operating, maintaining, and improving the district.

An authenticated copy of the audit shall be filed with the Auditor of Public Accounts within six months after the end of the fiscal year. Upon the failure by the district to file the audit report within such time, the Auditor of Public Accounts shall notify the county treasurer or treasurers within the district who shall withhold distribution of all tax funds to which the district may be entitled pursuant to section 2-3225.

Source: Laws 1969, c. 9, § 23, p. 114; Laws 1972, LB 107, § 1; Laws 1975, LB 404, § 3.

2-3223.01 Audit; failure to file; publication of failure; individuals responsible; penalty.

(1) If any district fails to file a copy of the audit within the required time, pursuant to section 2-3223, the name of the district, the officers, and the board of directors of the district shall be published in a newspaper or newspapers which provide general coverage of the district, which publication shall state the failure of the district and its directors, with publication costs to be paid by the district.

(2) Any officer or member of the board of directors responsible for such failure to file shall be guilty of a Class IV misdemeanor.

Source: Laws 1975, LB 404, § 4; Laws 1977, LB 40, § 27.

2-3224 Funds of districts; disbursement; treasurer's bond; secretary report changes.

Funds of the district shall be paid out or expended only upon the authorization or approval of the board of directors and by check, draft, warrant, or other instrument in writing, signed by the treasurer, assistant treasurer, or such other officer, employee or agent of the district as shall be authorized by the treasurer to sign in his behalf; *Provided,* such authorization shall be in writing and filed with the secretary of the district; *and provided further,* in the event that the treasurer's bond shall not expressly insure the district against loss resulting from the fraudulent, illegal, negligent, or otherwise wrongful or unauthorized acts or conduct by or on the part of any and every person thus authorized, there shall be procured and filed with the secretary of the district, together with the authorization, a corporate surety bond, effective for protection against such loss, in such form and amount and with such corporate surety as shall be approved in writing by the signed endorsement thereon of any two officers of the district other than the treasurer. The secretary shall report to the board at

each meeting any such bonds filed, or any change in the status of any such bonds, since the last previous meeting of the board.

Source: Laws 1969, c. 9, § 24, p. 115.

2-3225 Districts; tax; levies; limitation; use; collection.

(1)(a) Each district shall have the power and authority to levy a tax of not to exceed four and one-half cents on each one hundred dollars of taxable valuation annually on all of the taxable property within such district unless a higher levy is authorized pursuant to section 77-3444.

(b) Each district shall also have the power and authority to levy a tax equal to the dollar amount by which its restricted funds budgeted to administer and implement ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act exceed its restricted funds budgeted to administer and implement ground water management activities and integrated management activities for FY2003-04, not to exceed one cent on each one hundred dollars of taxable valuation annually on all of the taxable property within the district.

(c) In addition to the power and authority granted in subdivisions (1)(a) and (b) of this section, each district located in a river basin, subbasin, or reach that has been determined to be fully appropriated pursuant to section 46-714 or designated overappropriated pursuant to section 46-713 by the Department of Natural Resources shall also have the power and authority to levy a tax equal to the dollar amount by which its restricted funds budgeted to administer and implement ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act exceed its restricted funds budgeted to administer and implement ground water management activities and integrated management activities for FY2005-06, not to exceed three cents on each one hundred dollars of taxable valuation on all of the taxable property within the district for fiscal year 2006-07 and each fiscal year thereafter through fiscal year 2017-18.

(d) In addition to the power and authority granted in subdivisions (a) through (c) of this subsection, a district with jurisdiction that includes a river subject to an interstate compact among three or more states and that also includes one or more irrigation districts within the compact river basin may annually levy a tax not to exceed ten cents per one hundred dollars of taxable valuation of all taxable property in the district. The proceeds of such tax may be used for the payment of principal and interest on bonds and refunding bonds issued pursuant to section 2-3226.01. Such levy is not includable in the computation of other limitations upon the district's tax levy.

(2) The proceeds of the tax levies authorized in subdivisions (1)(a) through (c) of this section shall be used, together with any other funds which the district may receive from any source, for the operation of the district. When adopted by the board, the tax levies authorized in subdivisions (1)(a) through (d) of this section shall be certified by the secretary to the county clerk of each county which in whole or in part is included within the district. Such levy shall be handled by the counties in the same manner as other levies, and proceeds shall be remitted to the district treasurer. Such levy shall not be considered a part of

the general county levy and shall not be considered in connection with any limitation on levies of such counties.

Source: Laws 1969, c. 9, § 25, p. 115; Laws 1972, LB 540, § 1; Laws 1975, LB 577, § 19; Laws 1979, LB 187, § 10; Laws 1981, LB 110, § 1; Laws 1987, LB 148, § 4; Laws 1992, LB 719A, § 10; Laws 1993, LB 734, § 14; Laws 1996, LB 1114, § 17; Laws 2004, LB 962, § 3; Laws 2006, LB 1226, § 4; Laws 2007, LB701, § 11; Laws 2008, LB1094, § 1; Laws 2011, LB400, § 1; Laws 2014, LB906, § 11.

Cross References

Nebraska Ground Water Management and Protection Act, see section 46-701.

Subdivision (1)(d) of this section violates the prohibition against levying a property tax for state purposes found in Neb. Const. art. VIII, sec. 1A, and such provision is therefore unconstitutional. Garey v. Nebraska Dept. of Nat. Resources, 277 Neb. 149, 759 N.W.2d 919 (2009).

2-3226 Districts; bonds; issuance.

Each district shall have the power and authority to issue revenue bonds for the purpose of financing construction of facilities authorized by law. Issuance of revenue bonds must be approved by two-thirds of the members of the board of directors of the district. The district shall pledge sufficient revenue from any revenue-producing facility constructed with the aid of revenue bonds for the payment of principal and interest on such bonds and shall establish rates for such facilities at a sufficient level to provide for the operation of such facilities and for the bond payments.

Source: Laws 1969, c. 9, § 26, p. 116; Laws 1971, LB 534, § 1; Laws 1972, LB 540, § 2; Laws 1994, LB 480, § 8; Laws 1998, LB 896, § 6; Laws 1999, LB 436, § 4.

2-3226.01 River-flow enhancement bonds; authorized; natural resources districts; powers and duties; acquisition of water rights by purchase or lease; agreements; contents.

(1) In order to implement its duties and obligations under the Nebraska Ground Water Management and Protection Act and in addition to other powers authorized by law, the board of a district with jurisdiction that is part of a river basin for which the district has, in accordance with section 46-715, adopted an integrated management plan which references section 2-3226.04 and explicitly states its intent in the plan to utilize qualified projects described in section 2-3226.04 may issue negotiable bonds and refunding bonds of the district and entitled river-flow enhancement bonds, with terms determined appropriate by the board, payable by (a) funds granted to such district by the state or federal government for one or more qualified projects, (b) the occupation tax authorized by section 2-3226.05, or (c) the levy authorized by section 2-3225. The district may issue the bonds or refunding bonds directly, or such bonds may be issued by any joint entity as defined in section 13-803 whose member public agencies consist only of qualified natural resources districts or by any joint public agency as defined in section 13-2503 whose participating public agencies consist only of qualified natural resources districts, in connection with any joint project which is to be owned, operated, or financed by the joint entity or joint public agency for the benefit of its member natural resources districts. For the payment of such bonds or refunding bonds, the district may pledge one or more permitted payment sources.

(2) Within forty-five days after receipt of a written request by the Natural Resources Committee of the Legislature, the qualified natural resources districts shall submit an electronic report to the committee containing an explanation of existing or planned activities for river-flow enhancement, the revenue source for implementing such activities, and a description of the estimated benefit or benefits to the district or districts.

(3) If a district uses the proceeds of a bond issued pursuant to this section for the purposes described in subdivision (1) of section 2-3226.04 or the state uses funds for those same purposes, the agreement to acquire water rights by purchase or lease pursuant to such subdivision shall identify (a) the method of payment, (b) the distribution of funds by the party or parties receiving payments, (c) the water use or rights subject to the agreement, and (d) the water use or rights allowed by the agreement. If any irrigation district is party to the agreement, the irrigation district shall allocate funds received under such agreement among its users or members in a reasonable manner, giving consideration to the benefits received and the value of the rights surrendered for the specified contract period.

Source: Laws 2007, LB701, § 6; Laws 2008, LB1094, § 2; Laws 2010, LB862, § 1; Laws 2012, LB782, § 6.

Cross References

Nebraska Ground Water Management and Protection Act, see section 46-701.

2-3226.02 River-flow enhancement bonds; termination of authority; effect on existing bonds and refunding bonds.

The authority to issue bonds for qualified projects granted in section 2-3226.01 terminates on January 1, 2023, except that (1) any bonds already issued and outstanding for qualified projects as of such date are permitted to remain outstanding and the district shall retain all powers of taxation provided for in section 2-3226.01 to provide for the payment of principal and interest on such bonds and (2) refunding bonds may continue to be issued and outstanding as of January 1, 2023, including extension of principal maturities if determined appropriate.

Source: Laws 2007, LB701, § 7.

2-3226.03 River-flow enhancement bonds; board issuing bonds; powers; terms and conditions.

The board of a district issuing bonds pursuant to section 2-3226.01 may agree to pay fees to fiscal agents in connection with the placement of bonds of the district. Such bonds shall be subject to the same terms and conditions as provided by section 2-3254.07 for improvement project area bonds and such other terms and conditions as the board determines appropriate.

Source: Laws 2007, LB701, § 8.

2-3226.04 River-flow enhancement bonds; use of proceeds.

The proceeds of bonds issued pursuant to section 2-3226.01 shall only be used to pay or refinance the costs of (1) acquisition by purchase or lease of water rights in accordance with Chapter 46, article 6, pertaining to ground water, and Chapter 46, article 2, pertaining to surface water, including storage water rights with respect to a river or any of its tributaries, (2) acquisition by

purchase or lease or the administration and management, pursuant to mutual agreement, of canals and other works, including reservoirs, constructed for irrigation from a river or any of its tributaries, (3) vegetation management, including, but not limited to, the removal of invasive species in or near a river or any of its tributaries, and (4) the augmentation of river flows consistent with the authority granted under Chapter 2, article 32.

Source: Laws 2007, LB701, § 9.

2-3226.05 River-flow enhancement bonds; costs and expenses of qualified projects; occupation tax authorized; exemption; collection; accounting; lien; foreclosure.

(1) A district with an integrated management plan as described in subsection (1) of section 2-3226.01 may levy an occupation tax upon the activity of irrigation of agricultural lands within such district on an annual basis, not to exceed ten dollars per irrigated acre, the proceeds of which may be used for (a) repaying principal and interest on any bonds or refunding bonds issued pursuant to section 2-3226.01 for one or more projects under section 2-3226.04 or (b) payment of all or any part of the costs and expenses of one or more qualified projects described in section 2-3226.04. If such district has more than one river basin as described in section 2-1504 within its jurisdiction, such district shall confine such occupation tax authorized in this section to the geographic area affected by an integrated management plan adopted in accordance with section 46-715.

(2)(a) Acres classified by the county assessor as irrigated shall be subject to such district's occupation tax unless on or before June 1 in each calendar year the record owner certifies to the district the nonirrigation status of such acres for the same calendar year.

(b) A district may exempt from the occupation tax acres that are enrolled in local, state, or federal temporary irrigation retirement programs that prohibit the application of irrigation water in the year for which the tax is levied.

(c) Except as provided in subdivisions (2)(a) and (b) of this section, a district is prohibited from providing an exemption from, or allowing a request for a local refund of, an occupation tax on irrigated acres regardless of the irrigation source while the record owner maintains irrigated status on such acres in the year for which the tax is levied.

(3) Any such occupation tax shall remain in effect so long as the natural resources district has bonds outstanding which have been issued stating such occupation tax as an available source for payment and for the purpose of paying all or any part of the costs and expenses of one or more projects authorized pursuant to section 2-3226.04.

(4) Such occupation taxes shall be certified to, collected by, and accounted for by the county treasurer at the same time and in the same manner as general real estate taxes, and such occupation taxes shall be and remain a perpetual lien against such real estate until paid. Such occupation taxes shall become delinquent at the same time and in the same manner as general real property taxes. The county treasurer shall publish and post a list of delinquent occupation taxes with the list of real property subject to sale for delinquent property taxes provided for in section 77-1804. In addition, the list shall be provided to natural resources districts which levied the delinquent occupation taxes. The list shall include the record owner's name, the parcel identification number,

and the amount of delinquent occupation tax. For services rendered in the collection of the occupation tax, the county treasurer shall receive the fee provided for collection of general natural resources district money under section 33-114.

(5) Such lien shall be inferior only to general taxes levied by political subdivisions of the state. When such occupation taxes have become delinquent and the real property on which the irrigation took place has not been offered at any tax sale, the district may proceed in district court in the county in which the real estate is situated to foreclose in its own name the lien in the same manner and with like effect as a foreclosure of a real estate mortgage, except that sections 77-1903 to 77-1917 shall govern when applicable.

Source: Laws 2007, LB701, § 10; Laws 2008, LB1094, § 3; Laws 2010, LB862, § 2; Laws 2012, LB1125, § 1; Laws 2014, LB906, § 12; Laws 2014, LB1098, § 11.

2-3226.06 Repealed. Laws 2014, LB 906, § 23.

2-3226.07 Repealed. Laws 2014, LB 906, § 23.

2-3226.08 Repealed. Laws 2014, LB 906, § 23.

2-3226.09 Repealed. Laws 2014, LB 906, § 23.

2-3226.10 Flood protection and water quality enhancement bonds; authorized; natural resources district; powers and duties; special bond levy authorized.

In addition to other powers authorized by law, the board of directors of a natural resources district encompassing a city of the metropolitan class, upon an affirmative vote of two-thirds of the members of the board of directors, may issue negotiable bonds and refunding bonds of the district, entitled flood protection and water quality enhancement bonds, with terms determined appropriate by the board of directors, payable from an annual special flood protection and water quality enhancement bond levy upon the taxable value of all taxable property in the district. Such special bond levy is includable in the computation of other limitations upon the district's tax levy and shall not exceed one cent on each one hundred dollars of taxable valuation annually on all of the taxable property within the district without approval by a majority of registered voters of the district at an election in accordance with the Election Act called by the board of directors and held in conjunction with a statewide primary or general election.

Source: Laws 2009, LB160, § 1.

Cross References

Election Act, see section 32-101.

2-3226.11 Flood protection and water quality enhancement bonds; use of proceeds; certain projects; county board; powers.

(1) The proceeds of bonds issued pursuant to section 2-3226.10 shall be used to pay costs of design, rights-of-way acquisition, and construction of multipurpose projects and practices for storm water management within the natural resources district issuing such bonds, including flood control and water quality. For purposes of this section, flood control and water quality projects and

practices include, but are not limited to, low-impact development best management measures, flood plain buyout, dams, reservoir basins, and levees. The proceeds of bonds issued pursuant to section 2-3226.10 shall not be used to fund combined sewer separation projects in a city of the metropolitan class. No project for which bonds are issued under section 2-3226.10 shall include a reservoir or water quality basin having a permanent pool greater than four hundred surface acres. Any project having a permanent pool greater than twenty surface acres shall provide for public access.

(2) A district shall only convey real property that is acquired for a project described in subsection (1) of this section by eminent domain proceedings pursuant to sections 76-704 to 76-724 to a political subdivision or an agency of state or federal government.

(3)(a) Prior to the issuing of bonds pursuant to section 2-3226.10 or expending funds of a natural resources district encompassing a city of the metropolitan class to pay costs of a reservoir or water quality basin project or projects greater than twenty surface acres, a county board of the affected county may pass a resolution stating that it does not approve of the construction of such reservoir or water quality basin project or projects within its exclusive zoning jurisdiction. The county board shall hold a public hearing and shall vote on the resolution within ninety days after notice from the board of directors of the natural resources district of its intent to issue bonds.

(b) No proceeds from bonds issued pursuant to section 2-3226.10 or funds of a natural resources district encompassing a city of the metropolitan class may be used to pay costs of a reservoir or water quality basin project or projects greater than twenty surface acres if the county board of the affected county passes such a resolution.

(c) Sections 2-3226.10 to 2-3226.14 do not (i) limit the authority of a natural resources district with regard to reservoirs, water quality basin projects, or other projects of less than twenty surface acres or (ii) prohibit use of funds of a natural resources district for preliminary studies or reports necessary, in the discretion of the board of directors of the natural resources district, to determine whether a reservoir or water quality basin project should be presented to a county board pursuant to this section.

(4) Proceeds of bonds issued pursuant to section 2-3226.10 shall not be used to fund any project in any city or county (a) located within a watershed in which is located a city of the metropolitan class and (b) which is party to an agreement under the Interlocal Cooperation Act, unless such city or county has adopted a storm water management plan approved by the board of directors of the natural resources district encompassing a city of the metropolitan class.

(5) A natural resources district encompassing a city of the metropolitan class shall only issue bonds for projects in cities and counties that have adopted zoning regulations or ordinances that comply with state and federal flood plain management rules and regulations.

Source: Laws 2009, LB160, § 2.

Cross References

Interlocal Cooperation Act, see section 13-801.

2-3226.12 Flood protection and water quality enhancement bonds; warrants authorized.

For the purpose of making partial payments, the board of directors of a natural resources district issuing bonds pursuant to section 2-3226.10 may issue warrants having terms as determined appropriate by the board, payable from the proceeds of such bonds.

Source: Laws 2009, LB160, § 3.

2-3226.13 Flood protection and water quality enhancement bonds; fees to fiscal agents authorized; warrants and bonds; conditions.

The board of directors of a natural resources district issuing bonds pursuant to section 2-3226.10 may agree to pay fees to fiscal agents in connection with the placement of warrants or bonds of the district. Such warrants and bonds shall be subject to the same conditions as provided by section 2-3254.07 for improvement project area bonds and such other conditions as the board of directors determines appropriate.

Source: Laws 2009, LB160, § 4.

2-3226.14 Flood protection and water quality enhancement bonds; authority to issue; termination.

The authority to issue bonds for qualified projects granted in section 2-3226.10 terminates on December 31, 2024, except that (1) any bonds already issued and outstanding for qualified projects as of such date are permitted to remain outstanding and the district shall retain all powers of taxation provided for in section 2-3226.10 to provide for the payment of principal and interest on such bonds and (2) refunding bonds may continue to be issued and outstanding as of December 31, 2024, including extension of principal maturities if determined appropriate.

Source: Laws 2009, LB160, § 5; Laws 2019, LB177, § 1.

2-3227 Districts; funds; investment.

Each district may invest any surplus money in the district treasury, including such money as may be in any sinking fund established for the purpose of providing for the payment of the principal or interest of any contract, bond, or other indebtedness or for any other purpose, not required for the immediate needs of the district as provided in sections 77-2341, 77-2365.01, and 77-2366. The functions and duties authorized by this section shall be performed under such rules and regulations as shall be prescribed by the board.

Source: Laws 1969, c. 9, § 27, p. 117; Laws 1972, LB 206, § 3; Laws 1989, LB 33, § 1; Laws 1992, LB 757, § 1; Laws 1994, LB 480, § 9; Laws 1999, LB 81, § 1; Laws 2001, LB 362, § 2.

2-3228 Districts; powers; Nebraska Association of Resources Districts; retirement plan reports; duties.

(1) Each district shall have the power and authority to:

(a) Receive and accept donations, gifts, grants, bequests, appropriations, or other contributions in money, services, materials, or otherwise from the United States or any of its agencies, from the state or any of its agencies or political subdivisions, or from any person as defined in section 49-801 and use or expend all such contributions in carrying on its operations;

(b) Establish advisory groups by appointing persons within the district, pay necessary and proper expenses of such groups as the board shall determine, and dissolve such groups;

(c) Employ such persons as are necessary to carry out its authorized purposes and, in addition to other compensation provided, establish and fund a pension plan designed and intended for the benefit of all permanent full-time employees of the district. Any recognized method of funding a pension plan may be employed. Employee contributions shall be required to fund at least fifty percent of the benefits, and past service benefits may be included. The district shall pay all costs of any such past service benefits, which may be retroactive to July 1, 1972, and the plan may be integrated with old age and survivors' insurance, generally known as social security. A uniform pension plan, including the method for jointly funding such plan, shall be established for all districts in the state. A district may elect not to participate in such a plan but shall not establish an independent plan;

(d) Purchase liability, property damage, workers' compensation, and other types of insurance as in the judgment of the board are necessary to protect the assets of the district;

(e) Borrow money to carry out its authorized purposes;

(f) Adopt and promulgate rules and regulations to carry out its authorized purposes; and

(g) Invite the local governing body of any municipality or county to designate a representative to advise and counsel with the board on programs and policies that may affect the property, water supply, or other interests of such municipality or county.

(2) Beginning December 31, 1998, through December 31, 2017:

(a) The Nebraska Association of Resources Districts as organized under the Interlocal Cooperation Act shall file with the Public Employees Retirement Board an annual report on each retirement plan established pursuant to this section and section 401(a) of the Internal Revenue Code and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

(i) The number of persons participating in the retirement plan;

(ii) The contribution rates of participants in the plan;

(iii) Plan assets and liabilities;

(iv) The names and positions of persons administering the plan;

(v) The names and positions of persons investing plan assets;

(vi) The form and nature of investments;

(vii) For each defined contribution plan, a full description of investment policies and options available to plan participants; and

(viii) For each defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If a plan contains no current active participants, the association may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits; and

(b) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, the association shall cause to be prepared an annual report and shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the association does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the association. All costs of the audit shall be paid by the association. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to this section. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

Source: Laws 1969, c. 9, § 28, p. 118; Laws 1975, LB 404, § 5; Laws 1983, LB 36, § 4; Laws 1985, LB 387, § 1; Laws 1991, LB 15, § 2; Laws 1994, LB 480, § 10; Laws 1998, LB 1191, § 2; Laws 1999, LB 436, § 5; Laws 1999, LB 795, § 1; Laws 2000, LB 891, § 1; Laws 2011, LB474, § 1; Laws 2014, LB759, § 2; Laws 2017, LB415, § 1.

Cross References

Interlocal Cooperation Act, see section 13-801.

2-3229 Districts; purposes.

The purposes of natural resources districts shall be to develop and execute, through the exercise of powers and authorities granted by law, plans, facilities, works, and programs relating to (1) erosion prevention and control, (2) prevention of damages from flood water and sediment, (3) flood prevention and control, (4) soil conservation, (5) water supply for any beneficial uses, (6) development, management, utilization, and conservation of ground water and surface water, (7) pollution control, (8) solid waste disposal and sanitary drainage, (9) drainage improvement and channel rectification, (10) development and management of fish and wildlife habitat, (11) development and management of recreational and park facilities, and (12) forestry and range management.

As to development and management of fish and wildlife habitat and development and management of recreational and park facilities, such plans, facilities, works, and programs shall be in conformance with any outdoor recreation plan

for Nebraska and any fish and wildlife plan for Nebraska as developed by the Game and Parks Commission.

Source: Laws 1969, c. 9, § 29, p. 118; Laws 1972, LB 543, § 11; Laws 1981, LB 326, § 9; Laws 1982, LB 565, § 1; Laws 1992, LB 573, § 8.

Standing is not implied in, incident to, or indispensably essential to any express powers or declared objects and purposes of a natural resources district. Metropolitan Utilities Dist. v. Twin Platte NRD, 250 Neb. 442, 550 N.W.2d 907 (1996).

2-3230 Districts; facilities and works; powers.

Each district shall have the power and authority to construct and maintain works and establish and maintain facilities across or along any public street, alley, road, or highway and in, upon, or over any public lands which are now, or may hereafter become, the property of the State of Nebraska, and to construct works and establish and maintain facilities across any stream of water or watercourse; *Provided*, that the district shall promptly restore any such street, highway, or other property to its former state of usefulness as nearly as may be possible, and shall not use the same in such manner as to completely or unnecessarily impair the usefulness thereof. In the use of streets, the district shall be subject to the reasonable rules and regulations of the county, city, or village where such streets lie concerning excavation and the refilling of excavation, the relaying of pavements, and the protection of the public during periods of construction. The district shall not be required to pay any license or permit fees, or file any bonds, but may be required to pay reasonable inspection fees.

Source: Laws 1969, c. 9, § 30, p. 120.

2-3230.01 Natural resources districts; construction; approval of other special-purpose district affected.

A natural resources district having within, or partially within its boundary, the irrigation service area of an operational irrigation district, reclamation district, or public power and irrigation district, shall, prior to construction of any project within such irrigation service area that would have a direct effect upon the conveyance, distribution, use, recovery, reuse and drainage of water, obtain approval of such project by the governing board of the irrigation district, reclamation district or public power and irrigation district whose irrigation service area is so affected.

Source: Laws 1971, LB 626, § 3.

2-3231 Districts; contracts; powers.

Each district shall have the power and authority to:

(1) Contract for the construction, preservation, operation, and maintenance of tunnels, reservoirs, regulating or reregulating basins, diversion works and canals, dams, drains, drainage systems, or other projects for a purpose mentioned in section 2-3229, and necessary works incident thereto, and to hold the federal government or any agency thereof free from liability arising from any construction;

(2) Contract with the United States for a water supply and water distribution and drainage systems under any Act of Congress providing for or permitting such contract;

(3) Acquire by purchase, lease, or otherwise mutually arrange to administer and manage any project works undertaken by the United States or any of its agencies, or by this state or any of its agencies; except that this section shall not apply to any project being administered or managed by any public power district, public power and irrigation district, or metropolitan utilities district; and

(4) Act as agent of the United States, or any of its agencies, or for this state or any of its agencies, in connection with the acquisition, construction, operation, maintenance, or management of any project within its boundaries.

Source: Laws 1969, c. 9, § 31, p. 120; Laws 2007, LB701, § 12.

2-3232 Districts; studies, investigations, surveys, and demonstrations; powers.

Each district shall have the power and authority to:

(1) Make studies, investigations, or surveys and do research as may be necessary to carry out its authorized purposes, enter upon any land, after notifying the owner or occupier, for the purpose of conducting such studies, investigations, surveys, and research, and publish and disseminate the results. Entry upon any property pursuant to this section shall not be considered trespass, and damages are not recoverable on that account alone. In case of any actual or demonstrable damage to premises, the district shall pay the owner of the premises the amount of the damages. Upon failure of the landowner and the district to agree upon the amount of damages, the landowner, in addition to any other available remedy, may file a petition as provided in section 76-705. To avoid duplication of effort, any such studies, investigations, surveys, research, or dissemination shall be in cooperation and coordination with the programs of the University of Nebraska, or any department thereof, and any other appropriate state agencies; and

(2) Conduct demonstration projects within the district on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district, upon obtaining the consent of the owners of such land or the necessary rights and interest in such lands, in order to demonstrate by example the means, methods, and measures by which soil and water resources may be conserved and soil erosion in the form of soil blowing and soil washing may be prevented and controlled. Demonstration projects shall be coordinated with the programs of the Agricultural Research Division of the University of Nebraska Institute of Agriculture and Natural Resources.

Source: Laws 1969, c. 9, § 32, p. 121; Laws 1991, LB 663, § 32; Laws 1994, LB 480, § 11; Laws 1999, LB 436, § 6.

2-3233 Districts; water rights, waterworks, and property; acquisition; disposal.

Each district shall have the power and authority to acquire and dispose of water rights in accordance with Chapter 46, article 2, to acquire by grant, purchase, bequest, devise, or lease and to hold and use waterworks, personal property, and interests in or title to real property, and to sell, lease, encumber, or otherwise dispose of such waterworks and property. Each district shall also have the power and authority to acquire, construct, own, operate, control, maintain, and use any and all such works and facilities, both within and

without the district, necessary to carry out its authorized purposes and furnish water service for domestic, irrigation, power, manufacturing, and other beneficial purposes.

Source: Laws 1969, c. 9, § 33, p. 122; Laws 1994, LB 480, § 12; Laws 1998, LB 896, § 7; Laws 1999, LB 436, § 7.

A water right applicant has no transferable property right in a mere application to divert water. In re Applications A-15145, A-15146, A-15147, and A-15148, 230 Neb. 580, 433 N.W.2d 161 (1988).

2-3234 Districts; eminent domain; powers.

Except as provided in sections 2-3226.11 and 2-3234.02 to 2-3234.09, each district shall have the power and authority to exercise the power of eminent domain when necessary to carry out its authorized purposes within the limits of the district or outside its boundaries. Exercise of eminent domain shall be governed by the provisions of sections 76-704 to 76-724, except that whenever any district seeks to acquire the right to interfere with the use of any water being used for power purposes in accordance with sections 46-204, 70-668, 70-669, and 70-672 and is unable to agree with the user of such water upon the compensation to be paid for such interference, the procedure to condemn property shall be followed in the manner set forth in sections 76-704 to 76-724 and no other property shall be included in such condemnation. No district shall contract for delivery of water to persons within the corporate limits of any village, city, or metropolitan utilities district, nor in competition therewith outside such corporate limits, except by consent of and written agreement with the governing body of such political subdivision. A village, city, or metropolitan utilities district may negotiate and, if necessary, exercise the power of eminent domain for the acquisition of water supply facilities of the district which are within its boundaries.

Source: Laws 1969, c. 9, § 34, p. 122; Laws 1972, LB 543, § 12; Laws 1994, LB 480, § 13; Laws 1998, LB 896, § 8; Laws 1999, LB 436, § 8; Laws 2009, LB160, § 6; Laws 2010, LB1010, § 9.

2-3234.01 Districts; grant easements.

A district may grant easements across real estate under its ownership for purposes which are in the public interest and do not adversely affect the primary purpose for which such real estate is owned by the district.

Source: Laws 1984, LB 861, § 14.

2-3234.02 Trails; procedures.

Sections 2-3234.02 to 2-3234.09 are procedures for the use of eminent domain by a natural resources district to take private real property for a trail.

Source: Laws 2010, LB1010, § 1.

2-3234.03 Trails; terms, defined.

For purposes of sections 2-3234.02 to 2-3234.09:

(1) District means a natural resources district;

(2) Private real property does not include any public land such as real property under the general management of the Board of Educational Lands and Funds;

(3) Supermajority means sixty-seven percent or more; and

(4) Trail means a thoroughfare or track across real property used for recreational purposes.

Source: Laws 2010, LB1010, § 2.

2-3234.04 Trails; public hearing; considerations.

Before establishing a trail, the district shall consider, at a public hearing, all of the following:

(1) The proposed route for the trail, including maps and illustrations, and the mode of travel to be permitted;

(2) The areas adjacent to such route to be utilized by the district for scenic, historic, natural, cultural, or developmental purposes;

(3) The characteristics that make the proposed route suitable as a trail;

(4) The plans for developing, operating, and maintaining the proposed trail;

(5) Any anticipated problems enforcing the proper use of the proposed trail or hazards to private real property adjacent to such trail;

(6) The current status of the real property ownership and current and potential use of the real property in and along the proposed route;

(7) The estimated cost of acquisition of the real property, or an interest therein, needed for the proposed route; and

(8) The extent and type of private real property interest needed to establish the proposed trail, the right-of-way acquisition process to be followed, and the circumstances under which eminent domain may be utilized.

Source: Laws 2010, LB1010, § 3.

2-3234.05 Trails; establishment; district; powers; findings.

If the district decides to establish the trail after following the procedure under section 2-3234.04, the district may acquire private real property, or an interest therein, to develop and maintain the trail by:

(1) Seeking to secure the written consent of the private real property owners affected by the trail to enter into negotiations and proceeding in good faith to reach negotiated agreements with such owners for the private real property, or an interest therein needed; or

(2) If all reasonable efforts to secure written consent and negotiated agreements to acquire private real property, or an interest therein, have failed, the district board may, by resolution adopted by a supermajority of the district board at a public meeting, elect to conduct a proceeding to determine whether to use the power of eminent domain to acquire such property. Such proceeding shall be a public hearing with general notice to the public and specific notice by registered mail to all private real property owners whose property would be subject to condemnation by eminent domain. The public hearing shall be held no sooner than forty-five days after the date the resolution is adopted. At the public hearing, the district board shall receive evidence on the question of whether to acquire private real property by eminent domain for the purpose of constructing the trail. The district board may, by vote of a supermajority of its members, elect to proceed with eminent domain to acquire such property if the district board finds, by clear and convincing evidence received at the public hearing, that all of the following criteria are met:

(a) Whether the trail has been publicized at a public hearing held in accordance with section 2-3234.04 in the area where the trail is planned and reasonable notice of the hearing was provided to affected private real property owners;

(b) Whether good faith attempts to negotiate agreements meeting the requirements of subdivision (1) of this section with the affected private real property owners have been made and have failed for some or all of the private real property that is determined by the district board to be necessary for the trail to be developed;

(c) Whether all other trail route alternatives have been considered, with an evaluation of the extent to which private real property may be involved and which may require the exercise of eminent domain for each alternate route;

(d) Whether in locating the proposed trail consideration was given to the directness of the route; potential benefit to communities and public facilities adjacent to the trail route; trail design and costs; safety to trail users, vehicle operators, and adjacent persons; and adverse impacts and intrusions upon private real property owners or persons using such property;

(e) Whether good faith attempts have been made to address the concerns of affected private real property owners regarding trail design, privacy, land protection, management, and maintenance; and

(f) Whether any development and management of the trail is designed to harmonize with and complement any established forest or agricultural plan for the affected private real property.

Source: Laws 2010, LB1010, § 4.

2-3234.06 Trails; right of access.

When the acquisition of a parcel of private real property, or an interest therein, for a trail divides the private real property in such a manner that the owner has no reasonable access to one part of the divided parcel, the district shall allow reasonable access across the trail at a location mutually agreed upon by the owner of such divided parcel and the district.

Source: Laws 2010, LB1010, § 5.

2-3234.07 Trails; applicability of other law.

Acquisition of private real property, or an interest therein, and any utilization of eminent domain approved under sections 2-3234.02 to 2-3234.09 to establish a proposed trail shall be conducted in the manner and subject to the requirements provided in sections 25-2501 to 25-2506 and 76-701 to 76-726.

Source: Laws 2010, LB1010, § 6.

2-3234.08 Trails; owner or lessee; duties; negotiated written agreement; requirements.

(1) A private real property owner or lessee of property adjoining a trail has no duty (a) to maintain or repair the trail or (b) to protect users of the trail from danger resulting from conditions on the trail unless such conditions are the result of an intentional or negligent act of such owner or lessee.

(2) A negotiated written agreement between a district and a private real property owner regarding the acquisition of real property, or an interest

therein, by the district to establish and maintain a trail shall clearly express both parties' rights and obligations, including the obligation of the district to maintain the trail and the liability of the district for property damage or personal injury, or both, to users of the trail.

Source: Laws 2010, LB1010, § 7.

2-3234.09 Trails; decision of district board; appeal.

An affected private real property owner may appeal the decision of the district board to use eminent domain under sections 2-3234.02 to 2-3234.09 by petition in error to the district court of the county where the affected private real property is located. No petition to condemn private real property affected by the proposed trail shall be filed in county court until any error proceeding under this section is final.

Source: Laws 2010, LB1010, § 8.

2-3235 Districts; cooperation; agreements; authorized; contributions; materials and services to landowners; terms.

(1) Each district shall have the power and authority to cooperate with or to enter into agreements with and, within the limits of appropriations available, to furnish financial or other aid to any cooperator, any agency, governmental or otherwise, or any owner or occupier of lands within the district for the carrying out of projects for benefit of the district as authorized by law, subject to such conditions as the board may deem necessary.

(2) As a condition to the extending of any benefits to or the performance of work upon any lands not owned or controlled by this state or any of its agencies, the directors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits and may require landowners to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon.

(3) Each district may make available, on such terms as it shall prescribe, to landowners within the district specialized equipment, materials, and services which are not readily available from other sources and which will assist such landowners to carry on operations upon their lands for the conservation of soil and water resources and for the prevention and control of soil erosion. Whenever reasonably possible, purchases or contracts for such equipment shall be made from retail establishments.

Source: Laws 1969, c. 9, § 35, p. 123; Laws 1991, LB 15, § 3; Laws 1994, LB 480, § 14; Laws 1999, LB 436, § 9; Laws 2000, LB 891, § 2.

This section gives a natural resources district express authority to cooperate, enter agreements, and furnish aid to private developers and landowners to carry out projects that benefit the district. Japp v. Papio-Missouri River NRD, 273 Neb. 779, 733 N.W.2d 551 (2007).

2-3236 Districts; appointment as fiscal agent of United States; powers.

Each district shall have the power and authority to accept appointment of the district as fiscal agent of the United States, or authorization of the district by the United States to make collections of money for and on behalf of the United States in connection with any federal project, whereupon the district shall have full power to do any and all things required by the federal statutes in connection therewith, and all things required by the rules and regulations established by any department of the federal government in regard thereto.

Source: Laws 1969, c. 9, § 36, p. 123.

2-3237 Districts; weather modification programs; authorized.

A natural resources district may establish weather modification programs. A district may enter into agreements with companies, service organizations, municipalities, political subdivisions, public or private postsecondary educational institutions, or state or federal agencies to establish or participate in such programs.

Source: Laws 1998, LB 1161, § 11.

2-3238 Districts; develop, store, and transport water; water service; powers; limitation.

Each district shall have the power and authority to develop, store and transport water, and to provide, contract for, and furnish water service for domestic purposes, irrigation, milling, manufacturing, mining, metallurgical, and any and all other beneficial uses, and to fix the terms and rates therefor. Each district may acquire, construct, operate, and maintain dams, reservoirs, ground water storage areas, canals, conduits, pipelines, tunnels, and any and all works, facilities, improvements, and property necessary therefor. No district shall contract for delivery of water for irrigation uses within any area served by any irrigation district, public power and irrigation district, or reclamation district, except by consent of and written agreement with such irrigation district, public power and irrigation district, or reclamation district.

Source: Laws 1969, c. 9, § 38, p. 125.

2-3239 Districts; assessment of benefits; powers.

Each district shall have the power and authority to list in separate ownership the lands within the district which are susceptible of irrigation from the district sources, to enter into contracts to furnish water service to all such lands, and to levy assessments against the lands within the district to which water service is furnished on the basis of the value per acre-foot of water service furnished to the lands within the district; *Provided*, the board may divide the district into units and fix a different value per acre-foot of water in the respective units, and in such case shall assess the lands within each unit upon the same basis of value per acre-foot of water service furnished to lands within such unit.

Source: Laws 1969, c. 9, § 39, p. 125.

2-3240 Districts; certain activities; laws, rules, and regulations applicable.

In matters pertaining to applications for appropriation and use of surface water, construction of dams, drainage and channel rectification projects, and installation of ground water wells, districts shall comply with Chapter 46, articles 2, 6, and 7, and the applicable rules and regulations of the department.

Source: Laws 1969, c. 9, § 40, p. 126; Laws 2000, LB 900, § 57; Laws 2006, LB 1226, § 5.

2-3241 Districts; additional powers.

Each district shall have the power and authority to provide technical and other assistance as may be necessary or desirable in rural areas to abate the lowering of water quality in the state caused by sedimentation, effluent from feedlots, and runoff from cropland areas containing agricultural chemicals.

Such assistance shall be coordinated with the programs and the stream quality standards as established by the Department of Environment and Energy.

Source: Laws 1969, c. 9, § 41, p. 126; Laws 1972, LB 1045, § 2; Laws 1972, LB 543, § 13; Laws 1993, LB 3, § 3; Laws 2019, LB302, § 12.

2-3242 Districts; water projects; powers.

Each district shall have the power and authority to (1) build or construct, operate and maintain, any reservoir, dike or levee to prevent overflow of water, (2) drain any cropland subject to overflow by water, or drain wet land when desirable to make reasonable use of such land whether such condition is caused by surface water or ground water, or drain any land which will be improved by drainage, (3) locate and construct, straighten, widen, deepen, or alter and maintain any ditch, drain, stream, or watercourse, (4) riprap or otherwise protect the bank of any stream or ditch, and (5) construct, enlarge, extend, improve, or maintain any stream of drainage or system of control of surface water.

Source: Laws 1969, c. 9, § 42, p. 126.

2-3243 Districts; lands owned or controlled by state; preventive and control measures; powers.

Each district shall have the power and authority to carry out preventive and control measures within the district, including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and other measures as may be determined feasible on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owners of such lands or the necessary rights or interests in such lands.

Source: Laws 1969, c. 9, § 43, p. 127.

2-3244 Repealed. Laws 1986, LB 474, § 16.

2-3245 Repealed. Laws 1986, LB 474, § 16.

2-3246 Repealed. Laws 1986, LB 474, § 16.

2-3247 Repealed. Laws 1986, LB 474, § 16.

2-3248 Repealed. Laws 1986, LB 474, § 16.

2-3249 Repealed. Laws 1986, LB 474, § 16.

2-3250 Repealed. Laws 1986, LB 474, § 16.

2-3251 Repealed. Laws 1972, LB 543, § 18.

2-3252 Districts; improvement project areas; powers; project funding.

(1) Projects or portions of projects which the board determines to be of general benefit to the district shall be carried out with any available funds of the district, including proceeds from the district's tax levy pursuant to section 2-3225. Projects or portions of projects which the board determines to be of

special benefit to a certain area within the district may be established and maintained pursuant to subsection (2) of this section.

(2) Each district may establish improvement project areas within the district for the purpose of carrying out projects authorized by law which result in special benefits to lands and property within such improvement project areas. Improvement project areas may include land within an adjoining district with the written consent of the board of directors of the adjoining district. When only a portion of a project results in special benefits to an area, an improvement project area may be established to finance and maintain such portion of the project, and the district shall finance and maintain the other portions of the project pursuant to subsection (1) of this section. Such improvement project areas may be established, existing improvement project area boundaries may be altered, and the projects may be authorized after a hearing by the board, upon its own motion or by petitions, in the manner provided for by sections 2-3253 to 2-3255. The cost of any construction, capital improvements, or operation and maintenance involved in such special benefit portions of a project shall be recovered by the board by special assessment as provided in sections 2-3252 to 2-3254, 2-3254.04, and 2-3254.06. Any other costs related to such special benefit portion of a project may also be recovered by similar assessments. The board shall determine the amount of such special assessments and the period of time over which such special assessments shall be paid. When such projects result in the provision of continuing services such as the supply of revenue-producing water for any beneficial use, the persons receiving such special services shall be assessed for the cost of the service received in the manner provided in subsection (2) of section 2-3254. The reimbursable cost of the special benefit portions of such projects authorized in accordance with this section and as determined by the board of directors shall be assessed against the land within the improvement project area on the basis of benefits received in the manner provided in subsection (3) of section 2-3254 and section 2-3254.03. When a special-purpose district is merged with a natural resources district as provided by sections 2-3207 to 2-3212, the board may, without complying with the procedures outlined in sections 2-3252 to 2-3254.07, establish an improvement project area to carry out the functions of such special-purpose district and may adopt as its own any fee or assessment schedule or schedules previously adopted pursuant to law by such special-purpose district and in force and effect at the time of such merger. Any fees or assessments which are due or which become due under such adopted schedule or schedules shall be collected by the district in the manner provided by sections 2-3254 and 2-3254.03.

(3) Projects of a predominantly general benefit to a district with only an incidental special benefit, as determined by the board, may be developed and executed using any available funds of the district, including those from the tax levied pursuant to section 2-3225, without the establishment of an improvement project area or the levying of assessments or other charges.

Source: Laws 1969, c. 9, § 52, p. 130; Laws 1973, LB 206, § 4; Laws 1981, LB 388, § 1; Laws 1990, LB 969, § 1; Laws 2001, LB 136, § 1.

The determination of the feasibility of a general benefit project by the board of directors of a natural resources district, and the adoption and implementation of such a project, is a legislative function and is not within the scope of judicial review where the specific statutory requirements for such action have been met. Fisher & Trouble Creek v. Lower Platte No. Nat. Resources Dist., 212 Neb. 196, 322 N.W.2d 403 (1982).

2-3252.01 Repealed. Laws 1978, LB 783, § 7.

2-3253 Improvement project areas; petition; contents; hearing.

(1) A hearing on a proposed improvement project area, on altering the boundaries of an existing improvement project area, or on adopting a proposed project may be initiated by petition of landowners. All petitions filed with the board of the natural resources district must contain:

(a) A statement of the problem involved;

(b) A presentation of the project proposed;

(c) A description of the area to be affected by the project; and

(d) A request for a hearing.

(2) If there are twenty or less landowners in the improvement project area, then the signatures of at least one-fourth must be on the petition. If there are more than twenty, then the signature of ten landowners shall be sufficient. Any petition regarding a project which would provide a revenue-producing continuing service shall contain so many signatures of landowners as shall in the board's discretion indicate enough interest to generate sufficient revenue to recover any reimbursable costs should a project be authorized.

Source: Laws 1969, c. 9, § 53, p. 131; Laws 1973, LB 206, § 5; Laws 2001, LB 136, § 2.

2-3254 Improvement project areas; petition; hearing; notice; findings of board; apportionment of benefits; lien.

(1) The board shall hold a hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the establishment of or altering the boundaries of an existing improvement project area and the undertaking of such a project, upon the question of the appropriate boundaries describing affected land, upon the propriety of the petition, and upon all relevant questions regarding such inquiries. When a hearing has been initiated by petition, such hearing shall be held within one hundred twenty days of the filing of such petition. Notice of such hearing shall be published prior thereto once each week for three consecutive weeks in a legal newspaper published or of general circulation in the district. Landowners within the limits of the territory described in the petition and all other interested parties, including any appropriate agencies of state or federal government, shall have the right to be heard. If the board finds, after consultation with such appropriate agencies of state and federal government and after the hearing, that the project conforms with all applicable law and with the district's goals, criteria, and policies, it shall enter its findings in the board's official records and shall, with the aid of such engineers, surveyors, and other assistants as it may have chosen, establish an improvement project area or alter the boundaries of an existing improvement project area, proceed to make detailed plans and cost estimates, determine the total benefits, and carry out the project as provided in subsections (2) and (3) of this section. If the board finds that the project does not so conform, the findings shall be entered in the board's records and copies of such findings shall be furnished to the petitioners and the commission.

(2) When any such special project would result in the provision of revenue-producing continuing services, the board shall, prior to commencement of

construction of such project, determine, by circulation of petitions or by some other appropriate method, if such project can be reasonably expected to generate sufficient revenue to recover the reimbursable costs thereof. If it is determined that the project cannot be reasonably expected to generate sufficient revenue, the project and all work in connection therewith shall be suspended. If it is determined that the project can be reasonably expected to generate sufficient revenue, the board shall divide the total benefits of the project as provided in sections 2-3252 to 2-3254. If the proposed project involves the supply of water for any beneficial use, all plans and specifications for the project shall be filed with the secretary of the district and the Director of Natural Resources, except that if such project involves a public water system as defined in section 71-5301, the filing of the information shall be with the Department of Environment and Energy rather than the Director of Natural Resources. No construction of any such special project shall begin until the plans and specifications for such improvement have been approved by the Director of Natural Resources and the Department of Environment and Energy, if applicable, except that if such special project involves a public water system as defined in section 71-5301, only the Department of Environment and Energy shall be required to review such plans and specifications and approve the same if in compliance with the Nebraska Safe Drinking Water Act and departmental rules and regulations adopted and promulgated under the act. All prescribed conditions having been complied with, each landowner within the improvement project area shall, within any limits otherwise prescribed by law, subscribe to a number of benefit units in proportion to the extent he or she desires to participate in the benefits of the special project. As long as the capacity of the district's facilities permit, participating landowners may subscribe to additional units, within any limits otherwise prescribed by law, upon payment of a unit fee for each such unit. The unit fees made and charged pursuant to this section shall be levied and fixed by rules and regulations of the district. The service provided may be withheld during the time such charges levied upon such parcel of land are delinquent and unpaid. Such charges shall be cumulative, and the service provided by the project may be withheld until all delinquent charges for the operation and maintenance of such works of improvement are paid for past years as well as for the current year. All such charges, due and delinquent according to the rules and regulations of such district and unpaid on June 1 after becoming due and delinquent, may be certified by the governing authority of such district to the county clerk of such county in which are situated the lands against which such charges have been levied, and when so certified such charges shall be entered upon the tax list and spread upon the tax roll the same as other special assessment taxes are levied and assessed upon real estate, shall become a lien upon such real estate along with other real estate taxes, and shall be collectible at the same time, in the same manner, and in the same proceeding as other real estate taxes are levied.

(3) When the special project would not result in the provision of revenue-producing continuing services, the board shall apportion the benefits thereof accruing to the several tracts of land within the district which will be benefited thereby, on a system of units. The land least benefited shall be apportioned one unit of assessment, and each tract receiving a greater benefit shall be apportioned a greater number of units or fraction thereof, according to the benefits received. Nothing contained in this section shall prevent the district from establishing separate areas within the improvement project area so as to permit

future allocation of costs for particular portions of the work to specific subareas. This subarea method of allocation shall not be used in any improvement project area which has heretofore made a final apportionment of units of benefits and shall not thereafter be changed except by compliance with the procedure prescribed in this section.

(4) A notice shall be inserted for at least one week in a newspaper published or of general circulation in the improvement project area stating the time when and the place where the directors shall meet for the purpose of hearing all parties interested in the apportionment of benefits by reason of the improvement, at which time and place such parties may appear in person or by counsel or may file written objections thereto. The directors shall then proceed to hear and consider the same and shall make the apportionments fair and just according to benefits received from the improvement. The directors, having completed the apportionment of benefits, shall make a detailed report of the same and file such report with the county clerk. The board of directors shall include in such report a statement of the actual expenses incurred by the district to that time which relate to the proposed project and the actual cost per benefit unit thereof. Thereupon the board of directors shall cause to be published, once each week for three consecutive weeks in a newspaper published or of general circulation in the improvement project area, a notice that the report required in this subsection has been filed and notice shall also be sent to each party appearing to have a direct legal interest in such apportionment, which notice shall include the description of the lands in which each party notified appears to have such interest, the units of benefit assigned to such lands, the amount of actual costs assessable to date to such lands, and the estimated total costs of the project assessable to such lands upon completion thereof, as provided by sections 25-520.01 to 25-520.03. If the owners of record title representing more than fifty percent of the estimated total assessments file with the board within thirty days of the final publication of such notice written objections to the project proposed, such project and work in connection therewith shall be suspended, such project shall not be done in such project area, and all expenses relating to such project incurred by and accrued to the district may, at the direction of the board of directors, be assessed upon the lands which were to have been benefited by the completion of such improvement project in accordance with the apportionment of benefits determined and procedures established in this section. Upon completing the establishment of an improvement project area or altering the boundaries of an existing improvement project area as provided in this subsection and upon determining the reimbursable cost of the project and the period of time over which such cost shall be assessed, the board of directors shall determine the amount of money necessary to raise each year by special assessment within such improvement project area and apportion the same in dollars and cents to each tract benefited according to the apportionment of benefits as determined by this section. The board of directors shall also, from time to time as it deems necessary, order an additional assessment upon the lands and property benefited by the project, using the original apportionment of benefits as a basis to ascertain the assessment to each tract of land benefited, to carry out a reasonable program of operation and maintenance upon the construction or capital improvements involved in such project. The chairperson and secretary shall thereupon return lists of such tracts with the amounts chargeable to each of the county clerks of each county in which assessed lands are located, who shall place the same on

duplicate tax lists against the lands and lots so assessed. Such assessments shall be collected and accounted for by the county treasurer at the same time as general real estate taxes, and such assessments shall be and remain a perpetual lien against such real estate until paid. All provisions of law for the sale, redemption, and foreclosure in ordinary tax matters shall apply to such special assessments.

Source: Laws 1969, c. 9, § 54, p. 131; Laws 1972, LB 543, § 14; Laws 1973, LB 206, § 6; Laws 1981, LB 326, § 10; Laws 1994, LB 480, § 15; Laws 1996, LB 1044, § 39; Laws 1999, LB 436, § 10; Laws 2000, LB 900, § 58; Laws 2001, LB 136, § 3; Laws 2001, LB 667, § 1; Laws 2007, LB296, § 18; Laws 2021, LB148, § 40.

Cross References

Nebraska Safe Drinking Water Act, see section 71-5313.

2-3254.01 Improvement project; determination of special benefits; effect.

When determining the apportionment of benefits under section 2-3254, the board shall also make a determination as to what portion of the project will result in special benefits to lands and property and such determination, if not appealed as provided in section 2-3255, shall be conclusive as establishing the authority of the district to levy special assessments and issue bonds and warrants for such project.

Source: Laws 1981, LB 388, § 2.

2-3254.02 Improvement project; bonds; issued; when.

When a project which would not result in the provision of revenue-producing continuing services has been completed, the district shall have the power to issue its negotiable bonds entitled improvement project area bonds for the purpose of paying the cost of the special benefit portion of the project. Such bonds shall be payable from money in the sinking fund established in section 2-3254.05, and be issued under the conditions in section 2-3254.07.

Source: Laws 1981, LB 388, § 3.

2-3254.03 Improvement project; financed with bonds; requirements; warrants issued; when.

(1) Prior to awarding contracts for work in connection with any project the board proposes to finance in whole or in part by improvement project area bonds issued pursuant to section 2-3254.02, there shall be placed on file with the board an engineer's estimate of the total cost of such project. After any award of a contract for any such project, there shall be placed on file with the board a revised engineer's estimate of the total cost of that part of such project for which an award has been made. Such revised estimate shall be based upon the prices provided for in such contract. The revised estimate shall specifically state the estimated total cost of that part of the project for which awards have been made and which relates to that portion of the project which will result in special benefits to an area.

(2) For the purpose of making partial payments as the work progresses, warrants may be issued by the district. Such warrants shall not be issued in an amount which exceeds the engineer's revised estimate for that part of the project for which awards have been made and which relates to that portion of

the project which will result in special benefits to an area. Such warrants shall become due and payable not later than five years from the date of their issuance and shall draw interest at a rate fixed by the board and stated in such warrants from the date of presentation for registration and payment. The warrants shall be redeemed and paid from the proceeds of special assessments, from the sale of bonds issued and sold as provided for in section 2-3254.02, or from other available funds of the district, including proceeds from the tax levied pursuant to section 2-3225. The district may agree to pay annual or semiannual interest on all warrants issued by the district, and may issue warrants to pay such interest or issue warrants in return for cash to pay such interest. If determined appropriate by the board, the district may pay fees to fiscal agents in connection with the placement of warrants or bonds issued by the district.

Source: Laws 1981, LB 388, § 4.

2-3254.04 Improvement project areas; issuance of bonds; special assessment levy; hearing; notice; delinquent; interest.

Before issuing any improvement project area bonds pursuant to section 2-3254.02, special assessments shall be levied by resolution of the board for the improvement project area. Such levy of special assessments shall be made after the holding of a hearing by the board for which notice shall be published at least once a week for three weeks in a newspaper of general circulation in the improvement project area. Such notice shall state the time and place for such meeting and that such meeting shall be held for the purpose of hearing all parties interested in the levying of assessments for special benefits by reason of the improvements. All special assessments shall become due within fifty days after the date of levy and may be paid within that time without interest. If not paid within the fifty days, they shall bear interest therefrom at the rate established by the board. Such assessment shall become delinquent in equal annual installments over a period of years which the board may determine at the time of making the levy. Delinquent installments shall bear interest until paid at the rate established by the board. If three or more installments shall become delinquent, the board may declare all of the remaining installments to be delinquent and such installments shall bear interest at the rate established by the board for delinquent installments and may be collected in the same manner as other delinquent installments.

Source: Laws 1981, LB 388, § 5; Laws 2001, LB 136, § 4.

2-3254.05 Improvement project; special assessment proceeds; sinking fund; use.

The proceeds of all special assessments for an improvement project area shall constitute a sinking fund for the purposes of paying the cost of the special benefit portion of the project and for paying warrants and bonds issued pursuant to sections 2-3252 and 2-3254.01 to 2-3254.07 and shall, together with the interest payable upon such special assessments, be set aside and used to pay such costs, bonds, and warrants. Any money remaining in the sinking fund after fully discharging such costs, bonds, and warrants may be applied by the board for operation and maintenance expenses relating to such project or may be transferred to the general fund of the district. In any resolution authorizing the issuance of bonds or warrants, the board may provide that general funds of the

district, including the proceeds from such district's tax levied pursuant to section 2-3225, shall be transferred and paid into the sinking fund to provide for the prompt payment of principal and interest on any bonds and warrants of the district which are to be paid from such sinking fund, as they become due.

Source: Laws 1981, LB 388, § 6.

2-3254.06 Improvement project; special assessments; lien; delinquency; foreclosure; sale final; when.

(1) The natural resources district shall have a lien upon the real estate within its boundaries for all special assessments for improvement project areas which are due. Such lien shall be inferior only to general taxes levied by political subdivisions of the state. When such special assessments have become delinquent and the real property against which they are assessed has not been offered at any tax sale, the district may proceed in the district court in the county in which the real estate is situated to foreclose in its own name upon the lien in the same manner and with like effect as a foreclosure of a real estate mortgage, except that sections 77-1903 to 77-1917, shall govern in every case when applicable.

(2) Final confirmation of sale in such foreclosure proceedings and the issuance of a deed of sale to the district, or its assignee, cannot be had until two years have expired from the date of the sale held by the sheriff and until personal notice has been served on the occupants of the real property after such two-year period. The remedy granted in this section to a natural resources district for the collection of delinquent special assessments shall be cumulative and in addition to other existing methods.

Source: Laws 1981, LB 388, § 7.

2-3254.07 Improvement project; issuance of warrants or bonds; conditions.

The following conditions shall apply when the board issues warrants or improvement project area bonds to fund the special benefit portion of a project:

(1) Neither the members of the board nor any person executing the warrants or bonds shall be liable personally thereon by reason of their issuance;

(2) The warrants or bonds shall be a debt of the district only and shall state this on their face;

(3) Warrants and bonds of the district are declared to be issued for an essential public and governmental purpose and to be public instruments, and together with interest and income thereon, shall be exempt from all taxes;

(4) Bonds shall be authorized by a majority vote of the board which shall determine the manner and place of their execution. The bonds may be issued in one or more series and shall bear such a date, be payable upon demand or mature at such a time, bear interest at such a rate, be in such a denomination, be in such form, be payable at such a place, and be subject to redemption prior to maturity upon such a term and with such notice, as the board may direct; and

(5) Bonds and warrants issued pursuant to sections 2-3252 and 2-3254.01 to 2-3254.07 may be sold in any manner and for such price as the board of directors may determine.

Source: Laws 1981, LB 388, § 8.

2-3255 Improvement projects; apportionment of benefits; appeal.

From any order or decision of the board of directors of the natural resources district, an appeal may be taken to the district court by any person aggrieved by filing an undertaking in the sum of two hundred dollars with such sureties as may be approved by the clerk of the district court. Such undertaking shall be conditioned that the appellant will prosecute such appeal without delay and will pay all costs adjudged against him in the district court. Such undertaking shall be executed to the board of directors of the natural resources district and may be sued on in the name of the obligee. Where the project area is confined to the limits of one county, the appeal shall be taken to the district court of that county. When such project includes lands in two or more counties, the appeal shall be taken to the district court of the county in which the largest portion of the land which is claimed to be affected adversely by the order or decision appealed from lies. The appeal must be taken within thirty days after such decision or order has been entered by the secretary of the board of directors.

Source: Laws 1969, c. 9, § 55, p. 133.

The provisions of this section are a mechanism for appeal solely from decisions or orders of a board of directors of a natural resources district regarding special improvement projects and are not applicable to decisions of the board that do not arise in the context of special improvement projects. Japp v. Papio-Missouri River NRD, 271 Neb. 968, 716 N.W.2d 707 (2006).

2-3256 Structural works; supervision by licensed engineer; when.

All design or construction by a district of structural works costing more than one hundred thousand dollars shall be under the supervision of a licensed engineer except as otherwise provided in the Engineers and Architects Regulation Act. The Board of Engineers and Architects shall adjust the dollar amount in this section every fifth year. The first such adjustment after August 27, 2011, shall be effective on July 1, 2014. The adjusted amount shall be equal to the then current amount adjusted by the cumulative percentage change in the Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics for the five-year period preceding the adjustment date. The amount shall be rounded to the next highest one-thousand-dollar amount.

Source: Laws 1969, c. 9, § 56, p. 133; Laws 1978, LB 420, § 1; Laws 1997, LB 622, § 56; Laws 1999, LB 253, § 1; Laws 2004, LB 599, § 1; Laws 2011, LB45, § 1.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.

2-3257 Structural works; design; submit to department; approve or disapprove.

Detailed plans for the design of certain structural works by a district shall be submitted to the department as outlined in the Safety of Dams and Reservoirs Act and section 46-256. The department shall review the plans and shall approve or disapprove such plans within thirty days after submission. No construction work shall be started until the department has approved such plans.

Source: Laws 1969, c. 9, § 57, p. 133; Laws 2000, LB 900, § 59; Laws 2005, LB 335, § 71.

Cross References

Safety of Dams and Reservoirs Act, see section 46-1601.

2-3258 Repealed. Laws 1987, LB 1, § 16.

2-3259 Transferred to section 2-3212.01.

2-3260 Repealed. Laws 1985, LB 18, § 1.

2-3261 Repealed. Laws 1977, LB 510, § 10.

2-3262 Repealed. Laws 1994, LB 480, § 31.

2-3263 Transferred to section 2-1586.

2-3264 Transferred to section 2-1587.

2-3265 Transferred to section 2-1588.

2-3266 Transferred to section 2-1589.

2-3267 Transferred to section 2-1590.

2-3268 Transferred to section 2-1591.

2-3269 Transferred to section 2-1592.

2-3270 Transferred to section 2-1593.

2-3271 Transferred to section 2-1594.

2-3272 Transferred to section 2-1595.

2-3273 Transferred to section 2-1596.

2-3274 Transferred to section 2-1597.

2-3275 Transferred to section 2-1598.

2-3276 Districts; master plan; prepare and adopt; contents; review; filed.

By August 1, 1979, each natural resources district shall prepare and adopt a master plan to include but not be limited to a statement of goals and objectives for each of the purposes stated in section 2-3229. The master plan shall be reviewed and updated as often as deemed necessary by the district, but in no event less often than once each ten years. A copy of the master plan as adopted and all revisions and updates thereto shall be filed with the department.

Source: Laws 1978, LB 783, § 2; Laws 2000, LB 900, § 60.

2-3277 Districts; long-range implementation plan; prepare and adopt; contents; review; filing; department; develop guidelines.

Each district shall also prepare and adopt a long-range implementation plan which shall summarize planned district activities and include projections of financial, personnel, and land rights needs of the district for at least the next five years and the specific needs assessment upon which the current budget is based. Such long-range implementation plan shall be reviewed and updated annually. A copy of the long-range implementation plan and all revisions and updates thereto as adopted shall be filed with the department, the Governor's Policy Research Office, and the Game and Parks Commission on or before

October 1 of each year. The department shall develop and make available to the districts suggested guidelines regarding the format and general content of such long-range implementation plans.

Source: Laws 1978, LB 783, § 3; Laws 1979, LB 412, § 3; Laws 2000, LB 900, § 61.

2-3278 Districts; individual project plans; file; coordinate plans.

Each district shall also prepare and adopt any individual project plans as it deems necessary to carry out projects approved by the district. Project plans as developed involving state regulations or financing shall be filed with the appropriate agency. A project plan for any project shall also be filed with any of the agencies named in section 2-3277, if a timely request in writing is made by such agency. Each district shall consult with and coordinate its plans with those of other local implementation agencies.

Source: Laws 1978, LB 783, § 4.

2-3279 Districts; plans; period for review and comment; alteration of plans.

All plans submitted by a district under sections 2-3276 to 2-3278, except those filed in compliance with state requirements or for the purpose of state financial assistance, shall be accorded a thirty-day period for review and comment. Failure to reply within thirty days shall be conclusive that the plans have been endorsed by the reviewing agency. All comments on plans shall be reviewed by the district and alterations of the plans may be made as the district deems appropriate. If any state agency comments indicate a lack of conformance with the goals, criteria, and policies of any outdoor recreation plan, any fish and wildlife plan, or indicate a conflict with state policies or plans approved by the Legislature, such plans shall be altered as deemed necessary by the district prior to proceeding with implementation.

Source: Laws 1978, LB 783, § 5; Laws 1981, LB 326, § 12.

2-3280 State funds; allocated or disbursed; when.

No state funds shall be allocated or disbursed to a district unless that district has submitted its master plan in accordance with sections 2-3229 and 2-3276 to 2-3280 and until the disbursing agency has determined that such funds are for plans, facilities, works, and programs which are in conformance with the plans of the agency.

Source: Laws 1978, LB 783, § 6.

2-3281 Court action; district, officer, or employee; party litigant; no bond required.

No bond for cost, appeal, supersedeas, injunction, or attachment shall be required of any natural resources district or any officer, board, agent, or employee of any such district in any proceeding or court action in which the natural resources district or its officer, board, agent, or employee is a party litigant in its or his or her official capacity.

Source: Laws 1980, LB 884, § 1.

2-3282 Transferred to section 2-1599.

2-3283 Transferred to section 2-15,100.

2-3284 Transferred to section 2-15,101.

2-3285 Transferred to section 2-15,102.

2-3286 Transferred to section 2-15,103.

2-3287 Transferred to section 2-15,104.

2-3288 Transferred to section 2-15,105.

2-3289 Transferred to section 2-15,106.

2-3290 District; land; use for recreational purposes; fees.

Except as otherwise provided in section 2-3290.01, a district which owns land or has a lease or an easement permitting the use of land for public recreational purposes may adopt and promulgate rules and regulations governing the use of such land as provided in sections 2-3292 to 2-32,100. For purposes of sections 2-3234.01 and 2-3290 to 2-32,101, unless the context otherwise requires, recreation area means land owned by the district or over which a district has a lease or an easement permitting the use thereof for public recreational purposes which the board authorizes to be used for such purposes.

In addition to the authority provided in section 2-3292 to establish and collect fees, a district may establish and collect permit fees for public access to such land.

Source: Laws 1984, LB 861, § 2; Laws 1996, LB 1241, § 1; Laws 2006, LB 1113, § 15.

2-3290.01 Water project; public use; public access; district; duties; conditions.

(1) A district shall permit public use of those portions of a water project located on lands owned by the district and on land over which the district has a lease or an easement permitting use thereof for public recreational purposes. All recreational users of such portions of a water project shall abide by the applicable rules and regulations adopted and promulgated by the board.

(2) The district shall provide public access for recreational use at designated access points at any water project. Recreational users, whether public or private, shall abide by all applicable rules and regulations for use of the water project adopted and promulgated by the district or the political subdivision in which the water project is located. Public recreational users may only access the water project through such designated access points. Nothing in this subsection shall require public access when the portion of the project cost paid by the natural resources district with public funds does not exceed twenty percent of the total cost of the project.

(3) For purposes of this section, water project means a project with cooperators or others, as authorized in section 2-3235, that results in construction of a reservoir or other body of water having a permanent pool suitable for recreational purposes greater than one hundred fifty surface acres, the construction of which commenced after July 14, 2006. Water project shall not mean soil conservation projects, wetlands projects, projects described in section

2-3226.11, or other district projects with cooperators or others that do not have a recreational purpose.

(4) For projects funded under section 2-3226.11 that result in a reservoir or other body of water having a permanent pool suitable for recreational purposes greater than twenty surface acres, the district shall provide public access for recreational use at designated access points and shall include access to the land area a minimum distance of one hundred feet from the permanent pool. Recreational users, whether public or private, shall abide by all applicable rules, regulations, ordinances, or resolutions for use of the project adopted by the district or the political subdivision in which the project is located. Public recreational users may only access the project through such designated access points.

Source: Laws 2006, LB 1113, § 14; Laws 2009, LB160, § 7.

2-3291 District; recreation area; emergency permission and revocation; procedure.

The rules and regulations adopted and promulgated by a district to permit, prohibit, or otherwise govern activities in a recreation area as provided in sections 2-3292 to 2-32,100 may set out the circumstances under which the manager of the district may give permission for an activity in emergency situations or may, by the posting of appropriate signs, temporarily revoke permission for an activity or temporarily or permanently close a recreation area when revocation or closing is in the interest of public health, safety, or welfare or is for the protection or preservation of property. If the manager is unable, because of absence, to give or revoke permission as authorized in this section, or the manager's position is vacant, such authority shall vest in the chairperson of the board. If for the same reasons, the chairperson of the board is unable to give or revoke permission as authorized in this section, such authority shall vest in a district representative designated by a majority vote of the board, and such action shall be recorded in the board minutes.

Source: Laws 1984, LB 861, § 3.

2-3292 District; recreation area; designation of camping and other areas; violation; penalty.

(1) A district may designate camping areas in a recreation area, permit camping in a camping area, and prescribe such conditions as are reasonable and proper governing public use of a camping area, including, but not limited to, access to the camping area, area capacity, sanitation, opening and closing hours, public safety, fires, establishment and collection of fees where appropriate, protection of property, and zoning of activities. A district may also designate picnicking, hiking, backpacking, and other noncamping areas. The conditions for use of all such designated areas shall be posted on appropriate signs at the recreation area.

(2) Any person who camps, picnics, hikes, backpacks, or engages in any other unauthorized activity in a recreation area on land not designated as a camping, picnicking, hiking, backpacking, or similar area by the district or fails to observe the posted conditions governing use of such area shall be guilty of a Class V misdemeanor.

Source: Laws 1984, LB 861, § 4.

2-3293 District; recreation area; regulate use of fire; violation; penalty.

(1) A district may regulate the use of any type of fire, including the smoking of tobacco in any form, and provide for the size, location, and conditions under which a fire may be established in a recreation area. A district may regulate the possession or use in a recreation area of any type of fireworks not prohibited by law.

(2) Any person who lights any type of fire, uses any fireworks, smokes tobacco in any form, or leaves unattended and unextinguished any fire of any type in any location in a recreation area when not permitted by a district shall be guilty of a Class V misdemeanor.

Source: Laws 1984, LB 861, § 5.

2-3294 District; recreation area; regulate pets and other animals; violation; penalty.

(1) A district may permit pets, domestic animals, and poultry to be brought upon, possessed, grazed, maintained, or run at large in all or any portion of a recreation area.

(2) Any person who brings upon, possesses, grazes, maintains, or allows to run at large any pet, domestic animal, or poultry in a recreation area when not permitted by the district shall be guilty of a Class V misdemeanor.

Source: Laws 1984, LB 861, § 6.

2-3295 District; recreation area; permit hunting, fishing, trapping, weapons; violation; penalty.

(1) A district may on a temporary or permanent basis permit hunting, fishing, trapping or other forms of fur harvesting, or the public use of firearms, bow and arrow, or any other projectile weapons or devices in all or any portion of a recreation area.

(2) Any person who hunts, fishes, traps, harvests fur, or uses firearms, bow and arrow, or any other projectile weapon or device in a recreation area when not permitted by the district shall be guilty of a Class V misdemeanor.

Source: Laws 1984, LB 861, § 7.

2-3296 District; recreation area; permit water-related activities; violation; penalty.

(1) Except as otherwise provided in section 2-3290.01, a district may permit and regulate swimming, bathing, boating, wading, waterskiing, the use of any floatation device, or any other water-related recreational activity in all or any portion of a recreation area and may provide for special conditions to apply to specific swimming, bathing, boating, wading, or waterskiing areas. Any special conditions shall be posted on appropriate signs in the areas to which they apply.

(2) Any person who swims, bathes, boats, wades, water-skis, uses any floatation device, or engages in any other water-related recreational activity in a recreation area when not permitted by a district shall be guilty of a Class V misdemeanor.

Source: Laws 1984, LB 861, § 8; Laws 2006, LB 1113, § 16.

2-3297 District; recreation area; regulate real and personal property; violation; penalty.

(1) A district may provide for the protection, use, or removal of any public real or personal property in a recreation area and may regulate or prohibit the construction or installation of any privately owned structure in a recreation area. Except as otherwise provided in section 2-3290.01, a district may close all or any portion of a recreation area to any form of public use or access with the erection of appropriate signs, without the adoption and promulgation of formal written rules and regulations.

(2) Any person who, without the permission of the district, damages, destroys, uses, or removes any public real or personal property in a recreation area, constructs or installs any privately owned structure in a recreation area, or enters or remains upon all or any portion of a recreation area when appropriate signs or public notices prohibiting such activity have been erected or displayed shall be guilty of a Class V misdemeanor.

Source: Laws 1984, LB 861, § 9; Laws 2006, LB 1113, § 17.

2-3298 Recreation area; abandoned vehicle; penalty.

Any person who abandons any motor vehicle, trailer, or other conveyance in a recreation area shall be guilty of a Class V misdemeanor.

Source: Laws 1984, LB 861, § 10.

2-3299 District; recreation area; permit sales; violation; penalty.

(1) A district may permit the sale, trade, or vending of any goods, products, or commodities of any type in a recreation area.

(2) Any person who sells, trades, or vends any goods, products, or commodities of any type in a recreation area when not permitted by the district shall be guilty of a Class V misdemeanor.

Source: Laws 1984, LB 861, § 11.

2-32,100 District; recreation area; regulate vehicle traffic; violation; penalty.

A district may adopt and promulgate rules and regulations governing vehicle traffic in a recreation area as provided in the Nebraska Rules of the Road. Any person who violates any such rule or regulation shall be guilty of a Class V misdemeanor.

Source: Laws 1984, LB 861, § 12; Laws 1993, LB 370, § 1.

Cross References

Nebraska Rules of the Road, see section 60-601.

2-32,101 District; recreation area; enforcement; procedures; expenditure of funds for services or contracts, authorized.

(1) Any law enforcement officer, including, but not limited to, any Game and Parks Commission conservation officer, local police officer, member of the Nebraska State Patrol, or sheriff or deputy sheriff, is authorized to enforce sections 2-3292 to 2-32,100 and any rules and regulations adopted and promulgated pursuant to such sections. A district shall not employ law enforcement personnel and shall be prohibited from expending any funds for such purpose except as provided in subsection (2) of this section. Each district shall provide a

copy of its rules and regulations to the appropriate law enforcement officer. Any law enforcement officer may arrest and detain any person committing a violation of the rules and regulations in a recreation area or committing any misdemeanor or felony as provided by the laws of this state.

(2) A district may expend funds to enter into agreements pursuant to the Interlocal Cooperation Act for the services of certified law enforcement personnel or to contract for the services of private security services to patrol and protect district-owned or district-managed recreation areas and to assist law enforcement officers in enforcing sections 2-3292 to 2-32,100 and any rules and regulations adopted and promulgated pursuant to such sections.

Source: Laws 1984, LB 861, § 13; Laws 1998, LB 922, § 391; Laws 2010, LB817, § 1.

Cross References

Interlocal Cooperation Act, see section 13-801.

2-32,102 Natural resources; agreements with other states; authorized.

The State of Nebraska may enter into agreements for the purpose of providing interstate cooperation and coordination in matters relating to natural resources with two or more of the following states: South Dakota, North Dakota, Montana, Wyoming, and Colorado. These states have cultural, economic, social, agricultural, and natural resources similarities as evidenced by such states' (1) past affiliations in interstate organizations such as the Old West Regional Commission and the Missouri River Basin Commission and (2) identity as reclamation states in the Upper and Lower Regions of the United States Bureau of Reclamation.

Source: Laws 1985, LB 705, § 1.

2-32,103 Missouri Basin Natural Resources Council; authorized.

For purposes of fostering interstate cooperation and coordination between the states listed in section 2-32,102 on matters relating to natural resources, when two or more of such states agree to participate in any agreement pursuant to section 2-32,102, Nebraska may participate in the formation of a Missouri Basin Natural Resources Council, which is hereby authorized.

Source: Laws 1985, LB 705, § 2.

2-32,104 Council; member states; costs; how shared.

Each state participating in the Missouri Basin Natural Resources Council shall pay an equal and proportionate share of money to (1) establish the council, (2) provide for the council's operations and overhead, (3) cover the expense of the member states' participating representatives who are not elected officials or state employees whose expenses are otherwise covered by the states, and (4) carry out the council's purposes.

Source: Laws 1985, LB 705, § 3.

2-32,105 Council; membership.

The Missouri Basin Natural Resources Council shall consist of the following members:

(1) One senator appointed in the manner prescribed by the senate of such state, except that two senators may be appointed by the Governor of the State of Nebraska from the Unicameral Legislature of the State of Nebraska;

(2) One member of the house of representatives appointed in the manner prescribed by the house of representatives of such state;

(3) The director or head of the principal state agency that coordinates and regulates matters relating to natural resources in each state;

(4) The director or head of the principal state agency that conducts geological and ground water research, investigations, and monitoring in each state; and

(5) One member appointed by the Governor of each state who shall serve at the pleasure of the Governor.

Source: Laws 1985, LB 705, § 4.

2-32,106 Council; duties.

The duties of the Missouri Basin Natural Resources Council shall be to:

(1) Collect and disseminate information on natural resources including studies, research, and policies between the states;

(2) Engender cooperation among and between the states on matters and issues relating to natural resources;

(3) Promote greater understanding and public awareness of the issues relating to natural resources in the states; and

(4) Make recommendations to the governors and legislatures of the states on matters relating to natural resources of mutual interest and concern in and between the states.

Source: Laws 1985, LB 705, § 5.

2-32,107 Council; powers.

The Missouri Basin Natural Resources Council may establish offices, employ the necessary staff, sponsor activities and programs, and conduct such meetings as the council deems advisable.

Source: Laws 1985, LB 705, § 6.

2-32,108 Council; funding authorized; Governor; duty.

For purposes of sections 2-32,102 to 2-32,108 there is hereby authorized an initial amount of fifty thousand dollars for the State of Nebraska to enter into agreements with the states listed in section 2-32,102 and to carry out the purpose and intent of sections 2-32,102 to 2-32,108 if such sum is matched by at least two other states listed in section 2-32,102. It is the intent of the Legislature that the funds authorized by this section shall be appropriated to the Governor, who shall be responsible for the implementation of sections 2-32,102 to 2-32,108.

Source: Laws 1985, LB 705, § 7.

2-32,109 Flood control improvement corridor; board; adopt or amend map.

The board, upon its own motion or upon a petition filed with the district by at least five owners of land within the district and after a public hearing, may adopt or amend flood control improvement corridor maps which show the

watercourses as defined in section 31-202 within the district or the reaches of watercourses which the district in the future may determine to improve with levees or other flood control improvements. The maps shall show the corridors of land on either side of the centerlines of the watercourses which the board determines should be reserved for the future construction, operation, or maintenance of flood control improvements and shall show the approximate location of the corridors on each parcel of land traversed.

Source: Laws 1994, LB 480, § 16.

2-32,110 Flood control improvement corridor; hearing on adoption or amendment of map; notice.

At least ten days prior to the district's public hearing on the adoption or amendment of any flood control improvement corridor map, the district shall publish, in a newspaper of general circulation within the district, a notice of the public hearing together with a diagram showing the general location and width of each flood control improvement corridor which is proposed to be adopted or amended. The notice shall identify the place within the district where the detailed flood control improvement corridor maps which are proposed to be adopted or amended are available for public inspection. At least fifteen days prior to the public hearing, the district shall send such notice of public hearing and copies of the flood control improvement corridor map by certified mail to the owner of each parcel of land traversed by the corridor at the address shown for such owner on the county tax records.

Source: Laws 1994, LB 480, § 17.

2-32,111 Flood control improvement corridor; map; filing, recording, and indexing required.

The district shall file a copy of each adopted or amended flood control improvement corridor map, together with a copy of the board resolution adopting or amending such map and containing the legal descriptions of all parcels of land traversed, with the county, city, or village officer responsible for the receipt of requests for the issuance of building permits for each county, city, and village traversed by the flood control improvement corridors depicted upon the map. The district shall also record each adopted or amended flood control improvement corridor map and each board resolution adopting or amending such map with the register of deeds of each county traversed by such corridors. A notice of the existence of the map and board resolution shall be indexed against all parcels of land included in whole or in part on such map and, in addition, shall indicate to the landowner where the map may be reviewed.

Source: Laws 1994, LB 480, § 18.

2-32,112 Flood control improvement corridor; building permit; issuance; procedure.

A building permit shall be required for all structures within an adopted flood control improvement corridor if the actual cost of the structure will exceed one thousand dollars.

Upon the filing of a request for a building permit for a structure on a parcel of land located within a flood control improvement corridor, the officer responsible for issuance of building permits shall give the district notice of the filing of the request for a building permit. The officer shall not issue a permit

for a period of sixty days from the date of mailing such notice to the district unless the district waives the time period in writing.

Within the sixty-day period, the district may file with the officer and send by certified mail to the landowner a statement of the district's intent to negotiate with the owner of the land involved. Upon the filing and mailing of such a statement of intent, the district shall be allowed six months for negotiations with the landowner.

At the end of the six-month period, if the landowner has not withdrawn the application for a permit, the permit shall be issued if it meets all other applicable codes, ordinances, and laws.

Source: Laws 1994, LB 480, § 19.

2-32,113 Flood control improvement corridor; acquisition of rights-of-way; sections; how construed.

Nothing in sections 2-32,109 to 2-32,112 shall be deemed a condition precedent to the acquisition of rights-of-way by purchase or by eminent domain.

Source: Laws 1994, LB 480, § 20.

2-32,114 Flood control improvement corridor; building permit requirement; applicability of sections.

Sections 2-32,109 to 2-32,112 shall only apply in counties, cities, or villages which have a requirement that a building permit be obtained prior to construction of a structure whether the requirement is adopted before, on, or after July 16, 1994.

Source: Laws 1994, LB 480, § 21.

2-32,115 Immediate temporary stay imposed by natural resources district; department; powers and duties.

(1) Whenever a natural resources district imposes an immediate temporary stay for one hundred eighty days in accordance with subsection (2) of section 46-707, the department may place an immediate temporary stay without prior notice or hearing on the issuance of new surface water natural-flow appropriations for one hundred eighty days in the area, river basin, subbasin, or reach of the same area included in the natural resources district's temporary stay, except that the department shall not place a temporary stay on new surface water natural-flow appropriations that are necessary to alleviate an emergency situation involving the provision of water for human consumption or public health or safety.

(2) The department shall hold at least one public hearing on the matter within the affected area within the period of the one-hundred-eighty-day temporary stay, with the notice of hearing given as provided in section 46-743, prior to making a determination as to imposing a stay or conditions in accordance with section 46-234 and subsection (11) of section 46-714. The department may hold the public hearing in conjunction with the natural resources district's hearing.

(3) Within forty-five days after a hearing pursuant to this section, the department shall decide whether to exempt from the immediate temporary stay the issuance of appropriations for which applications were pending prior to the declaration commencing the stay but for which the application was not ap-

proved prior to such date, to continue the stay, or to allow the issuance of new surface water appropriations.

Source: Laws 2007, LB701, § 16; Laws 2009, LB483, § 1.

ARTICLE 33

SOYBEAN DEVELOPMENT

Section
2-3301. Repealed. Laws 1995, LB 434, § 13.
2-3302. Repealed. Laws 1995, LB 434, § 13.
2-3303. Repealed. Laws 1995, LB 434, § 13.
2-3304. Repealed. Laws 1995, LB 434, § 13.
2-3305. Repealed. Laws 1995, LB 434, § 13.
2-3306. Repealed. Laws 1995, LB 434, § 13.
2-3307. Repealed. Laws 1995, LB 434, § 13.
2-3308. Repealed. Laws 1995, LB 434, § 13.
2-3309. Repealed. Laws 1995, LB 434, § 13.
2-3310. Repealed. Laws 1995, LB 434, § 13.
2-3311. Repealed. Laws 1995, LB 434, § 13.
2-3312. Repealed. Laws 1981, LB 11, § 38.
2-3313. Repealed. Laws 1981, LB 11, § 38.
2-3314. Repealed. Laws 1981, LB 11, § 38.
2-3315. Repealed. Laws 1995, LB 434, § 13.
2-3316. Repealed. Laws 1995, LB 434, § 13.
2-3317. Repealed. Laws 1995, LB 434, § 13.
2-3318. Repealed. Laws 1995, LB 434, § 13.
2-3319. Repealed. Laws 1995, LB 434, § 13.
2-3320. Repealed. Laws 1995, LB 434, § 13.
2-3321. Repealed. Laws 1995, LB 434, § 13.
2-3322. Repealed. Laws 1995, LB 434, § 13.
2-3323. Repealed. Laws 1995, LB 434, § 13.
2-3324. Repealed. Laws 1995, LB 434, § 13.
2-3325. Legislative findings.
2-3326. Legislative intent.
2-3327. Transition to private nonprofit corporation; Soybean Development, Utilization, and Marketing Board; duties.
2-3328. Private nonprofit corporation; transfer of program; conditions; Director of Agriculture; duties.
2-3329. Repealed. Laws 2000, LB 692, § 13.
2-3330. Private nonprofit corporation; designation.
2-3331. State Treasurer; transfer of funds.

2-3301 Repealed. Laws 1995, LB 434, § 13.

2-3302 Repealed. Laws 1995, LB 434, § 13.

2-3303 Repealed. Laws 1995, LB 434, § 13.

2-3304 Repealed. Laws 1995, LB 434, § 13.

2-3305 Repealed. Laws 1995, LB 434, § 13.

2-3306 Repealed. Laws 1995, LB 434, § 13.

2-3307 Repealed. Laws 1995, LB 434, § 13.

2-3308 Repealed. Laws 1995, LB 434, § 13.

2-3309 Repealed. Laws 1995, LB 434, § 13.

2-3310 Repealed. Laws 1995, LB 434, § 13.

2-3311 Repealed. Laws 1995, LB 434, § 13.

2-3312 Repealed. Laws 1981, LB 11, § 38.

2-3313 Repealed. Laws 1981, LB 11, § 38.

2-3314 Repealed. Laws 1981, LB 11, § 38.

2-3315 Repealed. Laws 1995, LB 434, § 13.

2-3316 Repealed. Laws 1995, LB 434, § 13.

2-3317 Repealed. Laws 1995, LB 434, § 13.

2-3318 Repealed. Laws 1995, LB 434, § 13.

2-3319 Repealed. Laws 1995, LB 434, § 13.

2-3320 Repealed. Laws 1995, LB 434, § 13.

2-3321 Repealed. Laws 1995, LB 434, § 13.

2-3322 Repealed. Laws 1995, LB 434, § 13.

2-3323 Repealed. Laws 1995, LB 434, § 13.

2-3324 Repealed. Laws 1995, LB 434, § 13.

2-3325 Legislative findings.

The Legislature finds that:

(1) The federal government has enacted the Soybean Promotion, Research, and Consumer Information Act of 1990, 7 U.S.C. 6301 et seq., which provides for the establishment of a national program of promotion, research, consumer information, and industry information designed to strengthen the soybean industry's position in the marketplace and to maintain and expand existing domestic and foreign markets and uses for soybeans and soybean products;

(2) To carry out the program, assessments are made on the first marketing of soybeans. The federal Soybean Promotion, Research, and Consumer Information Act of 1990, 7 U.S.C. 6301 et seq., permits a qualified state soybean board to collect such assessments from producers. A qualified state soybean board may be a state agency or an entity governed by soybean producers;

(3) In 1975 the Nebraska Legislature enacted the Nebraska Soybean Resources Act which created the Soybean Development, Utilization, and Marketing Board to develop, carry out, and participate in programs of research, education, market development, and promotion of the soybean industry. The board is an agency of the state and carries out the duties of a qualified state soybean board for Nebraska, including collecting assessments as described in subdivision (2) of this section and depositing the qualified state soybean board's portion of such assessments in the Soybean Development, Utilization, and Marketing Fund;

(4) A state may have only one qualified state soybean board under the federal Soybean Promotion, Research, and Consumer Information Act of 1990, 7 U.S.C. 6301 et seq.;

(5) There would be many advantages in using a private nonprofit corporation rather than a state agency to carry out the purposes of the federal Soybean Promotion, Research, and Consumer Information Act of 1990, 7 U.S.C. 6301 et seq., including expediting business matters, eliminating duplication in accounting and auditing procedures, simplifying the appropriations process, and streamlining the disbursement of funds. The advantages provided to the public by operating as a state agency can be obtained by a private nonprofit corporation. A private nonprofit corporation can include in its bylaws procedures for open meetings, public notice of corporate programs and decisions, access to records, and a means by which a producer of soybeans has the opportunity to offer his or her ideas and suggestions relative to corporate policy;

(6) There are adequate protections provided by the federal Soybean Promotion, Research, and Consumer Information Act of 1990, 7 U.S.C. 6301 et seq., and the rules and regulations promulgated under the act to ensure that the assessments made are used for the purposes of the act. These provisions apply to the qualified state soybean board regardless of whether the board is a state agency or a private nonprofit corporation;

(7) All money in the Soybean Development, Utilization, and Marketing Fund comes from assessments on the marketing of soybeans and none of the money comes from tax funds;

(8) All equipment, furniture, and other property of the Soybean Development, Utilization, and Marketing Board was purchased with money from the fund and not with tax funds; and

(9) Continuity to the soybean industry development program in Nebraska is important, and if changes in the program occur at the federal level, the Legislature can respond with appropriate legislation.

Source: Laws 1995, LB 434, § 1.

2-3326 Legislative intent.

(1) It is the intent of the Legislature to encourage the formation of a private nonprofit corporation which meets the criteria of the federal Soybean Promotion, Research, and Consumer Information Act of 1990, 7 U.S.C. 6301 et seq., as a qualified state soybean board to continue Nebraska's soybean industry development program and to take over from the Soybean Development, Utilization, and Marketing Board the duties of the qualified state soybean board under the federal act.

(2) It is the intent of the Legislature that a smooth transition of Nebraska's soybean development program from the Soybean Development, Utilization, and Marketing Board to the private nonprofit corporation be made.

Source: Laws 1995, LB 434, § 2.

2-3327 Transition to private nonprofit corporation; Soybean Development, Utilization, and Marketing Board; duties.

(1) The private nonprofit corporation described in section 2-3326 seeking designation as a qualified state soybean board pursuant to the federal Soybean Promotion, Research, and Consumer Information Act of 1990, 7 U.S.C. 6301 et seq., shall have initial articles of incorporation and bylaws which include provisions providing that:

(a) The members of the Soybean Development, Utilization, and Marketing Board serving immediately prior to October 1, 1995, become the initial directors of the corporation and shall serve until their terms would have expired pursuant to the Nebraska Soybean Resources Act;

(b) Except for the election of an at-large member who shall be elected by the board, elections of subsequent members of the board of directors of the corporation shall be by districts to provide adequate representation of producers and such elections will be conducted by the Cooperative Extension Service of the University of Nebraska pursuant to a contract with the corporation, which contract provides for use of absentee ballots in the election;

(c) Any employee of the Soybean Development, Utilization, and Marketing Board immediately prior to October 1, 1995, becomes, at the option of the employee, an employee of the corporation on October 1, 1995;

(d) The financial records of the corporation are audited annually by a certified public accountant in accordance with any requirements of the federal Soybean Promotion, Research, and Consumer Information Act of 1990, 7 U.S.C. 6301 et seq., and any regulations under such act;

(e) The duties of the corporation are the duties provided for a qualified state soybean board under the federal Soybean Promotion, Research, and Consumer Information Act of 1990, 7 U.S.C. 6301 et seq., or any substantially similar successor federal act which provides for an assessment on the marketing of soybeans for purposes similar to the purposes provided in the federal Soybean Promotion, Research, and Consumer Information Act of 1990;

(f) The corporation assumes all existing and future liabilities of the Soybean Development, Utilization, and Marketing Board;

(g) The expenditure of any funds paid or transferred to the corporation will be used in a manner consistent with the original purposes of the Nebraska Soybean Resources Act;

(h) The corporation submits quarterly reports to the Auditor of Public Accounts detailing the expenditures of funds received or transferred to it from the state until all the funds are expended; and

(i) Any amendment to the articles and bylaws of the corporation shall not become effective until approved by a two-thirds vote of the directors of the private nonprofit corporation.

(2) The Soybean Development, Utilization, and Marketing Board shall:

(a) Utilize the existing appropriation to the Soybean Development, Utilization, and Marketing Fund to carry out its duties under the Nebraska Soybean Resources Act through September 30, 1995, and may contract with the private nonprofit corporation for transitional programs and services in addition to the contracts authorized under section 2-3311;

(b) Contract for the transfer of furniture, equipment, and other property from the board to the corporation; and

(c) Transfer all books, files, and records from the board to the corporation.

Source: Laws 1995, LB 434, § 3.

2-3328 Private nonprofit corporation; transfer of program; conditions; Director of Agriculture; duties.

(1) If a private nonprofit corporation as described in section 2-3326 (a) is formed, (b) submits to the Director of Agriculture on or before August 1, 1995, copies of its articles of incorporation and bylaws which the director determines comply with subsection (1) of section 2-3327, (c) provides to the director written documentation showing that the corporation has been certified by the United Soybean Board as a qualified state soybean board, and (d) provides to the Director of Administrative Services a contractual guarantee that the corporation accepts and agrees to pay out of any funds available to it all existing and future liabilities of the Soybean Development, Utilization, and Marketing Board which have not been extinguished prior to October 1, 1995, including unpaid bills and claims for goods and services, claims for refunds of fees and assessments, accrued salaries and benefits, unemployment compensation claims, and claims relating to wrongful action, and upon compliance with sections 2-3326 to 2-3328, the transfer of Nebraska's soybean industry development program from the Soybean Development, Utilization, and Marketing Board to the private nonprofit corporation shall be arranged.

(2) The Director of Agriculture shall complete the review of the articles and bylaws not later than September 1, 1995. Upon determining that the articles and bylaws contain the items required by section 2-3327, the director shall so notify the corporation in writing and shall send a copy of the articles and bylaws to the Soybean Development, Utilization, and Marketing Board.

Source: Laws 1995, LB 434, § 4; Laws 2000, LB 692, § 1.

2-3329 Repealed. Laws 2000, LB 692, § 13.

2-3330 Private nonprofit corporation; designation.

On October 1, 1995, if all provisions of sections 2-3326 to 2-3328 have been complied with, the private nonprofit corporation shall become the qualified state soybean board for Nebraska for the purposes of the federal Soybean Promotion, Research, and Consumer Information Act of 1990, 7 U.S.C. 6301 et seq.

Source: Laws 1995, LB 434, § 6.

2-3331 State Treasurer; transfer of funds.

The State Treasurer shall transfer any funds remaining in or accruing to the Soybean Development, Utilization, and Marketing Fund on or after October 1, 1995, to the private nonprofit corporation. Such transfers shall be in payment of any contract between the Soybean Development, Utilization, and Marketing Board and the corporation which provides for the corporation to carry out the responsibilities and programs of the board under the Nebraska Soybean Resources Act. The State Treasurer shall make such transfers only if sections 2-3326 to 2-3328 have been complied with.

Source: Laws 1995, LB 434, § 7; Laws 2000, LB 692, § 2.

ARTICLE 34
POULTRY AND EGG RESOURCES

Section
2-3401. Act, how cited.
2-3402. Division of Poultry and Egg Development, Utilization, and Marketing; created.
2-3403. Terms, defined.

Section
2-3404. Nebraska Poultry and Egg Development, Utilization, and Marketing Committee; members.
2-3405. Committee; members; compensation; expenses.
2-3406. Committee; chairman; meetings.
2-3407. Department; powers.
2-3408. Commercially sold eggs and turkeys; fee; how computed and assessed.
2-3409. Fees; deducted; when.
2-3410. First purchaser; deduct fees; maintain records; public inspection; statement.
2-3411. Director; annual report; contents; public record.
2-3412. Director; power to exempt purchasers; when; eggs exempt from act.
2-3413. Nebraska Poultry and Egg Development, Utilization, and Marketing Fund; created; administration; department; accept funds.
2-3414. Hearing before Legislature's Committee on Agriculture; when; purpose.
2-3415. Committee; research or development; limitation on authority.
2-3416. Violations; penalties.

2-3401 Act, how cited.

Sections 2-3401 to 2-3416 shall be known and may be cited as the Nebraska Poultry and Egg Resources Act.

Source: Laws 1976, LB 514, § 1.

2-3402 Division of Poultry and Egg Development, Utilization, and Marketing; created.

There is hereby established a Division of Poultry and Egg Development, Utilization, and Marketing in the Department of Agriculture.

Source: Laws 1976, LB 514, § 2.

2-3403 Terms, defined.

For purposes of the Nebraska Poultry and Egg Resources Act, unless the context otherwise requires:

(1) Department shall mean the Department of Agriculture;

(2) Director shall mean the Director of Agriculture;

(3) Committee shall mean the advisory committee created by section 2-3404;

(4) Nebraska Poultry Industries, Inc. shall mean a body corporate formed under the provisions of the Nonprofit Corporation Act, the articles of incorporation of which were received by the Secretary of State and filed for record on January 13, 1970, and recorded as film roll number 35, Miscellaneous Incorporations at page 2206. Its purpose and objective is to promote, improve, and protect all branches of the poultry and egg industry and to coordinate all the activities of its member divisions of the poultry industry and to act as their agent in promoting such activities favorably to the poultry industry as a whole for the entire State of Nebraska;

(5) Person shall mean any individual, firm, group of individuals, partnership, limited liability company, corporation, unincorporated association, cooperative, or other entity, public or private;

(6) Egg producer shall mean any person engaged in the production of commercial eggs who owns or contracts for the care of layer-type chickens;

(7) Turkey producer shall mean a person who owns or contracts for the care of turkeys sold through commercial channels;

(8) First purchaser shall mean any person who receives or otherwise acquires poultry or eggs from a producer and processes, prepares for marketing, or markets such poultry or eggs, including the poultry or eggs of his or her own production, and shall include a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the producer when the actual or constructive possession of such poultry or eggs is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim;

(9) Poultry shall mean domestic chickens and turkeys;

(10) Commercial eggs shall mean, in the case of eggs produced in this state, eggs from domesticated chickens that are sold for human consumption either in shell egg form or for further processing and, in the case of eggs produced outside of this state, graded eggs sold to retailers, wholesalers, distributors, or food purveyors;

(11) Egg products shall mean commercial products produced, in whole or in part, from shell eggs;

(12) Market development shall mean research and educational programs which are directed toward (a) better and more efficient production, marketing, and utilization of poultry, eggs, and the products thereof produced for resale, (b) better methods, to include, but not be limited to, public relations and other promotion techniques, for the maintenance of present markets and for the development of new or larger domestic or foreign markets and for the sale of poultry, eggs, and the products thereof, and (c) the prevention, modification, or elimination of trade barriers which obstruct the free flow of poultry, eggs, and the products thereof to market;

(13) Commercial channels shall mean the sale of poultry, eggs, or the products thereof for any use when sold to any commercial buyer, dealer, processor, or cooperative or to any person who resells any poultry, eggs, or the products thereof;

(14) Case shall mean a unit of thirty dozen eggs;

(15) Breaker shall mean a person engaged in the further processing of commercial eggs;

(16) Sale shall include any pledge or mortgage of poultry, eggs, or the products thereof to any person;

(17) Retailer shall mean a person who sells eggs or offers eggs for sale directly to consumers;

(18) Wholesaler or distributor shall mean a person who sells eggs to retailers, food purveyors, other wholesalers, or other distributors; and

(19) Food purveyor shall mean a person who operates a restaurant, cafeteria, hotel, hospital, nursing home, boarding house, school, government institution, or other place where eggs are served in the shell or broken out for immediate consumption.

Source: Laws 1976, LB 514, § 3; Laws 1984, LB 991, § 1; Laws 1993, LB 121, § 71.

2-3404 Nebraska Poultry and Egg Development, Utilization, and Marketing Committee; members.

(1) With the exception of the ex officio members, the duly elected directors of Nebraska Poultry Industries, Inc. shall serve as an advisory committee to be

known as the Nebraska Poultry and Egg Development, Utilization, and Marketing Committee who shall advise the director on matters relevant to the poultry and egg industry.

(2) The ex officio members shall be designated by the committee. Ex officio members may include, but not be limited to:

(a) The director;

(b) Vice chancellor, University of Nebraska Institute of Agriculture and Natural Resources;

(c) Chairperson, Department of Animal Sciences, University of Nebraska;

(d) Extension Poultry Specialist, Department of Animal Sciences, University of Nebraska;

(e) General Manager, Nebraska Poultry Industries, Inc.; and

(f) A representative of a consumer organization.

Source: Laws 1976, LB 514, § 4; Laws 1990, LB 856, § 1.

2-3405 Committee; members; compensation; expenses.

Members of the committee shall receive no salary, but shall be paid a per diem of twenty-five dollars for each day they are actually and necessarily engaged in the transaction of business, together with expenses incurred while on official business as provided in sections 81-1174 to 81-1177.

Source: Laws 1976, LB 514, § 5; Laws 2020, LB381, § 5.

2-3406 Committee; chairman; meetings.

The President of Nebraska Poultry Industries, Inc. shall be chairman of the committee. The committee shall meet at least once every three months and at such other times as called by the chairman, the director, or by any three members of the committee.

Source: Laws 1976, LB 514, § 6.

2-3407 Department; powers.

It is hereby declared to be the public policy of the State of Nebraska to protect and foster the health, prosperity, and general welfare of its people by protecting and stabilizing the poultry and egg industry and the economy of the areas producing poultry and eggs. The department shall be the agency of the State of Nebraska for such purpose. In connection with and in furtherance of such policy and purpose, such department, only upon the approval of a majority of the committee, may:

(1) Formulate the general policies and programs of the State of Nebraska respecting the discovery, promotion, and development of markets and industries for the utilization of poultry, eggs, and the products thereof;

(2) Adopt and devise a program of education and publicity;

(3) Cooperate with local, state, regional, or national organizations, whether public or private, in carrying out the purposes of the Nebraska Poultry and Egg Resources Act and to enter into such agreements as may be necessary;

(4) Adopt and promulgate such rules and regulations as are necessary to promptly and effectively enforce the act;

(5) Conduct, in addition, any other program that would enhance the image of poultry, eggs, and the products thereof. Such programs may include, but not be limited to, consumer education, research, information, advertising, promotion, and market development of poultry, eggs, and the products thereof;

(6) Make refunds for overpayment of fees according to rules and regulations adopted by the department;

(7) Appoint the head of the Division of Poultry and Egg Development, Utilization, and Marketing and assistants as may be necessary to carry out the intent and purposes of the act;

(8) Develop a biennial budget with fiscal year estimates of requirements to conduct the affairs of the division;

(9) Establish annually the fees to be collected; and

(10) Establish an administrative office, suitable for the furtherance of the intent and purposes of the act, with Nebraska Poultry Industries, Inc.

Source: Laws 1976, LB 514, § 7; Laws 1986, LB 258, § 6; Laws 1991, LB 358, § 3.

2-3408 Commercially sold eggs and turkeys; fee; how computed and assessed.

(1) There shall be paid to the director a fee of not to exceed five cents per case upon all commercial eggs sold through commercial channels to carry out the intent and purposes of sections 2-3401 to 2-3416. The fee for commercial eggs produced in this state shall be paid by the egg producer who owns the eggs and shall be collected and remitted to the director by the first purchaser. The fee for commercial eggs produced outside of this state and sold in this state to retailers, wholesalers, distributors, or food purveyors shall be paid to the director by the person importing such eggs into the state. Under the provisions of sections 2-3401 to 2-3416, no eggs shall be subject to the fee more than once.

(2) There shall be paid to the director a fee of not to exceed three cents per turkey grown in the State of Nebraska and sold through commercial channels. The fee shall be paid by the turkey producer and shall be collected by the first purchaser. Under the provisions of sections 2-3401 to 2-3416, no turkeys shall be subject to the fee more than once.

(3) The director may, subject to the approval of a majority of the members of the advisory committee, whenever he or she determines that the fees provided by this section are yielding more than is required to carry out the intent and purposes of sections 2-3401 to 2-3416, reduce such fees for such period as the director shall deem justified. In the event that the director, after reducing such fees, finds that sufficient revenue is not being produced by such reduced fees, he or she may restore in full or in part such fees to such rates as will in his or her judgment produce sufficient revenue to carry out the intent and purposes of sections 2-3401 to 2-3416.

Source: Laws 1976, LB 514, § 8; Laws 1984, LB 991, § 2.

2-3409 Fees; deducted; when.

The fee, provided for by the provisions of section 2-3408, shall be deducted, as provided by sections 2-3401 to 2-3416, whether such poultry and eggs are stored in this state or any other state. Any fees remitted to the director may be refunded by the director upon the written application of any producer for a

refund of the amount deducted by the first purchaser. The application for refund shall be submitted to the director within sixty days from the date of assessment of fees and shall have attached thereto proof of the fee deduction claim by the applicant.

Source: Laws 1976, LB 514, § 9.

2-3410 First purchaser; deduct fees; maintain records; public inspection; statement.

(1) The first purchaser, at the time of settlement, shall deduct the poultry and egg fees as provided in section 2-3408 and shall maintain records as specified in the rules and regulations promulgated under sections 2-3401 to 2-3416. Such records shall be open for inspection and audit by authorized representatives of the department during normal business hours observed by the purchaser.

(2) The purchaser shall render and have on file with the department a statement of the number of poultry or cases of eggs purchased in Nebraska in accordance with the rules and regulations promulgated under sections 2-3401 to 2-3416. At the time the statement is filed, the purchaser shall pay and remit to the department the fees as provided for in section 2-3408.

Source: Laws 1976, LB 514, § 10.

2-3411 Director; annual report; contents; public record.

The director shall make an annual report, at least thirty days prior to January 1 of each year, showing all income and expenses and any other facts relevant to sections 2-3401 to 2-3416. The report shall be available to the public.

Source: Laws 1976, LB 514, § 11.

2-3412 Director; power to exempt purchasers; when; eggs exempt from act.

(1) The director may exempt from the provisions of section 2-3408 and subsection (2) of section 2-3410 first purchasers whose annual average weekly volume is less than twenty-five thirty-dozen cases per week whenever the administrative cost of collecting and processing the fees received from such sources exceeds the amount of income derived therefrom.

(2) Eggs utilized for the production of baby chicks shall be exempt from sections 2-3401 to 2-3416.

Source: Laws 1976, LB 514, § 12; Laws 1977, LB 183, § 1.

2-3413 Nebraska Poultry and Egg Development, Utilization, and Marketing Fund; created; administration; department; accept funds.

(1) The State Treasurer is hereby directed to establish in the treasury of the State of Nebraska a fund to be known as the Nebraska Poultry and Egg Development, Utilization, and Marketing Fund, to which shall be credited all fees collected by the department pursuant to the Nebraska Poultry and Egg Resources Act. After appropriation, the Director of Administrative Services shall, upon receipt of proper vouchers approved by the director, issue warrants on such fund including refund payments authorized by section 2-3409 and the State Treasurer shall pay the warrants out of the money credited to such 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.

(2) The department may accept grants, contributions, or other funds from any private or federal, state, or other public source to be used to administer the Nebraska Poultry and Egg Resources Act and to conduct programs under such act.

Source: Laws 1976, LB 514, § 13; Laws 1984, LB 991, § 3; Laws 1995, LB 7, § 17.

Cross References

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

2-3414 Hearing before Legislature's Committee on Agriculture; when; purpose.

The director shall request a hearing by the Legislature's Committee on Agriculture when petitioned by either fifteen percent of the egg or turkey producers or any number of producers representing thirty percent of the eggs or turkeys upon which fees are being collected to determine whether or not there is need to amend or repeal sections 2-3401 to 2-3416.

Source: Laws 1976, LB 514, § 14.

2-3415 Committee; research or development; limitation on authority.

The Poultry and Egg Development, Utilization, and Marketing Committee shall not be authorized to set up research or development units or agencies of its own, but shall limit its activity to cooperation and contracts with the University of Nebraska Institute of Agriculture and Natural Resources and other proper local, state, regional, or national organizations, public or private, in carrying out the purposes of sections 2-3401 to 2-3416.

Source: Laws 1976, LB 514, § 15.

2-3416 Violations; penalties.

Any person violating any of the provisions of sections 2-3401 to 2-3416 shall be guilty of a Class III misdemeanor.

Source: Laws 1976, LB 514, § 16; Laws 1977, LB 41, § 2.

ARTICLE 35
GRADED EGGS

Section
2-3501. Repealed. Laws 2017, LB134, § 15.
2-3502. Repealed. Laws 2017, LB134, § 15.
2-3503. Repealed. Laws 2017, LB134, § 15.
2-3504. Repealed. Laws 2017, LB134, § 15.
2-3505. Repealed. Laws 2017, LB134, § 15.
2-3506. Repealed. Laws 2017, LB134, § 15.
2-3507. Repealed. Laws 2017, LB134, § 15.
2-3508. Repealed. Laws 2017, LB134, § 15.
2-3509. Repealed. Laws 2017, LB134, § 15.
2-3510. Repealed. Laws 2017, LB134, § 15.
2-3511. Repealed. Laws 2017, LB134, § 15.
2-3512. Repealed. Laws 2017, LB134, § 15.
2-3513. Repealed. Laws 2017, LB134, § 15.
2-3514. Repealed. Laws 2017, LB134, § 15.
2-3515. Repealed. Laws 2017, LB134, § 15.

Section
2-3516. Repealed. Laws 2017, LB134, § 15.
2-3517. Repealed. Laws 2003, LB 250, § 29.
2-3518. Repealed. Laws 2017, LB134, § 15.
2-3519. Repealed. Laws 2017, LB134, § 15.
2-3520. Repealed. Laws 2017, LB134, § 15.
2-3521. Repealed. Laws 2017, LB134, § 15.
2-3522. Repealed. Laws 2017, LB134, § 15.
2-3523. Repealed. Laws 2017, LB134, § 15.
2-3524. Repealed. Laws 2017, LB134, § 15.
2-3525. Repealed. Laws 2017, LB134, § 15.
2-3526. Graded Egg Fund; transfer.

2-3501 Repealed. Laws 2017, LB134, § 15.

2-3502 Repealed. Laws 2017, LB134, § 15.

2-3503 Repealed. Laws 2017, LB134, § 15.

2-3504 Repealed. Laws 2017, LB134, § 15.

2-3505 Repealed. Laws 2017, LB134, § 15.

2-3506 Repealed. Laws 2017, LB134, § 15.

2-3507 Repealed. Laws 2017, LB134, § 15.

2-3508 Repealed. Laws 2017, LB134, § 15.

2-3509 Repealed. Laws 2017, LB134, § 15.

2-3510 Repealed. Laws 2017, LB134, § 15.

2-3511 Repealed. Laws 2017, LB134, § 15.

2-3512 Repealed. Laws 2017, LB134, § 15.

2-3513 Repealed. Laws 2017, LB134, § 15.

2-3514 Repealed. Laws 2017, LB134, § 15.

2-3515 Repealed. Laws 2017, LB134, § 15.

2-3516 Repealed. Laws 2017, LB134, § 15.

2-3517 Repealed. Laws 2003, LB 250, § 29.

2-3518 Repealed. Laws 2017, LB134, § 15.

2-3519 Repealed. Laws 2017, LB134, § 15.

2-3520 Repealed. Laws 2017, LB134, § 15.

2-3521 Repealed. Laws 2017, LB134, § 15.

2-3522 Repealed. Laws 2017, LB134, § 15.

2-3523 Repealed. Laws 2017, LB134, § 15.

2-3524 Repealed. Laws 2017, LB134, § 15.

2-3525 Repealed. Laws 2017, LB134, § 15.

2-3526 Graded Egg Fund; transfer.

The State Treasurer shall transfer any money in the Graded Egg Fund to the Pure Food Cash Fund on August 24, 2017.

Source: Laws 2017, LB134, § 13.

ARTICLE 36

CORN DEVELOPMENT

Section
2-3601. Act, how cited.
2-3602. Intent and purpose of act.
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2-3604. Board, defined.
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2-3606. First purchaser, defined.
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2-3624. Repealed. Laws 1981, LB 11, § 38.
2-3625. Repealed. Laws 1981, LB 11, § 38.
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2-3627. Fees; adjusted by board; when.
2-3628. Pledge or mortgage; corn used as security; fee; refund; procedure.
2-3629. Fee; when assessed.
2-3630. Fee; when not applicable.
2-3631. Purchaser deduct fee; maintain records; public information; quarterly statement.
2-3632. Board; annual report; contents; public information.
2-3633. Nebraska Corn Development, Utilization, and Marketing Fund; created; use; investment.
2-3634. Board; cooperate with University of Nebraska and other organizations; purpose.
2-3635. Violations; penalty.

2-3601 Act, how cited.

Sections 2-3601 to 2-3635 shall be known and may be cited as the Nebraska Corn Resources Act.

Source: Laws 1978, LB 639, § 1; Laws 1996, LB 1336, § 1.

2-3602 Intent and purpose of act.

It is declared to be the public policy of the State of Nebraska to protect and foster the health, prosperity, and general welfare of its people by protecting and

stabilizing the corn industry and the economy of the areas producing corn. The Corn Development, Utilization, and Marketing Board shall be the agency of the State of Nebraska for such purpose. In connection with and in furtherance of such purpose, it is declared to be in the interest of the public welfare of the state that the producers of corn be permitted and encouraged to develop, carry out, and participate in programs of research, education, market development, and promotion. It is the purpose of the Nebraska Corn Resources Act to provide the authorization and to prescribe the necessary procedures whereby corn producers in this state may finance programs to achieve the activities expressed in the act.

Source: Laws 1978, LB 639, § 2; Laws 2012, LB1057, § 1.

2-3603 Definitions, where found.

For purposes of the Nebraska Corn Resources Act, unless the context otherwise requires, the definitions found in sections 2-3604 to 2-3610 shall be used.

Source: Laws 1978, LB 639, § 3; Laws 1996, LB 1336, § 2.

2-3604 Board, defined.

Board shall mean the Corn Development, Utilization, and Marketing Board.

Source: Laws 1978, LB 639, § 4.

2-3605 Grower, defined.

Grower shall mean any landowner personally engaged in growing corn, a tenant of the landowner personally engaged in growing corn, and both the owner and tenant jointly and shall include a person, partnership, limited liability company, association, corporation, cooperative, trust, sharecropper, and other business unit, device, and arrangement.

Source: Laws 1978, LB 639, § 5; Laws 1993, LB 121, § 72.

2-3606 First purchaser, defined.

First purchaser shall mean any person, public or private corporation, association, partnership, or limited liability company buying, accepting for shipment, or otherwise acquiring the property in or to corn from a grower, and shall include a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the grower, when the actual or constructive possession of such corn is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim.

Source: Laws 1978, LB 639, § 6; Laws 1993, LB 121, § 73.

2-3607 Commercial channels, defined.

Commercial channels shall mean the sale of corn for any use, to any commercial buyer, dealer, processor, cooperative, or to any person, public or private, who resells any corn or product produced from corn.

Source: Laws 1978, LB 639, § 7.

2-3608 Delivered or delivery, defined.

Delivered or delivery shall mean receiving corn for any use, except for storage, and includes receiving corn for consumption, for utilization, or as a result of sale in the State of Nebraska.

Source: Laws 1996, LB 1336, § 3.

2-3609 Sale, defined.

Sale shall include any pledge or mortgage of corn after harvest to any person, public or private.

Source: Laws 1978, LB 639, § 9.

2-3610 Corn, defined.

Corn shall not include popcorn or sweet corn.

Source: Laws 1978, LB 639, § 10.

2-3611 Board; members.

The board shall be composed of nine members who (1) are citizens of Nebraska, (2) are at least twenty-one years of age, (3) have been actually engaged in growing corn in this state for a period of at least five years, and (4) derive a substantial portion of their income from growing corn.

The Director of Agriculture, the vice chancellor of the University of Nebraska Institute of Agriculture and Natural Resources, and the president of the Nebraska Corn Growers Association shall be ex officio members of the board but shall have no vote in board matters.

Source: Laws 1978, LB 639, § 11.

2-3612 Board; vacancy; how filled.

Except for the position of the at-large member, whenever a vacancy occurs on the board for any reason, the Governor shall appoint an individual to fill such vacancy from the district in which the vacancy exists. If the vacant position is that of the at-large member, the appointment to fill such vacancy shall be made at large by the board.

Source: Laws 1978, LB 639, § 12; Laws 1992, LB 971, § 1.

2-3613 Repealed. Laws 1992, LB 971, § 2.

2-3614 Board; appointment of members; procedure.

Members of the board shall be appointed by the Governor on a nonpartisan basis. Candidates for appointment by the Governor to the initial board may place their names on a candidacy list for the respective district by filing a petition signed by at least fifty growers of such district with the Governor. Candidates for appointment to subsequent boards or to fill a vacancy in either a district or at-large membership position shall file such petitions with the existing board. Qualified individuals residing within their district shall be eligible for nomination as candidates from such district.

Source: Laws 1978, LB 639, § 14; Laws 1996, LB 1336, § 4.

2-3615 Board; membership districts.

One member shall be appointed from each of the following districts:

(a) District 1. The counties of Butler, Saunders, Douglas, Sarpy, Seward, Lancaster, Cass, Otoe, Saline, Jefferson, Gage, Johnson, Nemaha, Pawnee, and Richardson;

(b) District 2. The counties of Adams, Clay, Fillmore, Franklin, Webster, Nuckolls, and Thayer;

(c) District 3. The counties of Merrick, Polk, Hamilton, and York;

(d) District 4. The counties of Knox, Cedar, Dixon, Dakota, Pierce, Wayne, Thurston, Madison, Stanton, Cuming, Burt, Colfax, Dodge, and Washington;

(e) District 5. The counties of Sherman, Howard, Dawson, Buffalo, and Hall;

(f) District 6. The counties of Hayes, Frontier, Gosper, Phelps, Kearney, Hitchcock, Red Willow, Furnas, and Harlan;

(g) District 7. The counties of Boyd, Holt, Antelope, Garfield, Wheeler, Boone, Platte, Valley, Greeley, and Nance; and

(h) District 8. The counties of Sioux, Dawes, Box Butte, Sheridan, Scotts Bluff, Banner, Kimball, Morrill, Cheyenne, Garden, Deuel, Cherry, Keya Paha, Brown, Rock, Grant, Hooker, Thomas, Blaine, Loup, Arthur, McPherson, Logan, Custer, Keith, Lincoln, Perkins, Chase, and Dundy.

Source: Laws 1978, LB 639, § 15.

2-3616 Board; meeting; appoint member.

Within thirty days after the appointment of the initial board, such board shall conduct its first regular meeting. At this meeting, the board shall appoint the ninth member to the board. Such appointment shall be made at large and the appointee shall meet the same qualifications as the other members on the board.

Source: Laws 1978, LB 639, § 16.

2-3617 Board; members; terms.

(1) The initial term of office for members of the appointed board shall be as follows: Three district members shall be appointed for one year; three district members shall be appointed for two years; and two district members shall be appointed for three years. The term of the member appointed at large shall be three years.

(2) Upon completion of the initial term, the term of office for members of the board shall be for three years.

Source: Laws 1978, LB 639, § 17.

2-3618 Board; elect officers.

The board shall elect from its members a chairperson and such other officers as may be necessary.

Source: Laws 1978, LB 639, § 18.

2-3619 Board; compensation; expenses.

The voting members of the board, while engaged in the performance of their official duties, shall receive compensation at the rate of twenty-five dollars per day while so serving, including travel time. In addition, members of the board

shall receive reimbursement for expenses on the same basis and subject to the same conditions as provided in sections 81-1174 to 81-1177.

Source: Laws 1978, LB 639, § 19; Laws 1981, LB 204, § 11; Laws 2020, LB381, § 6.

2-3620 Board; removal of member; grounds.

A member of the board shall be removable by the Governor for cause. He shall first be given a copy of written charges against him and also an opportunity to be heard publicly. In addition to all other causes, a member ceasing to (1) be a resident of the state, (2) live in the district from which he was appointed, or (3) be actually engaged in growing corn in the state shall be deemed sufficient cause for removal from office.

Source: Laws 1978, LB 639, § 20.

2-3621 Board; meetings.

The board shall meet at least once every three months and at such other times as called by the chairperson or by any four members of the board.

Source: Laws 1978, LB 639, § 21.

2-3622 Board; duties and responsibilities.

The duties and responsibilities of the board shall be prescribed in the authority for the corn program and to the extent applicable shall include the following:

(1) To develop and direct any corn development, utilization, and marketing program. Such program may include a program to make grants and enter into contracts for research, accumulation of data, and construction of ethanol production facilities;

(2) To prepare and approve a budget consistent with limited receipts and the scope of the corn commodity program;

(3) To adopt and promulgate such rules and regulations as are necessary to enforce the Nebraska Corn Resources Act in accordance with the Administrative Procedure Act;

(4) To procure and evaluate data and information necessary for the proper administration and operation of the corn commodity program;

(5) To employ personnel and contract for services which are necessary for the proper operation of the program;

(6) To establish a means whereby any grower of corn has the opportunity at least annually to offer his or her ideas and suggestions relative to board policy for the upcoming year;

(7) To authorize the expenditure of funds and contracting of expenditures to conduct proper activities of the program;

(8) To bond the treasurer and such other persons necessary to insure adequate protection of funds;

(9) To keep minutes of its meetings and other books and records which will clearly reflect all of the acts and transactions of the board, and to keep these records open to examination by any grower-participant during normal business hours;

(10) To prohibit any funds collected by the board from being expended directly or indirectly to promote or oppose any candidate for public office or to influence state legislation. The board shall not expend more than twenty-five percent of its annual budget to influence federal legislation; and

(11) To make refunds for overpayment of fees according to rules and regulations adopted and promulgated by the board.

Source: Laws 1978, LB 639, § 22; Laws 1983, LB 505, § 5; Laws 1985, LB 60, § 2; Laws 1986, LB 1230, § 18.

Cross References

Administrative Procedure Act, see section 84-920.

2-3623 Sale of corn; fee; when paid.

There is hereby levied a fee of five-tenths of a cent per bushel upon all corn sold through commercial channels in Nebraska or delivered in Nebraska. The fee shall be paid by the grower at the time of sale or delivery and shall be collected by the first purchaser. Under the Nebraska Corn Resources Act, no corn shall be subject to the fee more than once.

Source: Laws 1978, LB 639, § 23; Laws 1983, LB 505, § 6; Laws 1987, LB 610, § 2; Laws 1996, LB 1336, § 5; Laws 2012, LB1057, § 2.

2-3624 Repealed. Laws 1981, LB 11, § 38.

2-3625 Repealed. Laws 1981, LB 11, § 38.

2-3626 Repealed. Laws 1981, LB 11, § 38.

2-3627 Fees; adjusted by board; when.

Until December 31, 1978, the fee levied pursuant to section 2-3623 shall not exceed one-tenth of one cent per bushel. Beginning January 1, 1979, the board may, whenever it shall determine that the fees provided by section 2-3623 are yielding more than is required to carry out the intent and purposes of sections 2-3601 to 2-3635, reduce such fees for such period as it shall deem justified, but not less than one year. If the board, after reducing such fees finds that sufficient revenue is not being produced by such reduced fees, it may restore in full or in part such fees not to exceed four-tenths of a cent per bushel.

Source: Laws 1978, LB 639, § 27.

2-3628 Pledge or mortgage; corn used as security; fee; refund; procedure.

In the case of a pledge or mortgage of corn as security for a loan under the federal price support program or other government agricultural loan programs, the fee shall be deducted from the proceeds of such loan at the time the loan is made. If, within the life of the loan plus thirty days after the collection of a fee for corn that is mortgaged as security for a loan under the federal price support program or other government agricultural loan programs, the grower decides to purchase the corn and use it as feed, the grower shall be entitled to a refund of the checkoff fee previously paid. The refund shall be payable by the board upon the grower's written application to the board for a refund of the amount deducted. Each application for a refund by a grower shall have attached thereto proof of the tax deducted.

Source: Laws 1978, LB 639, § 28; Laws 1996, LB 1336, § 6.

2-3629 Fee; when assessed.

The fee, provided for by section 2-3623, shall be deducted, as provided by sections 2-3601 to 2-3635, whether such corn is stored in this state or any other state.

Source: Laws 1978, LB 639, § 29.

2-3630 Fee; when not applicable.

The fee imposed by section 2-3623 shall not apply to the sale of corn to the federal government for the ultimate use of consumption by the people of the United States when the State of Nebraska is prohibited from imposing such fee by the Constitution of the United States and laws enacted pursuant thereto.

Source: Laws 1978, LB 639, § 30.

2-3631 Purchaser deduct fee; maintain records; public information; quarterly statement.

(1) The purchaser, at the time of settlement, shall deduct the corn fee and shall maintain the necessary record of the fee for each purchase of corn on the grain settlement form or check stub showing payment to the grower for each purchase. Such records maintained by the purchaser shall provide the following information:

(a) Name and address of the grower and seller;

(b) The date of the purchase;

(c) The number of bushels of corn sold; and

(d) The amount of fees collected on each purchase.

Such records shall be open for inspection during normal business hours observed by the purchaser.

(2) The purchaser shall render and have on file with the board by the last day of each January, April, July, and October, on forms prescribed by the board, a statement of the number of bushels of corn purchased in Nebraska. At the time the statement is filed, the purchaser shall pay and remit to the board the fee as provided for in section 2-3623.

Source: Laws 1978, LB 639, § 31.

2-3632 Board; annual report; contents; public information.

The board shall prepare and make available an annual report on or before January 1 of each year, which report shall set forth in detail the income received from the corn assessment for the previous year and shall include:

(1) The expenditure of all funds by the board during the previous year for the administration of the Nebraska Corn Resources Act;

(2) The action taken by the board on all contracts requiring the expenditure of funds by the board;

(3) A description of all such contracts;

(4) A detailed explanation of all programs relating to the discovery, promotion, and development of markets and industries for the utilization of corn, the direct expense associated with each program, and copies of such programs if in writing; and

(5) The name and address of each member of the board and a copy of all rules and regulations promulgated by the board.

Such report and a copy of all contracts requiring expenditure of funds by the board shall be available to the public upon request.

Source: Laws 1978, LB 639, § 32; Laws 2012, LB1057, § 3.

2-3633 Nebraska Corn Development, Utilization, and Marketing Fund; created; use; investment.

The Nebraska Corn Development, Utilization, and Marketing Fund is created. All fees collected pursuant to the Nebraska Corn Resources Act and any repayments relating to the fund, including license fees or royalties, shall be credited to the fund for the uses and purposes of the act and its enforcement. Such fund shall be expended solely for the administration 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 1978, LB 639, § 33; Laws 1995, LB 7, § 19; Laws 2012, LB1057, § 4.

Cross References

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

2-3634 Board; cooperate with University of Nebraska and other organizations; purpose.

The board shall not be authorized to set up research or development units or agencies of its own, but shall limit its activity to cooperation and contracts with the University of Nebraska Institute of Agriculture and Natural Resources and other proper local, state, or national organizations, public or private, in carrying out the purposes of sections 2-3601 to 2-3635.

Source: Laws 1978, LB 639, § 34.

2-3635 Violations; penalty.

Any person violating any of the provisions of sections 2-3601 to 2-3635 shall be guilty of a Class III misdemeanor.

Source: Laws 1978, LB 639, § 35.

ARTICLE 37

DRY BEAN RESOURCES

Section
2-3701. Repealed. Laws 1980, LB 633, § 10.
2-3702. Repealed. Laws 1980, LB 633, § 10.
2-3703. Repealed. Laws 1980, LB 633, § 10.
2-3704. Repealed. Laws 1980, LB 633, § 10.
2-3705. Repealed. Laws 1980, LB 633, § 10.
2-3706. Repealed. Laws 1980, LB 633, § 10.
2-3707. Repealed. Laws 1980, LB 633, § 10.
2-3708. Repealed. Laws 1980, LB 633, § 10.
2-3709. Repealed. Laws 1980, LB 633, § 10.
2-3710. Repealed. Laws 1980, LB 633, § 10.
2-3711. Repealed. Laws 1980, LB 633, § 10.

Section
2-3712. Repealed. Laws 1980, LB 633, § 10.
2-3713. Repealed. Laws 1980, LB 633, § 10.
2-3714. Repealed. Laws 1980, LB 633, § 10.
2-3715. Repealed. Laws 1980, LB 633, § 10.
2-3716. Repealed. Laws 1980, LB 633, § 10.
2-3717. Repealed. Laws 1980, LB 633, § 10.
2-3718. Repealed. Laws 1980, LB 633, § 10.
2-3719. Repealed. Laws 1980, LB 633, § 10.
2-3720. Repealed. Laws 1980, LB 633, § 10.
2-3721. Repealed. Laws 1980, LB 633, § 10.
2-3722. Repealed. Laws 1980, LB 633, § 10.
2-3723. Repealed. Laws 1980, LB 633, § 10.
2-3724. Repealed. Laws 1980, LB 633, § 10.
2-3725. Repealed. Laws 1980, LB 633, § 10.
2-3726. Repealed. Laws 1980, LB 633, § 10.
2-3727. Repealed. Laws 1980, LB 633, § 10.
2-3728. Repealed. Laws 1980, LB 633, § 10.
2-3729. Repealed. Laws 1980, LB 633, § 10.
2-3730. Repealed. Laws 1980, LB 633, § 10.
2-3731. Repealed. Laws 1980, LB 633, § 10.
2-3732. Repealed. Laws 1980, LB 633, § 10.
2-3733. Repealed. Laws 1980, LB 633, § 10.
2-3734. Repealed. Laws 1980, LB 633, § 10.
2-3735. Act, how cited.
2-3736. Purpose of act.
2-3737. Definitions, where found.
2-3738. Commercial channels, defined.
2-3739. Commission, defined.
2-3740. Dry bean, defined.
2-3741. First purchaser, defined.
2-3742. Grower, defined.
2-3743. Processor, defined.
2-3744. Sale, defined.
2-3745. Dry Bean Commission; created; members; qualifications.
2-3746. Commission; grower members; districts; processor members.
2-3747. Commission; appointment of grower member; candidacy list; petition.
2-3748. Commission; members; terms.
2-3749. Commission; vacancy.
2-3750. Commission; member; removal.
2-3751. Commission; officers; meetings; expenses.
2-3752. Commission; employees.
2-3753. Commission; powers and duties.
2-3754. Commission; prohibited acts.
2-3755. Dry beans; fee; adjustment; payment.
2-3756. Pledge or mortgage under federal program; deduction of fee.
2-3757. Fee; collection.
2-3758. Fee; when prohibited.
2-3759. First purchaser; deduct fee; maintain records; inspection and audit; contract for collection of fee; quarterly statement; confidentiality.
2-3760. Repealed. Laws 2015, LB 242, § 6.
2-3761. Commission; contracts authorized.
2-3762. Commission; annual report; contents.
2-3763. Dry Bean Development, Utilization, Promotion, and Education Fund; created; use; investment.
2-3764. Commission; cooperate with University of Nebraska and other organizations; purpose.
2-3765. Violations; penalty.

2-3701 Repealed. Laws 1980, LB 633, § 10.

2-3702 Repealed. Laws 1980, LB 633, § 10.

2-3703 Repealed. Laws 1980, LB 633, § 10.

2-3704 Repealed. Laws 1980, LB 633, § 10.

2-3705 Repealed. Laws 1980, LB 633, § 10.

2-3706 Repealed. Laws 1980, LB 633, § 10.

2-3707 Repealed. Laws 1980, LB 633, § 10.

2-3708 Repealed. Laws 1980, LB 633, § 10.

2-3709 Repealed. Laws 1980, LB 633, § 10.

2-3710 Repealed. Laws 1980, LB 633, § 10.

2-3711 Repealed. Laws 1980, LB 633, § 10.

2-3712 Repealed. Laws 1980, LB 633, § 10.

2-3713 Repealed. Laws 1980, LB 633, § 10.

2-3714 Repealed. Laws 1980, LB 633, § 10.

2-3715 Repealed. Laws 1980, LB 633, § 10.

2-3716 Repealed. Laws 1980, LB 633, § 10.

2-3717 Repealed. Laws 1980, LB 633, § 10.

2-3718 Repealed. Laws 1980, LB 633, § 10.

2-3719 Repealed. Laws 1980, LB 633, § 10.

2-3720 Repealed. Laws 1980, LB 633, § 10.

2-3721 Repealed. Laws 1980, LB 633, § 10.

2-3722 Repealed. Laws 1980, LB 633, § 10.

2-3723 Repealed. Laws 1980, LB 633, § 10.

2-3724 Repealed. Laws 1980, LB 633, § 10.

2-3725 Repealed. Laws 1980, LB 633, § 10.

2-3726 Repealed. Laws 1980, LB 633, § 10.

2-3727 Repealed. Laws 1980, LB 633, § 10.

2-3728 Repealed. Laws 1980, LB 633, § 10.

2-3729 Repealed. Laws 1980, LB 633, § 10.

2-3730 Repealed. Laws 1980, LB 633, § 10.

2-3731 Repealed. Laws 1980, LB 633, § 10.

2-3732 Repealed. Laws 1980, LB 633, § 10.

2-3733 Repealed. Laws 1980, LB 633, § 10.

2-3734 Repealed. Laws 1980, LB 633, § 10.

2-3735 Act, how cited.

Sections 2-3735 to 2-3765 shall be known and may be cited as the Dry Bean Resources Act.

Source: Laws 1987, LB 145, § 1.

2-3736 Purpose of act.

The Legislature finds and declares that it is in the public welfare of the State of Nebraska that growers and processors of dry beans be permitted and encouraged to develop, carry out, and participate in programs of research, education, and promotion of dry beans and bean products. It is the purpose of the Dry Bean Resources Act to provide the authorization and the necessary procedures by which dry bean growers and processors in this state may finance programs to achieve the purposes expressed in this section.

Source: Laws 1987, LB 145, § 2.

2-3737 Definitions, where found.

For purposes of the Dry Bean Resources Act, unless the context otherwise requires, the definitions found in sections 2-3738 to 2-3744 shall be used.

Source: Laws 1987, LB 145, § 3.

2-3738 Commercial channels, defined.

Commercial channels shall mean the sale of dry beans for any use to any commercial buyer, dealer, processor, or cooperative or to any person who resells such dry beans or any product produced from such dry beans.

Source: Laws 1987, LB 145, § 4.

2-3739 Commission, defined.

Commission shall mean the Dry Bean Commission.

Source: Laws 1987, LB 145, § 5.

2-3740 Dry bean, defined.

Dry bean shall mean any dry edible bean. Dry bean does not include chickpeas or garbanzo beans.

Source: Laws 1987, LB 145, § 6; Laws 2020, LB803, § 20.

2-3741 First purchaser, defined.

First purchaser shall mean any person, public or private corporation, association, partnership, or limited liability company buying, accepting for shipment, or otherwise acquiring dry beans from a grower and shall include, but not be limited to, a mortgagee, pledgee, lienor, or other person having a claim against the grower when the actual or constructive possession of such dry beans is taken as part payment or in satisfaction of the mortgage, pledge, lien, or claim.

Source: Laws 1987, LB 145, § 7; Laws 1993, LB 121, § 74.

2-3742 Grower, defined.

Grower shall mean any landowner personally engaged in growing dry beans, a tenant of a landowner personally engaged in growing dry beans, or both the owner and tenant jointly and shall include, but not be limited to, any person, partnership, limited liability company, association, corporation, cooperative, trust, or sharecropper or any other business unit, device, or arrangement.

Source: Laws 1987, LB 145, § 8; Laws 1993, LB 121, § 75.

2-3743 Processor, defined.

Processor shall mean any person or business or a representative thereof who receives, stores, ships, or otherwise handles dry beans.

Source: Laws 1987, LB 145, § 9.

2-3744 Sale, defined.

Sale shall include, but not be limited to, any pledge or mortgage of dry beans after harvest to any person.

Source: Laws 1987, LB 145, § 10.

2-3745 Dry Bean Commission; created; members; qualifications.

There is hereby created the Dry Bean Commission which shall be composed of nine members, two of whom shall be selected by the commission and seven of whom shall be appointed by the Governor. Commission members shall be appointed on a nonpartisan basis. Six members shall be growers who (1) are citizens of Nebraska, (2) are at least twenty-one years of age, (3) have actually been engaged in growing dry beans in this state for at least three years, and (4) derive a substantial portion of their income from growing dry beans. Three members shall be dry bean processors who have been in business in Nebraska for at least three years, and the Director of the University of Nebraska Panhandle Research and Extension Center shall be an ex officio member but shall have no vote in commission matters.

Source: Laws 1987, LB 145, § 11; Laws 2003, LB 219, § 1; Laws 2011, LB394, § 1.

2-3746 Commission; grower members; districts; processor members.

(1) The Governor shall appoint one grower member from each of the following four districts:

(a) District 1 which shall consist of the counties of Sioux, Dawes, Sheridan, and Box Butte;

(b) District 2 which shall consist of the county of Scotts Bluff;

(c) District 3 which shall consist of the counties of Banner, Morrill, Kimball, Cheyenne, Garden, and Deuel; and

(d) District 4 which shall consist of the remaining counties in which dry bean production occurs in the state.

(2) The commission shall appoint two grower members to the commission, one of whom resides within district 1 or 2 who shall represent districts 1 and 2 and one of whom resides within district 3 or 4 who shall represent districts 3 and 4. Members serving as representatives of such districts on May 18, 2011, shall continue as members of the commission until the end of their terms and

until their successors are appointed and qualified and, except as provided in section 2-3748, shall be eligible for reappointment.

(3) The three processor members of the commission shall be appointed by the Governor. Insofar as possible, the geographic locations of such appointed members shall be representative of the Nebraska dry bean industry. Any processor may place his or her name on a candidacy list for appointment by written notice to the commission.

Source: Laws 1987, LB 145, § 12; Laws 2011, LB394, § 2.

2-3747 Commission; appointment of grower member; candidacy list; petition.

Any grower may place his or her name on a candidacy list for appointment as a grower member of the commission by filing a petition signed by at least ten resident bean growers (1) from the district in which he or she resides for an appointment under subsection (1) of section 2-3746 or (2) from the district in which he or she resides or the other district to be represented for an appointment under subsection (2) of section 2-3746. The petition shall be filed with the commission. The Governor and the commission shall make appointments from the candidacy list unless there are no names on the list.

Source: Laws 1987, LB 145, § 13; Laws 2011, LB394, § 3.

2-3748 Commission; members; terms.

The term of a member of the commission shall be three years and until his or her successor is appointed and qualified. No member shall serve more than three consecutive three-year terms.

Source: Laws 1987, LB 145, § 14; Laws 2003, LB 219, § 2; Laws 2011, LB394, § 4.

2-3749 Commission; vacancy.

Whenever a vacancy occurs on the commission for any reason, the Governor shall appoint a person with the same qualifications as the initial appointee unless the vacant position is that of a member appointed by the commission, in which case the appointment to fill such vacancy shall be made by the commission.

Source: Laws 1987, LB 145, § 15; Laws 2011, LB394, § 5.

2-3750 Commission; member; removal.

A member of the commission shall be removed for ceasing to (1) be a resident of the state, (2) live in the district from which he or she was appointed, (3) in the case of a grower member, be actually engaged in the growing of dry beans in the state, or (4) in the case of a processor member, be actually engaged in the processing or shipping of dry beans in the state.

Source: Laws 1987, LB 145, § 16.

2-3751 Commission; officers; meetings; expenses.

The commission shall elect from its members a chairperson and such other officers as may be necessary. The commission shall meet at least once every three months and at such other times as called by the chairperson or by any

three members of the commission. The members shall receive no compensation for their services, but appointed members shall receive reimbursement for expenses incurred in the discharge of their official duties as provided in sections 81-1174 to 81-1177.

Source: Laws 1987, LB 145, § 17; Laws 2020, LB381, § 7.

2-3752 Commission; employees.

The commission may appoint and fix the salary of such support staff and employees, who shall serve at the pleasure of the commission, as may be required for the proper discharge of the functions of the commission.

Source: Laws 1987, LB 145, § 18.

2-3753 Commission; powers and duties.

The commission shall have the following powers and duties:

(1) To adopt and devise a dry bean program consisting of research, education, advertising, publicity, and promotion to increase total consumption of dry beans on a state, national, and international basis;

(2) To prepare and approve a budget consistent with limited receipts and the scope of the dry bean program;

(3) To adopt and promulgate reasonable rules and regulations necessary to carry out the dry bean program;

(4) To procure and evaluate data and information necessary for the proper administration and operation of the dry bean program;

(5) To employ personnel and contract for services which are necessary for the proper operation of the dry bean program;

(6) To establish a means whereby the grower and processor of dry beans has the opportunity at least annually to offer his or her ideas and suggestions relative to commission policy for the coming year;

(7) To authorize the expenditure of funds and contracting of expenditures to conduct proper activities of the program;

(8) To bond such persons as may be necessary in order to insure adequate protection of funds;

(9) To keep minutes of its meetings and other books and records which will clearly reflect all of the acts and transactions of the commission and to keep such records open to examination by any grower or processor participant during normal business hours;

(10) To prohibit any funds collected by the commission from being expended directly or indirectly to promote or oppose any candidate for public office or to influence state legislation. The commission shall not expend more than fifteen percent of its annual budget to influence federal legislation. The purpose of such expenditures for federal lobbying activity shall be limited to activity supporting the underlying objectives of the dry bean program relating to market development, education, and research;

(11) To establish an administrative office at such place in the state as may be suitable for the proper discharge of the functions of the commission; and

(12) To adopt and promulgate rules and regulations to carry out the Dry Bean Resources Act.

Source: Laws 1987, LB 145, § 19; Laws 2015, LB242, § 1.

2-3754 Commission; prohibited acts.

The commission shall not:

(1) Engage in marketing of dry beans or any activity which would result in the formation of a marketing order;

(2) Be a party to a procedure which includes price setting or production quotas; and

(3) Purchase, construct, or otherwise obtain title to its own administrative office but shall be limited to leasing state or commercial office space.

Source: Laws 1987, LB 145, § 20.

2-3755 Dry beans; fee; adjustment; payment.

(1) Beginning August 1, 1987, there shall be paid to the commission a fee of six cents per hundredweight upon all dry beans grown in the state during 1987 and thereafter and sold through commercial channels. Beginning January 1, 1989, until July 31, 2015, the commission may, whenever it determines that the fees provided by this section are yielding more or less than is required to carry out the intent and purposes of the Dry Bean Resources Act, reduce or increase such fee for such period as it shall deem justifiable, but not less than one year and not to exceed ten cents per hundredweight.

(2) Beginning August 1, 2015, the fee imposed by this section shall be fifteen cents per hundredweight. Beginning January 1, 2017, the commission may, whenever it determines that the fees provided by this section are yielding more or less than is required to carry out the intent and purposes of the act, reduce or increase such fee for such period as it shall deem justifiable, but not less than one year and not to exceed twenty-four cents per hundredweight.

(3) Two-thirds of the fee levied under this section shall be paid by the grower at the time of sale or delivery and shall be collected by the first purchaser. The first purchaser shall pay the remaining one-third of the fee. No dry beans shall be subject to the fee more than once.

Source: Laws 1987, LB 145, § 21; Laws 2015, LB242, § 2.

2-3756 Pledge or mortgage under federal program; deduction of fee.

In the case of a pledge or mortgage of dry beans as security for a loan under the federal price support program, the fee shall be deducted from the proceeds of such loan at the time the loan is made.

Source: Laws 1987, LB 145, § 22.

2-3757 Fee; collection.

The fee provided for by section 2-3755 shall be deducted, as provided by the Dry Bean Resources Act, whether such dry beans are stored or marketed in this state or any other state. The commission may enter into reciprocal agreements with other states for the collection of such fee.

Source: Laws 1987, LB 145, § 23.

2-3758 Fee; when prohibited.

The fee imposed by section 2-3755 shall not apply to the sale of dry beans to the federal government for ultimate use or consumption by the people of the United States when the State of Nebraska is prohibited from imposing such fee by the Constitution of the United States and laws enacted pursuant thereto.

Source: Laws 1987, LB 145, § 24.

2-3759 First purchaser; deduct fee; maintain records; inspection and audit; contract for collection of fee; quarterly statement; confidentiality.

(1) The first purchaser at the time of settlement shall deduct the dry bean fee and shall maintain the necessary record of the fee for each purchase of dry beans on the grain settlement form or check stub showing payment to the grower for each purchase. Such records maintained by the first purchaser shall provide the following information: (a) Name and address of the grower and seller; (b) the date of the purchase; (c) the number of hundredweight of dry beans sold; and (d) the amount of fees collected on each purchase. Such records shall be open for inspection and audit during the normal business hours observed by the purchaser. The inspection and audit shall be conducted by qualified and independent representatives authorized by the commission.

(2) The commission shall contract with an independent agency or organization to collect the fee. The first purchaser shall render and have on file with such independent collection agency by the last day of each January, April, July, and October, on forms prescribed by the commission, a statement of the number of hundredweight of dry beans purchased in Nebraska for the preceding three months. The independent collection agency shall keep first purchaser statements confidential and report only the total of all statements to the commission for the preceding three months. Purchaser records and other such statements shall be confidential and shall not be released to any person or agency, except that the Attorney General shall have access to such statements during a bona fide investigation. At the time the statement is filed, the purchaser shall pay and remit to the independent collection agency the fee as provided for in section 2-3755 for the dry beans purchased in the preceding three months.

Source: Laws 1987, LB 145, § 25.

2-3760 Repealed. Laws 2015, LB 242, § 6.

2-3761 Commission; contracts authorized.

The commission may contract with the proper local, state, or national organizations, public or private, in carrying out the purposes of the Dry Bean Resources Act.

Source: Laws 1987, LB 145, § 27.

2-3762 Commission; annual report; contents.

(1) The commission shall prepare and make available an annual report at least thirty days prior to January 1 of each year which shall set forth in detail the income received from the dry bean assessment for the previous year and shall include:

(a) The expenditure of all funds by the commission during the previous year for the administration of the Dry Bean Resources Act;

(b) The action taken by the commission on all contracts requiring the expenditure of funds by the commission;

(c) A description of all such contracts;

(d) Detailed explanation of all programs relating to the discovery, promotion, and development of bean products and industries for the utilization of dry beans, the direct expense associated with each program, and copies of such programs if in writing; and

(e) The name and address of each member of the commission and a copy of all rules and regulations adopted and promulgated by the commission.

(2) The report and a copy of all contracts requiring expenditure of funds by the commission shall be available to the public upon request. Notice of availability of such report shall be provided to the Director of Agriculture, the Clerk of the Legislature, and each grower and first purchaser subject to the checkoff.

Source: Laws 1987, LB 145, § 28; Laws 2015, LB242, § 3.

2-3763 Dry Bean Development, Utilization, Promotion, and Education Fund; created; use; investment.

The State Treasurer shall establish in the treasury of the State of Nebraska a fund to be known as the Dry Bean Development, Utilization, Promotion, and Education Fund, to which fund shall be credited funds collected by the commission pursuant to the Dry Bean Resources Act, including license fees, royalties, or any repayments relating to the fund. The fund shall be expended for the administration of such 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 1987, LB 145, § 29; Laws 1995, LB 7, § 20; Laws 2015, LB242, § 4.

Cross References

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

2-3764 Commission; cooperate with University of Nebraska and other organizations; purpose.

The commission shall not set up research or development units or agencies of its own but shall limit its activity to cooperation and contracts with the University of Nebraska Institute of Agriculture and Natural Resources and other local, state, or national organizations, public or private, in carrying out the purposes of the Dry Bean Resources Act.

Source: Laws 1987, LB 145, § 30.

2-3765 Violations; penalty.

Any person violating the Dry Bean Resources Act shall be guilty of a Class III misdemeanor.

Source: Laws 1987, LB 145, § 31.

ARTICLE 38

MARKETING, DEVELOPMENT, AND PROMOTION OF AGRICULTURAL PRODUCTS

(a) NEBRASKA AGRICULTURAL PRODUCTS MARKETING ACT

Section
2-3801. Act, how cited.
2-3802. Legislative findings.
2-3803. Definitions, where found.
2-3804. Agricultural product or commodity, defined.
2-3804.01. Aquaculture, defined.
2-3805. Department, defined.
2-3806. Director, defined.
2-3807. Marketing, defined.
2-3808. Department; marketing activities; powers and duties.
2-3809. Act, how construed.
2-3810. Department; contracts; limitations.
2-3811. Repealed. Laws 1981, LB 545, § 52.
2-3812. Nebraska Agricultural Products Marketing Cash Fund; created; use; investment.

(b) GRAIN STANDARDS

2-3813. Terms, defined.
2-3814. Department; grain inspections; special certificate; fee; powers; Nebraska Origin and Premium Quality Grain Cash Fund; created; use; investment.

(c) AGRICULTURAL PRODUCTS PROMOTION AND DEVELOPMENT

2-3815. Agriculture promotion and development program; established; purposes; employment of specialists.
2-3816. Repealed. Laws 1993, LB 364, § 26.
2-3817. Repealed. Laws 1993, LB 364, § 26.
2-3818. Repealed. Laws 1993, LB 364, § 26.
2-3819. Repealed. Laws 1993, LB 364, § 26.
2-3820. Repealed. Laws 1993, LB 364, § 26.
2-3821. Repealed. Laws 1993, LB 364, § 26.
2-3822. Repealed. Laws 1993, LB 364, § 26.
2-3823. Repealed. Laws 1993, LB 364, § 26.

(a) NEBRASKA AGRICULTURAL PRODUCTS MARKETING ACT

2-3801 Act, how cited.

Sections 2-3801 to 2-3812 shall be known and may be cited as the Nebraska Agricultural Products Marketing Act.

Source: Laws 1979, LB 538, § 1; Laws 1987, LB 561, § 2.

2-3802 Legislative findings.

The Legislature hereby finds that the general welfare of the people of Nebraska will significantly benefit from the conduct of programs designed and intended to enhance the effective marketing of Nebraska's many agricultural commodities.

The Legislature further finds that the meaningful realization of such benefits will result through the administration of programs and policies conceived, desired, and formulated by and for those persons who produce, process, or distribute such commodities as an integral part of their livelihood. It is necessary that the programs conducted by and for the various segments of the agricultural industry be efficiently coordinated, so that the marketing efforts

expended on behalf of each commodity will complement the marketing programs in the state.

Source: Laws 1979, LB 538, § 2.

2-3803 Definitions, where found.

For purposes of the Nebraska Agricultural Products Marketing Act, unless the context otherwise requires, the definitions found in sections 2-3804 to 2-3807 shall be used.

Source: Laws 1979, LB 538, § 3; Laws 1988, LB 807, § 3.

2-3804 Agricultural product or commodity, defined.

Agricultural product or commodity shall include all products resulting from the conduct of farming or ranching activities, dairying, beekeeping, aquaculture, poultry or egg production, or comparable activities, and any byproducts resulting from such activities.

Source: Laws 1979, LB 538, § 4; Laws 1987, LB 561, § 3.

2-3804.01 Aquaculture, defined.

Aquaculture shall mean the agricultural practice of controlled propagation and cultivation of aquatic plants or animals for commercial purposes. Unless the context otherwise requires, the term agriculture shall be construed to include aquaculture.

Source: Laws 1987, LB 561, § 4.

2-3805 Department, defined.

Department shall mean the Department of Agriculture.

Source: Laws 1979, LB 538, § 5.

2-3806 Director, defined.

Director shall mean the Director of Agriculture or his or her designee.

Source: Laws 1979, LB 538, § 6.

2-3807 Marketing, defined.

Marketing shall include any and all activities intended to directly or indirectly facilitate the sale, exchange, or other distribution of a product or commodity in an economic, efficient, and profitable manner, including research, market development, publicity, promotion, education, product utilization, and comparable activities.

Source: Laws 1979, LB 538, § 7.

2-3808 Department; marketing activities; powers and duties.

To achieve the purposes of the Nebraska Agricultural Products Marketing Act, the department may perform the following marketing activities:

(1) Coordinating the various marketing programs and policies of each of the state's agricultural commodities so that they will complement one another;

(2) Assisting the producers, processors, and distributors of agricultural products and commodities in conducting and administering marketing programs and policies conceived, desired, and formulated by and for such persons;

(3) Conducting activities designed to locate and study trade barriers adversely affecting the marketing of Nebraska agricultural products and conducting activities aimed at eliminating or mitigating any such barriers;

(4) Collecting and disseminating information relevant and beneficial to the economical, efficient, and profitable marketing of agricultural products by the Nebraska producers, processors, and distributors thereof;

(5) Assisting in matching up potential buyers and sellers of agricultural products produced in Nebraska;

(6) Cooperating with other local, state, or national agricultural marketing entities, public or private, in carrying out the act and entering into such contracts as may be necessary;

(7) Adopting and promulgating such reasonable rules and regulations as are necessary to effectively carry out the intent of the act;

(8) Accepting funds or fees from any source, including federal, state, public, or private, to be used in carrying out the act;

(9) Expending funds for purposes of carrying out the act; and

(10) Conducting any other programs for the development, utilization, and marketing of agricultural products grown or produced in the state.

Source: Laws 1979, LB 538, § 8; Laws 1988, LB 807, § 4.

2-3809 Act, how construed.

The Nebraska Agricultural Products Marketing Act shall not be construed:

(1) As altering the provisions of any other act or acts dealing with the marketing of agricultural products or as detracting from the authorities provided for in any such acts;

(2) As empowering the department to require cooperative marketing efforts of persons or groups within any segment of the agriculture industry, but shall be construed only to authorize such cooperative marketing efforts; or

(3) As empowering the department to purchase or otherwise obtain agricultural products or commodities for the purpose of resale.

Source: Laws 1979, LB 538, § 9; Laws 1988, LB 807, § 5.

2-3810 Department; contracts; limitations.

The department in entering into contracts authorized under the Nebraska Agricultural Products Marketing Act shall not be authorized to set up marketing units or agencies of its own. Only contracts necessary to the furtherance of the intent and purposes of the act shall be entered into.

Source: Laws 1979, LB 538, § 10; Laws 1988, LB 807, § 6.

2-3811 Repealed. Laws 1981, LB 545, § 52.

2-3812 Nebraska Agricultural Products Marketing Cash Fund; created; use; investment.

There is hereby created the Nebraska Agricultural Products Marketing Cash Fund. The fund shall consist of money appropriated by the Legislature which is received as gifts or grants or collected as fees or charges from any source, including federal, state, public, and private. The fund shall be utilized for the purpose of carrying out the Nebraska Agricultural Products Marketing Act. Any money in such fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1982, LB 942, § 1; Laws 1988, LB 807, § 7; Laws 1995, LB 7, § 21; Laws 2013, LB423, § 1; Laws 2020, LB344, § 58.

Cross References

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

(b) GRAIN STANDARDS

2-3813 Terms, defined.

For purposes of sections 2-3813 and 2-3814, unless the context otherwise requires:

(1) Grain shall mean wheat, corn, soybeans, and sorghum grains;

(2) Quality factors shall mean:

(a) Heat-damaged kernels which include kernels that have been discolored or damaged by high heat from respiring grain;

(b) Total-damaged kernels which represent the percentage, by weight, of kernels damaged by weather, disease, insects, molds, and moisture and includes heat damage;

(c) Foreign material which is all matter other than the grain being examined which remains in a sample after removal of dockage and shrunken and broken kernels;

(d) Shrunken and broken kernels which are kernels, kernel pieces, and other matter that pass through a sixty-four thousandths by three-eighths inch oblong-hole sieve;

(e) Total defects which are the sum of heat-damaged kernels, shrunken and broken kernels, and foreign material;

(f) Wheat of other classes which is any class that is mixed with the predominant class;

(g) Dockage, though not a grading factor, which appears on the certificate if it exceeds forty-nine hundredths of one percent. Dockage shall be rounded down to the nearest one-half percent. Dockage shall include chaff, dust, and items removed from a sample by an initial screening with a dockage tester; and

(h) Grade which is determined by analyzing the physical and biological factors present in the sample. Limits for the grading factors shall be established for each numerical grade. Numerical grades shall range from number 1, highest, to sample grade, lowest. Factors that exceed the established limits shall lower the numerical grade. Higher test weights shall be acceptable; and

(3) Department shall mean the Department of Agriculture.

Source: Laws 1986, LB 1007, § 1.

2-3814 Department; grain inspections; special certificate; fee; powers; Nebraska Origin and Premium Quality Grain Cash Fund; created; use; investment.

(1) In order to assist Nebraska grain producers and the state's grain industry in competing for a larger share of the international grain trade against the more stringent grain standards of other exporting nations, the department shall, upon request, provide inspection of grain shipments assembled by farmers and grain dealers who are arranging or attempting to arrange grain sales with foreign buyers. As a means of expediting such sales and to insure the quality of grain shipments for export originating in Nebraska, the department shall provide grain inspections. Such inspections shall include a certificate stating the quality factors present in the grain shipments destined for export points. A special certificate shall be designed by the department for shipments that substantially exceed grade and quality factors required under current United States grain standards. Such special certificate shall be designated as Nebraska Origin and Premium Quality Grain and shall be issued only on grain shipments containing levels of grade and quality factors totaling not more than fifty percent of the maximum allowable limits of total defects and other quality factors as required by current United States Grade Number One.

(2) The department shall assess and collect a fee for the inspections made. The fee shall be in an amount equal to the costs of the inspections.

(3) The department may:

(a) Contract for services which are necessary to carry out its duties under sections 2-3813 and 2-3814;

(b) Accept funds or fees from any source, including, but not limited to, federal, state, public, and private, to be used in carrying out such sections;

(c) Expend funds for purposes of carrying out such sections; and

(d) Enter upon public or private land for the purpose of inspecting such grain.

(4) The department may adopt and promulgate rules and regulations to aid in implementing such sections. The rules and regulations may include, but shall not be limited to, provisions governing: (a) Assignment of responsibilities; (b) the charges and fees to be assessed; (c) setting the grades; and (d) methods for determining quality factors.

(5) There is hereby created the Nebraska Origin and Premium Quality Grain Cash Fund. The fund shall consist of money appropriated by the Legislature which is received as gifts or grants or collected as fees from any source, including, but not limited to, federal, state, public, and private. The fund shall be utilized for the purpose of carrying out sections 2-3813 and 2-3814. Any money in such fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1986, LB 1007, § 2; Laws 1995, LB 7, § 22.

Cross References

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

(c) AGRICULTURAL PRODUCTS PROMOTION AND DEVELOPMENT

2-3815 Agriculture promotion and development program; established; purposes; employment of specialists.

(1) The Department of Agriculture shall establish an agriculture promotion and development program. The department shall employ a program director and one specialist in research techniques and market development. Both individuals shall report directly to the Director of Agriculture.

(2) The program shall concentrate on the identification and development of opportunities to enhance profitability in agriculture and to stimulate agriculture-related economic development. Program activities may include, but not be limited to, (a) promotion and market development, (b) value-added processing of alternative and traditional commodities, (c) agricultural diversification, including poultry development and aquaculture, (d) agricultural cooperatives, and (e) alternative crops.

(3) The Department of Agriculture shall serve as the facilitator, coordinator, and catalyst for developments through and with the Nebraska Food Processing Center, the Cooperative Extension Service of the University of Nebraska, the commodity boards, the Department of Economic Development, other state agencies, the United States Department of Agriculture grant programs, and the private sector. It is the intent of the Legislature that the department foster close working relationships between production agriculture and existing programs for the purposes of agricultural development and promotion. The department may enter into such contracts as may be necessary to carry out the purposes of this section.

(4) For purposes of this section, unless the context otherwise requires, private sector includes, but is not limited to, representatives of food industry associations, lenders, or venture capital groups.

Source: Laws 1987, LB 561, § 1; R.S.1943, (1987), § 2-2516; Laws 2011, LB334, § 1; Laws 2017, LB644, § 2.

2-3816 Repealed. Laws 1993, LB 364, § 26.

2-3817 Repealed. Laws 1993, LB 364, § 26.

2-3818 Repealed. Laws 1993, LB 364, § 26.

2-3819 Repealed. Laws 1993, LB 364, § 26.

2-3820 Repealed. Laws 1993, LB 364, § 26.

2-3821 Repealed. Laws 1993, LB 364, § 26.

2-3822 Repealed. Laws 1993, LB 364, § 26.

2-3823 Repealed. Laws 1993, LB 364, § 26.

ARTICLE 39
MILK

(a) NEBRASKA PASTEURIZED MILK LAW

Section
2-3901. Transferred to section 2-3965.

Section
2-3902. Transferred to section 2-3967.
2-3902.01. Repealed. Laws 1997, LB 201, § 7.
2-3903. Transferred to section 2-3969.
2-3904. Transferred to section 2-3970.
2-3905. Repealed. Laws 2007, LB 111, § 31.
2-3906. Transferred to section 2-3971.
2-3907. Transferred to section 2-3972.
2-3908. Transferred to section 2-3973.
2-3909. Transferred to section 2-3974.
2-3910. Transferred to section 2-3975.
2-3911. Transferred to section 2-3976.
2-3912. Repealed. Laws 1997, LB 201, § 7.

(b) NEBRASKA MANUFACTURING MILK ACT

2-3913. Transferred to section 2-3978.
2-3914. Transferred to section 2-3966.
2-3915. Transferred to section 2-3979.
2-3916. Transferred to section 2-3980.
2-3917. Transferred to section 2-3981.
2-3917.01. Transferred to section 2-3982.
2-3917.02. Repealed. Laws 2007, LB 111, § 31.
2-3918. Repealed. Laws 2007, LB 111, § 31.
2-3919. Transferred to section 2-3983.
2-3920. Transferred to section 2-3984.
2-3921. Transferred to section 2-3985.
2-3922. Transferred to section 2-3986.
2-3923. Transferred to section 2-3987.
2-3924. Transferred to section 2-3988.
2-3925. Transferred to section 2-3989.
2-3926. Repealed. Laws 2007, LB 111, § 31.
2-3927. Repealed. Laws 2007, LB 111, § 31.
2-3928. Repealed. Laws 2007, LB 111, § 31.
2-3929. Repealed. Laws 2007, LB 111, § 31.
2-3930. Repealed. Laws 2007, LB 111, § 31.
2-3931. Repealed. Laws 2007, LB 111, § 31.
2-3932. Repealed. Laws 2007, LB 111, § 31.
2-3933. Repealed. Laws 1986, LB 900, § 38.
2-3934. Repealed. Laws 2007, LB 111, § 31.
2-3935. Transferred to section 2-3990.
2-3936. Repealed. Laws 2007, LB 111, § 31.
2-3937. Transferred to section 2-3991.
2-3937.01. Repealed. Laws 2007, LB 111, § 31.
2-3938. Repealed. Laws 2007, LB 111, § 31.
2-3939. Repealed. Laws 2007, LB 111, § 31.
2-3940. Repealed. Laws 2007, LB 111, § 31.
2-3941. Repealed. Laws 2007, LB 111, § 31.
2-3942. Transferred to section 2-3992.
2-3943. Repealed. Laws 2007, LB 111, § 31.
2-3944. Repealed. Laws 2007, LB 111, § 31.
2-3945. Repealed. Laws 2007, LB 111, § 31.
2-3946. Repealed. Laws 2007, LB 111, § 31.
2-3947. Transferred to section 2-3917.02.

(c) DAIRY INDUSTRY DEVELOPMENT ACT

2-3948. Act, how cited.
2-3949. Terms, defined.
2-3950. Legislative findings.
2-3951. Nebraska Dairy Industry Development Board; created; members; qualifications.
2-3951.01. Board members; appointment; terms; officers; expenses.
2-3951.02. Board members; nomination and appointment.

Section
2-3951.03. Board members; vacancies.
2-3951.04. Board members; nominations; notification; procedure.
2-3952. Repealed. Laws 2004, LB 836, § 8.
2-3952.01. Repealed. Laws 2004, LB 836, § 8.
2-3953. Repealed. Laws 2004, LB 836, § 8.
2-3954. Repealed. Laws 2004, LB 836, § 8.
2-3955. Board; meetings; minutes.
2-3956. Board; administration; limitation on expenses.
2-3957. Board; powers and duties.
2-3958. Mandatory assessment; board; duties.
2-3959. Assessment; payment; procedures.
2-3960. Nebraska Dairy Industry Development Fund; created; use; investment.
2-3961. Use of funds; limitations.
2-3962. Board; report; contents.
2-3963. Violations; penalties; unpaid assessment; late payment fee.
2-3964. Repealed. Laws 2004, LB 836, § 8.

(d) NEBRASKA MILK ACT

2-3965. Act, how cited; provisions adopted by reference; copies.
2-3966. Terms, defined.
2-3967. Activities regulated.
2-3968. Grade A milk producer permit; manufacturing grade milk producer permit; label restrictions.
2-3969. Sale of milk and milk products; conditions.
2-3970. Act; administration and enforcement.
2-3971. Permit fees; inspection fees; other fees; rate.
2-3972. Adulteration or misbranding; stop-sale, stop-use, or removal order; issuance; hearing.
2-3973. Department; rules and regulations.
2-3974. Violation; restraining order or injunction; prohibited acts; penalty; county attorney; duties.
2-3975. Director; surveys of milksheds; make and publish results.
2-3976. Pure Milk Cash Fund; created; use; investment.
2-3977. Field representative; powers; field representative permit; applicant; qualifications.
2-3978. Public policy.
2-3979. Classification of raw milk.
2-3980. Flavor and odor of acceptable raw milk for manufacturing purposes.
2-3981. Dairy plants, milk for manufacturing purposes, and pickup tankers; quality tests; standards.
2-3982. Classification for sediment content; sediment standards; determination; effect.
2-3982.01. Grade A Pasteurized Milk Ordinance requirements; facility in existence prior to July 1, 2013; other facilities; requirements applicable.
2-3983. Milking facility requirements.
2-3984. Yard or loafing area requirements.
2-3985. Udders; teats of dairy animals; milk stools; antikickers; surcingles; drugs; requirements.
2-3986. Milk in farm bulk tanks; cooled; temperature.
2-3987. Milkhouse or milkroom; sanitation requirements.
2-3988. Milk utensils; sanitation requirements.
2-3989. Water supply requirements; testing.
2-3990. Cream for buttermaking; pasteurization.
2-3991. Dairy products; packaging; containers; labeling.
2-3992. Director; access to facilities, books, and records; inspections authorized.

(e) DAIRY STUDY

2-3993. Repealed. Laws 2017, LB2, § 3.

(a) NEBRASKA PASTEURIZED MILK LAW

2-3901 Transferred to section 2-3965.

2-3902 Transferred to section 2-3967.

2-3902.01 Repealed. Laws 1997, LB 201, § 7.

2-3903 Transferred to section 2-3969.

2-3904 Transferred to section 2-3970.

2-3905 Repealed. Laws 2007, LB 111, § 31.

2-3906 Transferred to section 2-3971.

2-3907 Transferred to section 2-3972.

2-3908 Transferred to section 2-3973.

2-3909 Transferred to section 2-3974.

2-3910 Transferred to section 2-3975.

2-3911 Transferred to section 2-3976.

2-3912 Repealed. Laws 1997, LB 201, § 7.

(b) NEBRASKA MANUFACTURING MILK ACT

2-3913 Transferred to section 2-3978.

2-3914 Transferred to section 2-3966.

2-3915 Transferred to section 2-3979.

2-3916 Transferred to section 2-3980.

2-3917 Transferred to section 2-3981.

2-3917.01 Transferred to section 2-3982.

2-3917.02 Repealed. Laws 2007, LB 111, § 31.

2-3918 Repealed. Laws 2007, LB 111, § 31.

2-3919 Transferred to section 2-3983.

2-3920 Transferred to section 2-3984.

2-3921 Transferred to section 2-3985.

2-3922 Transferred to section 2-3986.

2-3923 Transferred to section 2-3987.

2-3924 Transferred to section 2-3988.

2-3925 Transferred to section 2-3989.

2-3926 Repealed. Laws 2007, LB 111, § 31.

2-3927 Repealed. Laws 2007, LB 111, § 31.

2-3928 Repealed. Laws 2007, LB 111, § 31.

2-3929 Repealed. Laws 2007, LB 111, § 31.

2-3930 Repealed. Laws 2007, LB 111, § 31.

2-3931 Repealed. Laws 2007, LB 111, § 31.

2-3932 Repealed. Laws 2007, LB 111, § 31.

2-3933 Repealed. Laws 1986, LB 900, § 38.

2-3934 Repealed. Laws 2007, LB 111, § 31.

2-3935 Transferred to section 2-3990.

2-3936 Repealed. Laws 2007, LB 111, § 31.

2-3937 Transferred to section 2-3991.

2-3937.01 Repealed. Laws 2007, LB 111, § 31.

2-3938 Repealed. Laws 2007, LB 111, § 31.

2-3939 Repealed. Laws 2007, LB 111, § 31.

2-3940 Repealed. Laws 2007, LB 111, § 31.

2-3941 Repealed. Laws 2007, LB 111, § 31.

2-3942 Transferred to section 2-3992.

2-3943 Repealed. Laws 2007, LB 111, § 31.

2-3944 Repealed. Laws 2007, LB 111, § 31.

2-3945 Repealed. Laws 2007, LB 111, § 31.

2-3946 Repealed. Laws 2007, LB 111, § 31.

2-3947 Transferred to section 2-3917.02.

(c) DAIRY INDUSTRY DEVELOPMENT ACT

2-3948 Act, how cited.

Sections 2-3948 to 2-3963 shall be known and may be cited as the Dairy Industry Development Act.

Source: Laws 1992, LB 275, § 1; Laws 2001, LB 194, § 1; Laws 2004, LB 836, § 1.

2-3949 Terms, defined.

For purposes of the Dairy Industry Development Act:

(1) Board shall mean the Nebraska Dairy Industry Development Board;

(2) Commercial use shall mean sale for retail consumption or sale for resale, for manufacture for resale, or for processing for resale;

(3) First purchaser of milk shall mean a person who buys milk from a producer and resells to another person the milk or products manufactured or processed from the milk;

(4) Milk shall mean any class of cow's milk produced in the State of Nebraska;

(5) Milk production unit shall mean any producer licensed by the Department of Agriculture;

(6) Producer shall mean any person engaged in the production of milk for commercial use;

(7) Producer-processor shall mean a producer who processes and markets the producer's own milk; and

(8) Qualified program shall mean any state or regional dairy product promotion, research, or nutrition education program which is certified pursuant to 7 C.F.R. 1150.153, as amended. Such program shall: (a) Conduct activities as defined in 7 C.F.R. 1150.114, 1150.115, and 1150.116 intended to increase consumption of milk and dairy products generally; (b) except for programs operated under the laws of the United States or any state, have been active and ongoing before November 29, 1983; (c) be financed primarily by producers, either individually or through cooperative associations; (d) not use any private brand or trade name in advertising and promotion of dairy products unless the National Dairy Promotion and Research Board established pursuant to 7 C.F.R. 1150.131 and the United States Secretary of Agriculture concur that such requirement should not apply; (e) certify to the United States Secretary of Agriculture that any request from a producer for a refund under the program will be honored by forwarding that portion of such refund equal to the amount of credit that otherwise would be applicable to the program pursuant to 7 C.F.R. 1150.152(c) to either the National Dairy Promotion and Research Board or a qualified program designated by the producer; and (f) not use program funds for the purpose of influencing governmental policy or action.

Source: Laws 1992, LB 275, § 2.

2-3950 Legislative findings.

The Legislature declares it to be in the public interest that producers in Nebraska be permitted and encouraged to maintain and expand domestic sales of milk and dairy products, develop new products and new markets, improve methods and practices relating to marketing or processing of milk and dairy products, and inform and educate consumers of sound nutritional principles including the role of milk in a balanced diet. It is the purpose of the Dairy Industry Development Act to provide the authorization and to prescribe the necessary procedures by which the dairy industry in Nebraska may finance programs to achieve the purposes expressed in this section. The Nebraska Dairy Industry Development Board shall be the agency of the State of Nebraska for such purpose.

Source: Laws 1992, LB 275, § 3.

2-3951 Nebraska Dairy Industry Development Board; created; members; qualifications.

The Nebraska Dairy Industry Development Board is hereby created. Members of the board shall (1) be residents of Nebraska, (2) be at least twenty-one

years of age, (3) have been actually engaged in the production of milk in this state for at least five years, and (4) derive a substantial portion of their income from the production of milk in Nebraska. Board members shall be nominated and appointed as provided in sections 2-3951.01 to 2-3951.04.

Source: Laws 1992, LB 275, § 4; Laws 2004, LB 836, § 2; Laws 2013, LB70, § 1.

2-3951.01 Board members; appointment; terms; officers; expenses.

(1) Members of the board shall, as nearly as possible, be representative of all first purchasers of milk and individual producer-processors in the state and, to the extent practicable, result in equitable representation of the various interests of milk producers both in terms of the manner in which milk is marketed and geographic distribution of milk production units in the state.

(2) The terms of the members of the board shall be three years, except that the first term of the initial and additional members of the board shall be staggered so that one-third of the members are appointed each year. The number of years for the first term of new and additional members shall be determined by the Governor. Once duly appointed and qualified, no member's term shall be shortened or terminated by any subsequent certification by the Department of Agriculture of milk production units from which a first purchaser of milk purchases milk.

(3) The Director of Agriculture or his or her designee shall be an ex officio member of the board but shall have no vote in board matters.

(4) Members of the board shall elect from among the members a chairperson, a vice-chairperson, and such other officers as they deem necessary and appropriate.

(5) Members of the board shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 2004, LB 836, § 3; Laws 2013, LB70, § 2; Laws 2020, LB381, § 8.

2-3951.02 Board members; nomination and appointment.

(1) Members of the board shall be nominated and appointed as follows:

(a) Each first purchaser of milk which purchases milk from at least twenty-one milk producers may submit to the Governor the names of up to two nominees for each forty milk production units, or major portion thereof, from which the first purchaser purchases milk. The Governor shall appoint one member for each forty production units, or major portion thereof, from nominees submitted pursuant to this subdivision, except that if milk production units certified by the Department of Agriculture have decreased so that each board member appointed pursuant to this subdivision represents less than a major portion of forty production units, the Governor shall maintain representation of one member for each forty production units, or major portion thereof, by not filling a vacancy caused by a member's term expiring; and

(b) All other first purchasers of milk and individual producer-processors who are not included among milk production units claimed by a first purchaser of milk entitled to submit nominees under subdivision (1)(a) of this section shall be combined as a group for the purpose of submitting nominees, and each first purchaser and individual producer-processor of the group may nominate up to

two nominees. The Governor shall appoint two members from nominees submitted pursuant to this subdivision.

(2) Whenever the number of members of the board as determined by subsection (1) of this section results in less than seven members, the Governor shall appoint a member or members from the state at large to maintain membership of the board at seven members. Whenever such appointment is required, the board shall call for and submit a list of two or more nominees for each additional member needed to the Governor, and the Governor shall appoint a member or members from the nominees submitted pursuant to this subsection.

(3) Nominations in the case of term expiration or new or at-large membership and for all other vacancies shall be provided according to the process prescribed in section 2-3951.04. The Governor may choose the members of the board from the nominees submitted or may reject all nominees. If the Governor rejects all nominees, names of nominees shall again be provided to the Governor until the appointment is filled.

Source: Laws 2004, LB 836, § 4; Laws 2013, LB70, § 3.

2-3951.03 Board members; vacancies.

(1) A vacancy on the board exists in the event of the death, incapacity, removal, or resignation of any member; when a member ceases to be a resident of Nebraska; when a member ceases to be a producer in Nebraska; or when the member's term expires. Members whose terms have expired shall continue to serve until their successors are appointed and qualified, except that if such a vacancy will not be filled, as determined by the Governor under section 2-3951.02, the member shall not serve after the expiration of his or her term.

(2) For purposes of filling vacancies on the board, the Governor shall appoint one member from up to two nominees submitted by the vacating member's nominator under section 2-3951.02. In the event of a vacancy, the board shall certify to the vacating member's nominator that such a vacancy exists and shall request nominations to fill the vacancy for the remainder of the unexpired term or for a new term, as the case may be.

Source: Laws 2004, LB 836, § 5; Laws 2013, LB70, § 4.

2-3951.04 Board members; nominations; notification; procedure.

(1) When nominations for board members are required, written notification shall be given to each producer represented or to be represented by such member, including an at-large member. The first purchaser or purchasers of milk shall notify each producer from whom the first purchaser buys milk that each producer may submit written nominations. If the group represented is a combination of first purchasers of milk and individual producer-processors or if the member is an at-large member, the individual producer-processors shall receive notification from the Department of Agriculture.

(2) Nominations shall be in writing and shall contain an acknowledgment and consent by the producer being nominated. The nomination shall be returned by the producer to the first purchaser of milk or to the department from whom the producer received notification within fifteen days after the receipt of the notification. For nominations to replace a member whose term is to expire or for a new member, the producers shall receive notification between August 1

and August 15 preceding the expiration of the term of the member or the beginning of the term of a new member. For all other vacancies, the producers shall receive notification within thirty days after the member vacates his or her position on the board or within thirty days after the board calls for an at-large member or members as provided in section 2-3951.02.

(3) The first purchasers of milk, the department, or the board shall submit nominations to the Governor by September 30, in the case of term expiration or new or at-large member, or forty-five days after the member vacates his or her position for all other vacancies. The Governor shall make the appointments within thirty days after receipt of the nominations.

(4) All nominees shall meet the qualifications provided in section 2-3951.

Source: Laws 2004, LB 836, § 6; Laws 2013, LB70, § 5.

2-3952 Repealed. Laws 2004, LB 836, § 8.

2-3952.01 Repealed. Laws 2004, LB 836, § 8.

2-3953 Repealed. Laws 2004, LB 836, § 8.

2-3954 Repealed. Laws 2004, LB 836, § 8.

2-3955 Board; meetings; minutes.

(1) The board shall meet at least once every six months at a time and place fixed by the board. Special meetings may be called by the chairperson and shall be called by the chairperson upon request of at least twenty-five percent of the members of the board. Written notice of the time and place of all meetings shall be mailed in advance to each member of the board. A majority of members of the board shall constitute a quorum for the transaction of business. The affirmative vote of a majority of all members of the board shall be necessary for the adoption of rules and regulations.

(2) The board shall at each regular meeting review all expenditures made since its last regular meeting.

(3) The board shall keep minutes of its meetings and other books and records which shall clearly reflect all of the acts and transactions of the board. Such records shall be open to examination during normal business hours.

Source: Laws 1992, LB 275, § 8.

2-3956 Board; administration; limitation on expenses.

The board may contract for the necessary office space, furniture, stationery, printing, and personnel services useful or necessary for the administration of the Dairy Industry Development Act. The total administrative costs and expenses of the board shall not exceed five percent of the annual assessments collected in accordance with section 2-3958.

Source: Laws 1992, LB 275, § 9.

2-3957 Board; powers and duties.

The board shall:

(1) Arrange or contract for administrative and audit services which are necessary for the proper operation of the Dairy Industry Development Act;

(2) Procure and evaluate data and information necessary for the appropriate distribution of funds collected;

(3) Direct the distribution of funds collected;

(4) Prepare and approve a yearly budget;

(5) Adopt and promulgate rules and regulations to carry out the act;

(6) Establish a means by which all producers are informed annually on board members, policy, expenditures, and programs for the preceding year;

(7) Authorize the expenditure of funds to conduct activities provided for by the act;

(8) Bond such persons as necessary to ensure adequate protection of funds;

(9) Make refunds to other qualified programs in other states and disburse as directed by producers pursuant to subdivision (8)(e) of section 2-3949;

(10) Require that all books and records which clearly reflect all the transactions of its funded qualified programs be made available for audit by the board;

(11) Initiate appropriate enforcement of the act and the rules, regulations, and orders promulgated under the act;

(12) Accept remittances or credits and apply for and accept advances, grants, contributions, and any other forms of assistance from the federal government, the state, or any public or private source for administering the act and execute contracts or agreements in connection therewith;

(13) When necessary, appoint committees and advisory committees, the membership of which reflects the different funding regions of the United States and of the State of Nebraska in which milk is produced and delegate to such committees the authority reasonably necessary to administer the act under the direction of the board and within the policies determined by the board; and

(14) Exercise all incidental powers useful or necessary to carry out the act.

Source: Laws 1992, LB 275, § 10.

2-3958 Mandatory assessment; board; duties.

(1) There shall be paid to the board a mandatory assessment of ten cents per hundredweight on all milk produced in the State of Nebraska for commercial use.

(2) The board may audit financial and other records of first purchasers of milk, producers, and their agents pertaining to the assessment provided for in this section and otherwise ensure compliance with the Dairy Industry Development Act.

(3) For purposes of the act, when milk is sold to an out-of-state purchaser, the sale shall be deemed to have occurred in Nebraska if the milk was otherwise produced within Nebraska immediately prior to such sale and such sale is the first purchase of the milk for commercial use.

(4) For purposes of the act, when milk is produced out-of-state but sold to a first purchaser of milk in Nebraska, the assessment provided for in this section may be assessed and retained in Nebraska only if the producer consents.

Source: Laws 1992, LB 275, § 11.

2-3959 Assessment; payment; procedures.

The assessment prescribed in section 2-3958 shall be paid by producers at the time of first sale or delivery of milk for commercial use and shall be collected by the first purchaser of milk except as provided in this section. The first purchaser of milk shall remit the assessment to the board when the first purchaser of milk issues the milk payroll to producers. When milk is sold by producers to nonresident first purchasers of milk, the nonresident first purchaser of milk shall remit the assessments to the board. Producer-processors shall remit the assessments to the board. All assessments shall be remitted to the board not later than the last day of the month following the month in which the milk was commercially used, and a report shall be filed by the person responsible for remitting the assessment at the time that the assessment is remitted. The board shall make proper refunds to producers pursuant to subdivision (8)(e) of section 2-3949 at least quarterly. The board shall promulgate rules and regulations concerning the payment, remittance, refunding, and reporting of assessments. All money collected by the board shall be remitted to the State Treasurer for credit to the Nebraska Dairy Industry Development Fund.

Source: Laws 1992, LB 275, § 12.

2-3960 Nebraska Dairy Industry Development Fund; created; use; investment.

The Nebraska Dairy Industry Development Fund is hereby created. Money in the fund shall be used for the administration of the Dairy Industry Development Act, including advertising and promotion, market research, nutrition and product research and development, and nutrition and educational programs. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1992, LB 275, § 13; Laws 1994, LB 1066, § 7.

Cross References

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

2-3961 Use of funds; limitations.

The board shall not set up programs or agencies of its own but shall fund active, ongoing, qualified programs as stated in section 114 of the Dairy Production Stabilization Act of 1983, Public Law 98-180, as amended, and the regulations promulgated pursuant thereto. Funds may be used by qualified programs to jointly sponsor projects with any private or public organization to meet the objectives of the Dairy Industry Development Act.

Source: Laws 1992, LB 275, § 14.

2-3962 Board; report; contents.

The board shall prepare a report on or before October 1 of each year setting forth the income received from the assessments collected in accordance with section 2-3958 for the preceding fiscal year, and the report shall include:

(1) The expenditure of funds by the board during the year for the administration of the Dairy Industry Development Act;

(2) A brief description of all contracts requiring the expenditure of funds by the board;

(3) The action taken by the board on all such contracts;

(4) An explanation of all programs relating to the discovery, promotion, and development of markets and industries for the utilization of dairy products and the direct expense associated with each program;

(5) The name and address of each member of the board; and

(6) A brief description of the rules, regulations, and orders adopted and promulgated by the board.

The board shall submit the report electronically to the Clerk of the Legislature and shall make the report available to the public upon request.

Source: Laws 1992, LB 275, § 15; Laws 2013, LB222, § 1.

2-3963 Violations; penalties; unpaid assessment; late payment fee.

(1) Any person violating any of the provisions of the Dairy Industry Development Act shall be guilty of a Class III misdemeanor.

(2) Any unpaid assessment shall be increased one and one-half percent each month beginning with the day following the date such assessment was due. Any remaining amount due, including any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each succeeding month until paid.

(3) For purposes of this section, any assessment that was determined at a date later than prescribed by section 2-3959 because of the failure to submit a report to the board when due shall be considered to have been payable on the date it would have been due if the report had been timely filed. The timeliness of a payment to the board shall be based on the applicable postmarked date or the date actually received by the board, whichever is earlier. Any assessments and late payment fees may be recovered by action commenced by the board.

(4) The remedies provided in this section shall be in addition to and not exclusive of other remedies that may be available by law or in equity.

Source: Laws 1992, LB 275, § 16.

2-3964 Repealed. Laws 2004, LB 836, § 8.

(d) NEBRASKA MILK ACT

2-3965 Act, how cited; provisions adopted by reference; copies.

(1) Sections 2-3965 to 2-3992 and the publications adopted by reference in subsections (2) and (3) of this section shall be known and may be cited as the Nebraska Milk Act.

(2) The Legislature adopts by reference the following official documents of the National Conference on Interstate Milk Shipments as published by the United States Department of Health and Human Services, United States Public Health Service/Food and Drug Administration:

(a) Grade A Pasteurized Milk Ordinance, 2017 Revision, as delineated in subsection (3) of this section;

(b) Methods of Making Sanitation Ratings of Milk Shippers, 2017 Revision;

(c) Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, 2017 Revision; and

(d) Evaluation of Milk Laboratories, 2017 Revision.

(3) All provisions of the Grade A Pasteurized Milk Ordinance, 2017 Revision, including footnotes relating to requirements for cottage cheese, and the appendixes with which the ordinance requires mandatory compliance are adopted with the following exceptions:

(a) Section 9 of the ordinance is replaced by section 2-3969;

(b) Section 15 of the ordinance is replaced by section 2-3970;

(c) Section 16 of the ordinance is replaced by section 2-3974;

(d) Section 17 of the ordinance is not adopted;

(e) Section 3 of the ordinance, Administrative Procedures, Issuance of Permits, is adopted with the following modifications:

(i) The department may suspend a permit for a definite period of time or place the holder of a permit on probation upon evidence of violation by the holder of any of the provisions of the Nebraska Milk Act; and

(ii) Decisions of the department may be appealed and such appeals shall be in accordance with the Administrative Procedure Act; and

(f) Section 1 of the ordinance, Definitions, is adopted except for paragraph DD.

(4) Copies of the Ordinance, the Appendixes, and the publications, adopted by reference, shall be filed in the offices of the Secretary of State, Clerk of the Legislature, and Department of Agriculture. The copies filed with the Clerk of the Legislature shall be filed electronically.

Source: Laws 1980, LB 632, § 1; Laws 1986, LB 900, § 1; Laws 1990, LB 856, § 2; Laws 1992, LB 366, § 2; Laws 1997, LB 201, § 1; Laws 2001, LB 198, § 1; R.S.Supp.,2006, § 2-3901; Laws 2007, LB111, § 1; Laws 2013, LB67, § 1; Laws 2013, LB222, § 2; Laws 2019, LB333, § 1.

Cross References

Administrative Procedure Act, see section 84-920.

2-3966 Terms, defined.

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

(1) 3-A Sanitary Standards has the same meaning as in the Grade A Pasteurized Milk Ordinance;

(2) Acceptable milk means milk that qualifies under sections 2-3979 to 2-3982 as to sight and odor and that is classified acceptable for somatic cells, bacterial content, drug residues, and sediment content;

(3) Components of milk means whey, whey and milk protein concentrate, whey cream, cream, butter, skim milk, condensed milk, ultra-filtered milk, milk powder, dairy blends that are at least fifty-one percent dairy components, and any similar milk byproduct;

(4) C-I-P or cleaned-in-place means the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation;

(5) Dairy products means products allowed to be made from milk for manufacturing purposes and not required to be of Grade A quality;

(6) Department means the Department of Agriculture;

(7) Director means the Director of Agriculture or his or her duly authorized agent or designee;

(8) Field representative means an individual qualified and trained in the sanitary methods of production and handling of milk as set forth in the Nebraska Milk Act and who is generally employed by a processing or manufacturing milk plant or cooperative for the purpose of quality control work;

(9) First purchaser means a person who purchases raw milk directly from the farm for processing or for resale to a processor, who purchases milk products or components of milk for processing or resale to a processor, or who utilizes milk from the first purchaser's own farm for the manufacturing of milk products or dairy products;

(10) Grade A Pasteurized Milk Ordinance means the documents delineated in subsection (3) of section 2-3965;

(11) Milk for manufacturing purposes means milk produced for processing and manufacturing into products not required by law to be of Grade A quality;

(12) Milk distributor means a person who distributes milk, fluid milk, milk products, or dairy products whether or not the milk is shipped within or into the state. The term does not include a milk plant, a bulk milk hauler/sampler, or a milk producer, as such terms are defined in the Grade A Pasteurized Milk Ordinance, or a food establishment, as defined in the Nebraska Pure Food Act;

(13) Probational milk means milk classified undergrade for somatic cells, bacterial content, or sediment content that may be accepted by plants for specific time periods; and

(14) Reject milk means milk that does not qualify under sections 2-3979 to 2-3982.

Source: Laws 1969, c. 5, § 3, p. 69; R.S.1943, (1976), § 81-263.89; Laws 1980, LB 632, § 14; Laws 1981, LB 333, § 1; Laws 1986, LB 900, § 12; Laws 1988, LB 871, § 19; Laws 1990, LB 856, § 6; Laws 1993, LB 121, § 77; Laws 1993, LB 268, § 1; Laws 2001, LB 198, § 7; R.S.Supp.,2006, § 2-3914; Laws 2007, LB111, § 2; Laws 2013, LB67, § 2; Laws 2019, LB333, § 2.

Cross References

Nebraska Pure Food Act, see section 81-2,239.

2-3967 Activities regulated.

The Nebraska Milk Act shall be used for the regulation of: (1) The production, transportation, processing, handling, sampling, examination, grading, labeling, and sale of all milk and milk products; (2) the inspection of dairy herds, dairy farms, milk plants, plants fabricating single-service articles, transfer stations, receiving stations, milk haulers, and milk distributors; and (3) the issuance, suspension, and revocation of permits.

Source: Laws 1980, LB 632, § 2; Laws 1986, LB 900, § 2; Laws 1990, LB 856, § 3; Laws 1997, LB 201, § 2; Laws 2001, LB 198, § 2; R.S.Supp.,2006, § 2-3902; Laws 2007, LB111, § 3.

2-3968 Grade A milk producer permit; manufacturing grade milk producer permit; label restrictions.

(1) A milk producer shall receive a Grade A milk producer permit if the milk produced is in conformance with all requirements of the Nebraska Milk Act for Grade A milk or milk products.

(2) A milk producer shall receive a manufacturing grade milk producer permit if the milk produced is in conformance with all requirements of the Nebraska Milk Act for manufacturing grade milk or dairy products.

(3) Dairy products made from milk for manufacturing purposes shall not be labeled with the Grade A designation.

Source: Laws 2007, LB111, § 4.

2-3969 Sale of milk and milk products; conditions.

(1) Except as provided in subsections (2) and (3) of this section, only milk and milk products from approved sources with an appropriate permit issued by the department or a similar regulatory authority of another state shall be sold to the final consumer or to restaurants, soda fountains, grocery stores, or similar establishments.

(2) In an emergency, the sale of pasteurized milk and milk products which have not been graded or the grade of which is unknown may be authorized by the regulatory agency, in which case such milk and milk products shall be labeled as ungraded.

(3) Milk and cream produced by farmers exclusively for sale at the farm directly to customers for consumption and not for resale shall be exempt from the Nebraska Milk Act.

(4) If the permit of a Grade A milk producer is suspended for sanitary or milk quality violations, the producer may market milk, for manufacturing purposes only, for an interim period not to exceed sixty days with the approval of the department, if the milk meets the criteria of manufacturing grade milk.

Source: Laws 1980, LB 632, § 3; Laws 1986, LB 900, § 3; Laws 1997, LB 201, § 3; R.S.1943, (1997), § 2-3903; Laws 2007, LB111, § 5.

2-3970 Act; administration and enforcement.

The Nebraska Milk Act shall be administered and enforced by the department.

Source: Laws 1980, LB 632, § 4; Laws 1986, LB 900, § 4; R.S.1943, (1997), § 2-3904; Laws 2007, LB111, § 6.

2-3971 Permit fees; inspection fees; other fees; rate.

(1)(a) As a condition precedent to the issuance of a permit pursuant to the Nebraska Milk Act, the annual permit fees shall be paid to the department on or before August 1 of each year as follows:

(i) Milk plant processing 100,000 or less pounds per month . . . $100.00;

(ii) Milk plant processing 100,001 to 2,000,000 pounds per month . . . $500.00;

(iii) Milk plant processing more than 2,000,000 pounds per month . . . $1,000.00;

(iv) Receiving station $200.00;

(v) Plant fabricating single-service articles . . $300.00;

(vi) Milk distributor $150.00;

(vii) Transfer station $100.00;

(viii) Milk tank truck cleaning facility $100.00;

(ix) Bulk milk hauler/sampler $25.00;

(x) Field representative $25.00;

(xi) Grade A Milk producer . . . . No Fee; and

(xii) Manufacturing milk producer . . . . No Fee.

(b) On or before each August 1 a Milk Transportation Company shall pay twenty-five dollars for each milk tank truck in service on July 1 of the current year, but in no case shall the fee be less than one hundred dollars.

(2)(a) All milk or components of milk produced or processed in Nebraska and milk or components of milk shipped in for processing shall be subject to the payment of inspection fees as provided in this subsection.

(b) There shall be three categories of inspection fees as follows:

(i) The inspection fee for raw milk purchased directly off the farm by first purchasers shall have a maximum inspection fee of two and five-tenths cents per hundredweight for raw milk and shall be paid by first purchasers;

(ii) The inspection fee for milk processed by a milk plant shall be seventy-five percent of the fee paid by first purchasers and shall be paid by the milk plant; and

(iii) The inspection fee for components of milk processed shall be fifty percent of the fee paid by first purchasers and shall be paid by the milk plant.

(c) All fees shall be paid on or before the last day of the month for milk or components of milk produced or processed during the preceding month. Any unpaid fee shall be increased one and one-half percent each month beginning with the day following the date the fee was due. Any remaining amount due, including any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each succeeding month until paid. The purpose of increasing the fees is to cover the administrative costs associated with collecting fees, and all money collected as increased fees shall be remitted to the State Treasurer for credit to the Pure Milk Cash Fund.

(d) The director may raise or lower the inspection fees each year, but the fees shall not exceed the maximum fees set out in subdivision (b) of this subsection. The director shall determine the fees based on the estimated annual revenue and fiscal year-end fund balance determined as follows:

(i) The estimated annual revenue shall not be greater than one hundred seven percent of the program cash fund appropriations allocated for the Nebraska Milk Act;

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

(iii) All fee increases or decreases shall be equally distributed between categories to maintain the percentages set forth in subdivision (b) of this subsection.

(3) If any person required to have a permit pursuant to the act has been operating prior to applying for a permit, an additional fee of one hundred dollars shall be paid upon application.

Source: Laws 1980, LB 632, § 6; Laws 1986, LB 900, § 6; Laws 1992, LB 366, § 4; Laws 1997, LB 752, § 58; Laws 2001, LB 198, § 3; R.S.Supp.,2006, § 2-3906; Laws 2007, LB111, § 7; Laws 2013, LB67, § 3.

2-3972 Adulteration or misbranding; stop-sale, stop-use, or removal order; issuance; hearing.

Whenever a regulatory agency finds milk or milk products being manufactured, processed, transported, distributed, offered for sale, or sold, in violation of the adulteration or misbranding provisions of the Nebraska Milk Act, it shall have the authority to issue and enforce a written or printed stop-sale, stop-use, or removal order to the person in charge of such milk or milk product only if the issuance of such an order is necessary for the protection of the public health, safety, or welfare. Such an order shall specifically describe the nature of the violation found and the precise action necessary to bring the milk or milk products into compliance with the applicable provisions of the act. Such an order shall clearly advise the person in charge of the milk or milk products that he or she may request an immediate hearing before the director or his or her designee on the matter. The issuance of orders under this section shall be limited to instances in which no alternative course of action would sufficiently protect the public health, safety, or welfare.

Source: Laws 1980, LB 632, § 7; Laws 2001, LB 198, § 4; R.S.Supp.,2006, § 2-3907; Laws 2007, LB111, § 8.

2-3973 Department; rules and regulations.

The department may adopt and promulgate reasonable rules and regulations to carry out the Nebraska Milk Act.

Source: Laws 1980, LB 632, § 8; Laws 1986, LB 900, § 7; Laws 2001, LB 198, § 5; R.S.Supp.,2006, § 2-3908; Laws 2007, LB111, § 9.

2-3974 Violation; restraining order or injunction; prohibited acts; penalty; county attorney; duties.

(1) The department may apply for a restraining order or a temporary or permanent injunction against any person violating or threatening to violate the Nebraska Milk Act or the rules and regulations adopted and promulgated pursuant to the act in order to insure compliance with the provisions thereof. 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 other remedies at law and shall be granted without bond.

(2) Any person violating the act or who impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the director in the performance of his or her duties in connection with the enforcement of the act or the rules and regulations adopted and promulgated by the department is guilty of a Class V misdemeanor.

(3) It shall be the duty of the county attorney of the county in which violations of the act are occurring or are about to occur, when notified of such violations or threatened violations by the department, to cause appropriate proceedings under subsection (1) of this section to be instituted and pursued in the district court without delay.

Source: Laws 1980, LB 632, § 9; Laws 1986, LB 900, § 8; R.S.1943, (1997), § 2-3909; Laws 2007, LB111, § 10.

2-3975 Director; surveys of milksheds; make and publish results.

The director shall make and publish the results of periodic surveys of milksheds to determine the degree of compliance with the sanitary requirements for the production, processing, handling, distribution, sampling, and hauling of milk and milk products as provided in the Nebraska Milk Act. The director shall have the power to adopt and promulgate reasonable rules and regulations in accordance with the procedure defined in the Administrative Procedure Act for the interpretation and enforcement of this section. Such a survey or rating of a milkshed shall follow the procedures prescribed by the United States Department of Health and Human Services, United States Food and Drug Administration, in its documents, as delineated in section 2-3965, entitled Methods of Making Sanitation Ratings of Milk Shippers and Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments.

Source: Laws 1980, LB 632, § 10; Laws 1986, LB 900, § 9; Laws 1990, LB 856, § 4; Laws 1995, LB 406, § 1; Laws 1997, LB 201, § 4; Laws 2001, LB 198, § 6; R.S.Supp.,2006, § 2-3910; Laws 2007, LB111, § 11; Laws 2013, LB67, § 4.

Cross References

Administrative Procedure Act, see section 84-920.

2-3976 Pure Milk Cash Fund; created; use; investment.

All fees paid to the department in accordance with the Nebraska Milk Act shall be remitted to the State Treasurer for credit to the Pure Milk Cash Fund, which fund is hereby created. All money credited to the fund shall be appropriated to the uses of the department to aid in defraying the expenses of administering the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1980, LB 632, § 11; Laws 1986, LB 900, § 10; Laws 1995, LB 7, § 23; R.S.1943, (1997), § 2-3911; Laws 2007, LB111, § 12; Laws 2013, LB67, § 5.

Cross References

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

2-3977 Field representative; powers; field representative permit; applicant; qualifications.

(1) Milk plants or any entity purchasing raw milk from producers holding a permit under the Nebraska Milk Act may employ, contract with, or otherwise

provide for the services of a competent and qualified field representative who may:

(a) Inform new producers about the requirements of dairy farm sanitation and assist dairy producers with milk quality problems;

(b) Collect and submit samples at the request of the department; and

(c) Advise the department of any circumstances that could be of public health significance.

(2) An applicant for a field representative permit shall be trained in the sanitation practices for the sampling, care of samples, and milk hauling requirements of the Nebraska Milk Act. Prior to obtaining a field representative permit, the applicant shall take and pass an examination approved by the department and shall pay the permit fee set forth in section 2-3971. The permit shall expire on July 31 of the year following issuance.

Source: Laws 2007, LB111, § 13; Laws 2013, LB67, § 6.

2-3978 Public policy.

It is hereby recognized and declared as a matter of legislative determination that in the field of human nutrition, safe, clean, wholesome milk is indispensable to the health and welfare of the citizens of the State of Nebraska; that milk is a perishable commodity susceptible to contamination and adulteration; that the production and distribution of an adequate supply of clean, safe, and wholesome milk are significant to sound health; and that minimum standards are declared to be necessary for the production and distribution of milk and milk products.

Source: Laws 1969, c. 5, § 2, p. 69; R.S.1943, (1976), § 81-263.88; Laws 1980, LB 632, § 13; R.S.1943, (1997), § 2-3913; Laws 2007, LB111, § 14.

2-3979 Classification of raw milk.

The classification of raw milk for manufacturing purposes shall be based on sight and odor and quality control tests for somatic cells, bacterial content, sediment content, and drug residues. Classification shall be either acceptable, probational, or reject.

Source: Laws 1969, c. 5, § 4, p. 72; R.S.1943, (1976), § 81-263.90; Laws 1980, LB 632, § 15; Laws 1981, LB 333, § 1; Laws 1986, LB 900, § 13; Laws 1993, LB 268, § 2; Laws 2001, LB 198, § 8; R.S.Supp.,2006, § 2-3915; Laws 2007, LB111, § 15.

2-3980 Flavor and odor of acceptable raw milk for manufacturing purposes.

The odor of acceptable raw milk for manufacturing purposes shall be fresh and sweet. The milk shall be free from objectionable feed and other off-odors that would adversely affect the finished product, and it shall not show any abnormal condition, including, but not limited to, curdled, ropy, bloody, or mastitic condition, as indicated by sight or odor.

Source: Laws 1969, c. 5, § 5, p. 72; R.S.1943, (1976), § 81-263.91; Laws 1980, LB 632, § 16; R.S.1943, (1997), § 2-3916; Laws 2007, LB111, § 16.

2-3981 Dairy plants, milk for manufacturing purposes, and pickup tankers; quality tests; standards.

(1) All dairy plants using milk for manufacturing purposes shall run the quality tests set out in this section in a state-certified laboratory and report the results to the department upon request. The test methods shall be those stated in laboratory procedures.

(2) Milk for manufacturing purposes shall be classified for bacterial content by the standard plate count or plate loop count. Bacterial count limits of individual producer milk shall not exceed five hundred thousand per milliliter.

(3) Bacterial counts for milk for manufacturing purposes shall be run at least four times in six consecutive months at irregular intervals at times designated by the director on representative samples of each producer's milk. Whenever any two out of four consecutive bacterial counts exceed five hundred thousand per milliliter, the producer shall be sent a written notice by the department. Such notice shall be in effect so long as two of the last four consecutive samples exceed the limit of the standard set out in subsection (2) of this section. A producer sample shall be taken between three and twenty-one days after the second excessive count. If that sample indicates an excessive bacterial count, the producer's milk shall be rejected until subsequent testing indicates a bacterial count of five hundred thousand per milliliter or less.

(4) All standards and procedures of the Grade A Pasteurized Milk Ordinance relating to somatic cells shall apply to milk for manufacturing purposes.

(5) The industry shall test all producer's milk and bulk milk pickup tankers for drug residues in accordance with Appendix N, Drug Residue Testing and Farm Surveillance, of the Grade A Pasteurized Milk Ordinance.

Source: Laws 1980, LB 632, § 17; Laws 1986, LB 900, § 14; Laws 1988, LB 871, § 20; Laws 1993, LB 268, § 3; Laws 1997, LB 201, § 5; Laws 2001, LB 198, § 9; R.S.Supp.,2006, § 2-3917; Laws 2007, LB111, § 17; Laws 2013, LB67, § 7.

2-3982 Classification for sediment content; sediment standards; determination; effect.

(1) Milk for manufacturing purposes shall be classified for sediment content, regardless of the results of the appearance and odor examination described in section 2-3980, according to sediment standards as follows:

(a) No. 1: Acceptable, not to exceed fifty-hundredths milligrams or its equivalent;

(b) No. 2: Acceptable, not to exceed one and fifty-hundredths milligrams or its equivalent;

(c) No. 3: Probational, not over ten days, not to exceed two and fifty-hundredths milligrams or its equivalent; and

(d) No. 4: Reject, over two and fifty-hundredths milligrams or its equivalent.

(2) Methods for determining the sediment content of the milk of individual producers shall be the methods described in 7 C.F.R. 58.134, as such section existed on July 1, 2018.

(3) Sediment testing shall be performed at least four times every six months at irregular intervals as designated by the director.

(4) If the sediment disc is classified as No. 1, No. 2, or No. 3, the producer's milk may be accepted. If the sediment disc is classified as No. 4, the milk shall be rejected. A producer's milk that is classified as No. 3 may be accepted for a period not to exceed ten calendar days. If at the end of ten days the producer's milk does not meet acceptable sediment classification No. 1 or No. 2, it shall be rejected from the market. If the sediment disc is classified as No. 4, the milk shall be rejected and no further shipments accepted unless the milk meets the requirements of No. 3 or better.

Source: Laws 1986, LB 900, § 15; Laws 1993, LB 268, § 4; Laws 2001, LB 198, § 10; R.S.Supp.,2006, § 2-3917.01; Laws 2007, LB111, § 18; Laws 2013, LB67, § 8; Laws 2019, LB333, § 3.

2-3982.01 Grade A Pasteurized Milk Ordinance requirements; facility in existence prior to July 1, 2013; other facilities; requirements applicable.

A facility producing milk for manufacturing purposes in existence prior to July 1, 2013, which does not meet all of the requirements of the Grade A Pasteurized Milk Ordinance shall be acceptable for use only if it meets the requirements of sections 2-3983 to 2-3989. After July 1, 2013, all new facilities that produce milk and facilities that produce milk that are under new ownership shall be required to meet the requirements of the Grade A Pasteurized Milk Ordinance.

Source: Laws 2013, LB67, § 9.

2-3983 Milking facility requirements.

A milking facility producing milk for manufacturing purposes of adequate size and arrangement shall be provided to permit normal sanitary milking operations. Such milking facility shall be physically separated by solid partitions or doors from other parts of the barn or building which do not meet the requirements of this section. A milking facility shall meet the following requirements:

(1) Sufficient space shall be provided for each dairy animal during the milking operation. If housed in the same area, the individual dairy animal should be able to lie down comfortably without being substantially in the gutter or alley. There shall not be overcrowding of the dairy animals;

(2) Maternity pens and calf, kid, and lamb pens, if provided, shall be properly maintained and cleaned regularly;

(3) Walls and ceilings shall be of solid and tight construction and in good repair;

(4) Only dairy animals shall be permitted in any part of the milking facility;

(5) The floors and gutters of the milking facility shall be constructed of concrete or other impervious material, graded to drain, and in good repair;

(6) The milking facility shall be well lighted and well ventilated to accommodate day or night milking;

(7) The milking facility shall be kept clean with walls and ceilings kept free of filth, cobwebs, and manure. The floor shall be scraped or washed after each milking and the manure stored to prevent access by dairy animals;

(8) Only articles directly related to the normal milking operation may be stored in the milking facility; and

(9) Feed storage rooms and silo areas shall be partitioned from the milking facility.

Source: Laws 1969, c. 5, § 9, p. 75; R.S.1943, (1976), § 81-263.95; Laws 1980, LB 632, § 19; Laws 1986, LB 900, § 17; Laws 1993, LB 268, § 5; R.S.1943, (1997), § 2-3919; Laws 2007, LB111, § 19.

2-3984 Yard or loafing area requirements.

The yard or loafing area of a facility producing milk for manufacturing purposes shall be of ample size to prevent overcrowding, shall be drained to prevent forming of water pools, and shall be kept clean. Manure piles shall not be accessible to the dairy animals. Swine shall not be allowed in the yard or loafing area.

Source: Laws 1969, c. 5, § 10, p. 75; R.S.1943, (1976), § 81-263.96; Laws 1980, LB 632, § 20; Laws 1993, LB 268, § 6; R.S.1943, (1997), § 2-3920; Laws 2007, LB111, § 20.

2-3985 Udders; teats of dairy animals; milk stools; antikickers; surcingles; drugs; requirements.

All facilities producing milk for manufacturing purposes shall meet the following requirements:

(1) The udders and teats of all dairy animals shall be washed or wiped immediately before milking with a clean damp cloth or paper towel moistened with a sanitizing solution and wiped dry or by any other sanitary method. The milker's clothing shall be clean and his or her hands clean and dry. Dairy animals treated with drugs shall be milked last and the milk excluded from the supply for such period of time as is necessary to have the milk free from drug residues;

(2) Milk stools, antikickers, and surcingles shall be kept clean and properly stored. Dusty hay shall not be fed in the milking facility immediately before milking. Strong flavored feeds should not be fed before milking; and

(3) Drugs shall be stored in such manner that they cannot contaminate the milk or dairy products or milk contact areas. Unapproved or improperly labeled drugs shall not be used to treat dairy animals and shall not be stored in the barn or milking facility. Drugs intended for the treatment of nonlactating dairy animals shall be segregated from drugs used for lactating dairy animals. All drugs shall be properly labeled to include:

(a) The name and address of the manufacturer or distributor for drugs or veterinary practitioners dispensing the product for prescription and extra-labeling-use drugs;

(b) The established name of the active ingredient, or if formulated from more than one ingredient, the established name of each ingredient;

(c) Directions for use, including the class or species or identification of the animals, and the dosage, frequency, route of administration, and duration of therapy;

(d) Any cautionary statements; and

(e) The specified withdrawal or discard time for meat, milk, eggs, or any food which might be derived from the treated animal.

Source: Laws 1969, c. 5, § 11, p. 75; R.S.1943, (1976), § 81-263.97; Laws 1980, LB 632, § 21; Laws 1989, LB 38, § 3; Laws 1993, LB 268, § 7; R.S.1943, (1997), § 2-3921; Laws 2007, LB111, § 21.

2-3986 Milk in farm bulk tanks; cooled; temperature.

Milk for manufacturing purposes in farm bulk tanks shall be cooled to forty degrees Fahrenheit or lower within two hours after milking and maintained at fifty degrees Fahrenheit or lower until transferred to the transport tank. Milk offered for sale for manufacturing purposes shall be in a farm bulk tank that meets all 3-A Sanitary Standards.

Source: Laws 1969, c. 5, § 12, p. 75; R.S.1943, (1976), § 81-263.98; Laws 1980, LB 632, § 22; Laws 1986, LB 900, § 18; Laws 1993, LB 268, § 8; R.S.1943, (1997), § 2-3922; Laws 2007, LB111, § 22; Laws 2013, LB67, § 10.

2-3987 Milkhouse or milkroom; sanitation requirements.

A milkhouse or milkroom at a facility producing milk for manufacturing purposes shall be conveniently located and properly constructed, lighted, and ventilated for handling and cooling milk in farm bulk tanks. The milkhouse or milkroom shall meet the following requirements:

(1) Adequate natural or artificial lighting shall be provided for conducting milkhouse or milkroom operations. Light fixtures shall not be installed directly above farm bulk milk tanks in areas where milk is drained or in areas where equipment is washed or stored. A minimum of thirty footcandles of light intensity shall be provided where the equipment is washed. All artificial lighting shall be from permanent fixtures;

(2) Adequate ventilation shall be provided to prevent odors and condensation on walls and ceilings;

(3) The milkhouse or milkroom shall be used for no other purpose;

(4) Adequate facilities for washing and storing milking equipment shall be provided in the milkhouse or milkroom. Only C-I-P equipment shall be stored in the milking area or milking parlor. Hot and cold running water under pressure shall be provided in the milkhouse or milkroom;

(5) If the milkhouse or milkroom is part of the milking facility or other building, it shall be partitioned and sealed to prevent the entrance of dust, flies, or other contamination. Walls, floors, and ceilings shall be kept clean and in good repair;

(6) Feed concentrates, if stored in the building, shall be kept in a tightly covered box or bin;

(7) The floor of the building shall be of concrete or other impervious material and graded to provide drainage;

(8) All doors in the milkhouse or milkroom shall be self-closing. Outer screen doors shall open outward and be maintained in good repair;

(9) No animals shall be allowed in the milkhouse or milkroom;

(10) A farm bulk tank shall be properly located in the milkhouse or milkroom for access to all areas for cleaning and servicing. It shall not be located over a floor drain or under a ventilator or a light fixture;

(11) A suitable hoseport opening shall be provided in the milkhouse or milkroom for hose connections and the hoseport shall be fitted with a tight-fitting door which shall be kept closed except when the port is in use. An easily cleanable surface shall be constructed under the hoseport adjacent to the outside wall large enough to protect the milkhose from contamination;

(12) The truck approach to the milkhouse or milkroom shall be properly graded and surfaced to prevent mud or pooling of water at the point of loading. It shall not pass through any livestock holding area;

(13) All windows, if designed to be opened, shall be adequately screened;

(14) Surroundings shall be neat, clean, and free of harborage and pooled water; and

(15) Handwashing facilities shall be provided which shall include soap, single-service towels, running water under pressure, a sink, and a covered refuse container.

Source: Laws 1969, c. 5, § 13, p. 75; R.S.1943, (1976), § 81-263.99; Laws 1980, LB 632, § 23; Laws 1981, LB 333, § 2; Laws 1986, LB 900, § 19; Laws 1989, LB 38, § 4; Laws 1993, LB 268, § 9; R.S.1943, (1997), § 2-3923; Laws 2007, LB111, § 23.

2-3988 Milk utensils; sanitation requirements.

At a facility producing milk for manufacturing purposes, utensils, milk cans, milking machines, including pipeline systems, and other equipment used in the handling of milk shall be maintained in good condition, shall be free from rust, open seams, milkstone, or any unsanitary condition, and shall be washed, rinsed, and drained after each milking, stored in suitable facilities, and sanitized immediately before use. New or replacement can lids shall be umbrella type. All new utensils, new farm bulk tanks, and equipment shall meet 3-A Sanitary Standards and comply with applicable rules and regulations of the department. Equipment manufactured in conformity with 3-A Sanitary Standards complies with the sanitary design and construction standards of the Nebraska Milk Act.

Source: Laws 1969, c. 5, § 14, p. 76; R.S.1943, (1976), § 81-263.100; Laws 1980, LB 632, § 24; Laws 1986, LB 900, § 20; Laws 1993, LB 268, § 10; Laws 2001, LB 198, § 11; R.S.Supp.,2006, § 2-3924; Laws 2007, LB111, § 24; Laws 2013, LB67, § 11.

2-3989 Water supply requirements; testing.

The water supply at a facility producing milk for manufacturing purposes shall be safe, clean, and ample for the cleaning of dairy utensils and equipment. The water supply shall meet the bacteriological standards established by the Department of Health and Human Services at all times. Water samples shall be taken, analyzed, and found to be in compliance with the requirements of the Nebraska Milk Act prior to the issuance of a permit to the producer and whenever any major change to the well or water source occurs. Wells or water sources which do not meet the construction standards of the Department of Health and Human Services shall be tested annually, and wells or water

sources which do meet the construction standards of the Department of Health and Human Services shall be tested every three years. Whenever major alterations or repairs occur or a well or water source repeatedly recontaminates, the water supply shall be unacceptable until such time as the construction standards are met and an acceptable supply is demonstrated. All new producers issued permits under the Nebraska Milk Act shall be required to meet the construction standards established by the Department of Health and Human Services for private water supplies.

Source: Laws 1969, c. 5, § 15, p. 76; R.S.1943, (1976), § 81-263.101; Laws 1980, LB 632, § 25; Laws 1986, LB 900, § 21; Laws 1989, LB 38, § 5; Laws 1993, LB 268, § 11; Laws 1996, LB 1044, § 40; R.S.1943, (1997), § 2-3925; Laws 2007, LB111, § 25; Laws 2007, LB296, § 19; Laws 2013, LB67, § 12.

2-3990 Cream for buttermaking; pasteurization.

Cream for buttermaking shall be pasteurized at a temperature of not less than one hundred sixty-five degrees Fahrenheit and held continuously in a vat at such temperature for not less than thirty minutes, or at a temperature of not less than one hundred eighty-five degrees Fahrenheit for not less than fifteen seconds, or any other temperature and holding time approved by the director that will assure pasteurization and comparable keeping-quality characteristics.

Source: Laws 1969, c. 5, § 24, p. 84; R.S.1943, (1976), § 81-263.110; Laws 1980, LB 632, § 35; Laws 1986, LB 900, § 26; Laws 1993, LB 268, § 18; R.S.1943, (1997), § 2-3935; Laws 2007, LB111, § 26.

2-3991 Dairy products; packaging; containers; labeling.

Dairy products shall be packaged in commercially acceptable containers or packaging material that will protect the quality of the contents in regular channels of trade. Prior to use packaging materials shall be protected against dust, mold, and other possible contamination.

Commercial bulk shipping containers for dairy products shall be legibly marked with the name of the product, net weight or content, name and address of processor, manufacturer, or distributor, and plant code number. Consumer-packaged products shall be legibly marked with the name of the product, net weight or content, plant code number, and name and address of the packer or distributor.

Source: Laws 1969, c. 5, § 28, p. 86; R.S.1943, (1976), § 81-263.114; Laws 1980, LB 632, § 37; Laws 1993, LB 268, § 19; R.S.1943, (1997), § 2-3937; Laws 2007, LB111, § 27.

2-3992 Director; access to facilities, books, and records; inspections authorized.

(1) The director or his or her duly authorized agent shall have access during regular business hours to any milking facility or dairy plant for which a permit is held in which milk is used or stored for use in the manufacture, processing, packaging, or storage of milk or milk products or to enter any vehicle being used to transport or hold such milk or milk products for the purpose of inspection and to secure specimens or samples of any milk or milk product

after paying or offering to pay for such sample or specimen. The director may analyze and inspect samples of raw milk and dairy products.

(2) The director or his or her duly authorized agent shall have access during regular business hours to the books and records of any permitholder under the Nebraska Milk Act when such access is necessary to properly administer and enforce such act.

Source: Laws 1969, c. 5, § 33, p. 89; R.S.1943, (1976), § 81-263.119; Laws 1980, LB 632, § 42; Laws 1986, LB 900, § 31; Laws 1993, LB 268, § 24; R.S.1943, (1997), § 2-3942; Laws 2007, LB111, § 28.

(e) DAIRY STUDY

2-3993 Repealed. Laws 2017, LB2, § 3.

ARTICLE 40

GRAIN SORGHUM DEVELOPMENT

Section
2-4001. Act, how cited.
2-4002. Terms, defined.
2-4003. Intent and purpose of act.
2-4004. Board; members; membership districts; officers; terms; vacancy; how filled.
2-4005. Board; appointment of members; procedure.
2-4006. Board; membership; transitional provisions.
2-4007. Board; responsibility; powers.
2-4008. Board; voting members; expenses.
2-4009. Board; removal of member; grounds.
2-4010. Board; meetings.
2-4011. Board; duties and responsibilities.
2-4012. Sale of grain sorghum; fee; adjustment.
2-4013. Pledge or mortgage; grain sorghum used as security; fee; refund; procedure.
2-4014. Fee; when assessed.
2-4015. Fee; when not applicable.
2-4016. Purchaser; deduct fee; maintain records; public inspection; quarterly statement.
2-4017. Board; annual report; contents.
2-4018. Grain Sorghum Development, Utilization, and Marketing Fund; created; purpose; investment.
2-4019. Board; cooperate with University of Nebraska and other organizations; purpose.
2-4020. Violations; penalty.
2-4021. Grain Sorghum National Checkoff Fund; created; use; investment.

2-4001 Act, how cited.

Sections 2-4001 to 2-4020 shall be known and may be cited as the Grain Sorghum Resources Act.

Source: Laws 1981, LB 11, § 1.

2-4002 Terms, defined.

For purposes of the Grain Sorghum Resources Act, unless the context otherwise requires:

(1) Board means the Grain Sorghum Development, Utilization, and Marketing Board;

(2) Commercial channels means the sale of grain sorghum for any use to any commercial buyer, dealer, processor, or cooperative or to any person, public or private, who resells any grain sorghum or product produced from grain sorghum;

(3) Delivered or delivery means receiving grain sorghum for any use, except for storage, and includes receiving grain sorghum for consumption, for utilization, or as a result of a sale in the State of Nebraska;

(4) First purchaser means any person, public or private corporation, association, partnership, or limited liability company buying, accepting for shipment, or otherwise acquiring the property rights in or to grain sorghum from a grower and includes a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the grower when the actual or constructive possession of such grain sorghum is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim;

(5) Grower means any landowner personally engaged in growing grain sorghum, a tenant of the landowner personally engaged in growing grain sorghum, and both the owner and tenant jointly and includes a person, partnership, limited liability company, association, corporation, cooperative, trust, sharecropper, and other business unit, device, or arrangement; and

(6) Sale includes any pledge or mortgage of grain sorghum after harvest to any person, public or private.

Source: Laws 1981, LB 11, § 2; Laws 1993, LB 121, § 78; Laws 1997, LB 11, § 1.

2-4003 Intent and purpose of act.

It is declared to be in the interest of the public welfare that the producers of grain sorghum be permitted and encouraged to develop, carry out, and participate in programs of research, education, market development, and promotion. It is the purpose of sections 2-4001 to 2-4020 to provide the authorization and to prescribe the necessary procedures whereby grain sorghum producers in this state may finance programs to achieve the purposes expressed in this section.

Source: Laws 1981, LB 11, § 3.

2-4004 Board; members; membership districts; officers; terms; vacancy; how filled.

(1) The board shall be composed of grower members who (a) are citizens of Nebraska, (b) are at least twenty-one years of age, and (c) derive a portion of their income from growing grain sorghum. The Director of Agriculture and the vice chancellor of the University of Nebraska Institute of Agriculture and Natural Resources shall be ex officio members of the board but shall have no vote in board matters.

(2) Except as provided in section 2-4006 or 2-4007, the members shall be appointed as follows:

(a) One member shall be appointed by the Governor from each of the following districts:

(i) District 1: The counties of Cedar, Dixon, Dakota, Wayne, Thurston, Stanton, Cuming, Burt, Colfax, Dodge, Washington, Douglas, Butler, Saunders, Sarpy, Seward, Saline, Lancaster, Cass, Otoe, Jefferson, Gage, Johnson, Nemaha, Pawnee, and Richardson;

(ii) District 2: The counties of Knox, Antelope, Pierce, Madison, Boone, Platte, Nance, Merrick, Polk, Hamilton, York, Adams, Clay, Fillmore, Webster, Nuckolls, and Thayer;

(iii) District 3: The counties of Keya Paha, Boyd, Brown, Rock, Holt, Blaine, Loup, Garfield, Wheeler, Custer, Valley, Greeley, Sherman, Howard, Dawson, Buffalo, Hall, Gosper, Phelps, Kearney, Furnas, Harlan, and Franklin; and

(iv) District 4: The counties of Sioux, Dawes, Box Butte, Sheridan, Cherry, Scotts Bluff, Banner, Kimball, Morrill, Cheyenne, Garden, Deuel, Grant, Hooker, Thomas, Arthur, McPherson, Logan, Keith, Perkins, Lincoln, Chase, Hayes, Frontier, Dundy, Hitchcock, and Red Willow; and

(b) Three members shall be appointed from the state at large, two of whom shall be appointed by the Governor and one appointed by the board. When making at-large appointments, the Governor and the board shall, to the extent practicable, seek to achieve an equitable representation of grain sorghum producers in terms of the geographic distribution of grain sorghum production in the state. No more than two at-large members may reside in a single district as defined by subdivision (a) of this subsection.

(3) The board shall elect from its members a chairperson, treasurer, and such other officers as may be necessary. Except as provided in section 2-4006, the term of office for members of the board shall be three years and until their successors are appointed and qualified.

(4) Whenever a vacancy occurs on the board for any reason, the remaining board members shall appoint an individual to fill such vacancy from the district in which the vacancy exists. If the vacant position is that of an at-large member, the appointment to fill such vacancy shall be made at large subject to subdivision (2)(b) of this section.

Source: Laws 1981, LB 11, § 4; Laws 2011, LB107, § 1.

2-4005 Board; appointment of members; procedure.

Members shall be appointed to the board on a nonpartisan basis. Candidates for appointment to the board may place their names on a candidacy list for the respective district or for at-large appointment by submitting to the board an application for gubernatorial appointment obtained from the Governor's office, a statement of interest in serving on the board, two letters of endorsement of the candidate's appointment by grain sorghum growers, and documentation substantiating qualification to serve as a member of the board. The board may publish guidelines regarding the forms of documentation suitable to substantiate qualification to serve on the board. The board shall perform a review of each candidate's qualification to serve and shall without undue delay forward all applications for appointment to the Governor along with the board's assessment of the candidate's qualification to serve the appointment. Qualified individuals residing within their district shall be eligible for nomination as candidates from such district, and qualified individuals residing in the state shall be eligible for at-large appointment.

Source: Laws 1981, LB 11, § 5; Laws 2011, LB107, § 2.

2-4006 Board; membership; transitional provisions.

The member serving district 1 as it existed prior to May 18, 2011, shall assume the role of serving district 1 as defined by section 2-4004, and his or her

term shall expire on July 1, 2014. The member serving district 3 as it existed prior to May 18, 2011, shall assume the role of serving new district 2 as defined by section 2-4004, and his or her term shall expire on July 1, 2013. The member serving as the at-large member prior to May 18, 2011, shall assume the role of serving district 3 as defined by section 2-4004, and his or her term shall expire on July 1, 2013. The Governor shall appoint a member to serve district 4 as defined by section 2-4004, and the term of such member shall expire on July 1, 2012. The member serving district 2 as it existed prior to May 18, 2011, shall assume the role of serving as the at-large member appointed by the board as defined by section 2-4004, and his or her term shall expire on July 1, 2012. The member serving district 4 as it existed prior to May 18, 2011, shall assume the role of serving as an at-large member appointed by the Governor as defined by section 2-4004, and the term of such member shall expire on July 1, 2013. The member serving district 5 as it existed prior to May 18, 2011, shall assume the role of serving as an at-large member appointed by the Governor as defined by section 2-4004, and the term of such member shall expire on July 1, 2014.

Source: Laws 1981, LB 11, § 6; Laws 2011, LB107, § 3.

2-4007 Board; responsibility; powers.

The board shall be responsible for the administration of all subsequent appointments and may adopt rules and regulations to carry out such responsibility. The composition of the board as defined by section 2-4004 shall continue until such time as the board determines that the districts and at-large membership as defined by such section are incompatible with an equitable representation of producers of grain sorghum due to changing geographic distribution of grain sorghum production in the state, changing marketing patterns, or availability of qualified individuals to serve as board members. The board may, from time to time as appropriate, by rule and regulation, redesignate districts and the number of at-large members to provide for an equitable representation of producers of grain sorghum, except that the number of appointed members of the board shall be either seven or five and the number of districts shall be no greater than six nor fewer than three.

Source: Laws 1981, LB 11, § 7; Laws 2011, LB107, § 4.

2-4008 Board; voting members; expenses.

All voting members of the board shall be entitled to expenses as provided for in sections 81-1174 to 81-1177 while attending meetings of the board or while engaged in the performance of official responsibilities as determined by the board.

Source: Laws 1981, LB 11, § 8; Laws 2020, LB381, § 9.

2-4009 Board; removal of member; grounds.

A member of the board shall be removable for ceasing to (1) be a resident of the state, (2) live in the district from which appointed, or (3) be actually engaged in growing grain sorghum in the state.

Source: Laws 1981, LB 11, § 9.

2-4010 Board; meetings.

The board shall meet at least once every three months and at such other times as called by the chairperson or by any three members of the board.

Source: Laws 1981, LB 11, § 10.

2-4011 Board; duties and responsibilities.

The duties and responsibilities of the board shall be to implement and carry out the grain sorghum program and to the extent applicable shall include the following:

(1) To develop and direct any grain sorghum development, utilization, and marketing program. Such program may include a program to make grants and enter into contracts for research, accumulation of data, and construction of ethanol production facilities;

(2) To prepare and approve a budget consistent with limited receipts and the scope of the grain sorghum commodity program;

(3) To adopt and promulgate reasonable rules and regulations;

(4) To procure and evaluate data and information necessary for the proper administration and operation of the grain sorghum commodity program;

(5) To employ personnel and contract for services which are necessary for the proper operation of the program;

(6) To establish a means whereby any grower of grain sorghum has the opportunity at least annually to offer his or her ideas and suggestions relative to board policy for the coming year;

(7) To authorize the expenditure of funds and contracting for expenditures to conduct proper activities of the program;

(8) To bond the treasurer and such other persons necessary to insure adequate protection of funds;

(9) To keep minutes of its meetings and other books and records which will clearly reflect all of the acts and transactions of the board and to keep these records open to examination by any grower-participant during normal business hours;

(10) To prohibit any funds collected by the board from being expended directly or indirectly to promote or oppose any candidate for public office or to influence state legislation. The board shall not expend more than twenty-five percent of its annual budget to influence federal legislation; and

(11) To make refunds for overpayments of fees according to rules and regulations which may be adopted and promulgated by the board pursuant to this section.

Source: Laws 1981, LB 11, § 11; Laws 1983, LB 535, § 1; Laws 1983, LB 505, § 7; Laws 1986, LB 1016, § 4; Laws 1986, LB 1230, § 19.

2-4012 Sale of grain sorghum; fee; adjustment.

(1) After August 31, 1981, there shall be paid to the board a fee of not to exceed one cent per hundredweight upon all grain sorghum sold through commercial channels in the State of Nebraska or delivered in the State of Nebraska. The fee shall be paid by the grower at the time of sale or delivery and shall be collected by the first purchaser. Under the provisions of the Grain Sorghum Resources Act, no grain sorghum shall be subject to the fee more than once.

(2) The board may, whenever it shall determine that the fees provided by this section are yielding more than is required to carry out the intent and purposes of the Grain Sorghum Resources Act, reduce such fees for such period as it shall deem justified, but not less than one year. If the board, after reducing such fees, finds that sufficient revenue is not being produced by such reduced fees, it may restore in full or in part such fees not to exceed the amount authorized by subsection (1) of this section.

Source: Laws 1981, LB 11, § 12; Laws 1983, LB 535, § 2; Laws 1983, LB 505, § 8; Laws 1987, LB 610, § 3; Laws 1997, LB 11, § 2.

2-4013 Pledge or mortgage; grain sorghum used as security; fee; refund; procedure.

In the case of a pledge or mortgage of grain sorghum as security for a loan under the federal price support program, the fee shall be deducted from the proceeds of such loan at the time the loan is made. If, within the life of the loan, plus thirty days after the collection of a fee for grain sorghum that is mortgaged as security for a loan under the federal price support program or other government agricultural loan programs, the grower decides to purchase the grain sorghum and use it as feed, the grower shall be entitled to a refund of the checkoff fee previously paid. The refund shall be payable by the board upon the grower's written application to the board for a refund of the amount deducted. Each application for a refund by a grower shall have attached thereto proof of the tax deducted.

Source: Laws 1981, LB 11, § 13; Laws 1997, LB 11, § 3.

2-4014 Fee; when assessed.

The fee, provided for by section 2-4012, shall be deducted, as provided by sections 2-4001 to 2-4020, whether such grain sorghum is stored in this state or any other state.

Source: Laws 1981, LB 11, § 14.

2-4015 Fee; when not applicable.

The fee imposed by section 2-4012 shall not apply to the sale of grain sorghum to the federal government for ultimate use or consumption by the people of the United States when the State of Nebraska is prohibited from imposing such fee by the Constitution of the United States and laws enacted pursuant thereto.

Source: Laws 1981, LB 11, § 15.

2-4016 Purchaser; deduct fee; maintain records; public inspection; quarterly statement.

(1) The purchaser, at the time of settlement, shall deduct the grain sorghum fee and shall maintain the necessary record of the fee for each purchase of grain sorghum on the grain settlement form or check stub showing payment to the grower for each purchase. Such records maintained by the purchaser shall provide the following information: (a) Name and address of the grower and seller; (b) the date of the purchase; (c) the number of hundredweights of grain sorghum sold; and (d) the amount of fees collected on each purchase. Such

records shall be open for inspection during normal business hours observed by the purchaser.

(2) The purchaser shall render and have on file with the board by the last day of each January, April, July, and October, on forms prescribed by the board, a statement of the number of hundredweights of grain sorghum purchased in Nebraska during the preceding quarter. At the time the statement is filed, the purchaser shall pay and remit to the board the fee as provided for in section 2-4012.

Source: Laws 1981, LB 11, § 16; Laws 1983, LB 535, § 3.

2-4017 Board; annual report; contents.

The board shall make and publish an annual report on or before January 1 of each year, which report shall set forth in detail the income received from the grain sorghum assessment for the previous year and shall include:

(1) The expenditure of all funds by the board during the previous year for the administration of sections 2-4001 to 2-4020;

(2) The action taken by the board on all contracts requiring the expenditure of funds by the board;

(3) Copies of all such contracts;

(4) A detailed explanation of all programs relating to the discovery, promotion, and development of markets and industries for the utilization of grain sorghum, the direct expense associated with each program, and copies of such programs if in writing; and

(5) The name and address of each member of the board and a copy of all rules and regulations promulgated by the board.

Such report shall be available to the public upon request.

Source: Laws 1981, LB 11, § 17.

2-4018 Grain Sorghum Development, Utilization, and Marketing Fund; created; purpose; investment.

The State Treasurer shall establish in the state treasury a fund to be known as the Grain Sorghum Development, Utilization, and Marketing Fund, to which shall be credited (1) all fees collected by the board pursuant to the Grain Sorghum Resources Act and (2) any repayments relating to the fund, including license fees or royalties, which shall be credited to the fund for the uses and purposes of the act and its enforcement. Such fund shall be expended solely for the administration 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 1981, LB 11, § 18; Laws 1995, LB 7, § 24; Laws 2019, LB298, § 12.

Cross References

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

2-4019 Board; cooperate with University of Nebraska and other organizations; purpose.

The board shall not set up research or development units or agencies of its own, but shall limit its activity to cooperation and contracts with the University of Nebraska Institute of Agriculture and Natural Resources, and other proper local, state, or national organizations, public or private, in carrying out the purposes of sections 2-4001 to 2-4020.

Source: Laws 1981, LB 11, § 19.

2-4020 Violations; penalty.

Any person violating any of the provisions of sections 2-4001 to 2-4020 shall be guilty of a Class III misdemeanor.

Source: Laws 1981, LB 11, § 20.

2-4021 Grain Sorghum National Checkoff Fund; created; use; investment.

The Grain Sorghum National Checkoff Fund is created. The fund shall be administered by the Grain Sorghum Development, Utilization, and Marketing Board. All sums of money received from the United Sorghum Checkoff Program shall be deposited in the fund. The board shall expend the fund to conduct state-specific programs for research, information, and promotion related to grain sorghum. 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 2019, LB298, § 23.

Cross References

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

ARTICLE 41
DRY PEA AND LENTIL RESOURCES

Section

2-4101. Act, how cited.
2-4102. Terms, defined.
2-4103. Dry Pea and Lentil Commission, created.
2-4104. Commission; members; appointment; districts.
2-4105. Commission; members; terms.
2-4106. Commission; members; expenses.
2-4107. Commission; members; removal.
2-4108. Commission; officers; meetings; quorum.
2-4109. Commission; purpose; powers.
2-4110. Commission; administrative office.
2-4111. Dry peas and lentils; excise tax; amount; adjustment.
2-4112. Excise tax; deduct from loan proceeds.
2-4113. Excise tax; stored dry peas and lentils.
2-4114. Excise tax; federal government; sale; exception.
2-4115. Excise tax; first purchaser; records; statement; remittance.
2-4116. Dry Pea and Lentil Fund, created; use; investment.
2-4117. Commission; restriction on authority; cooperate with agencies and organizations.
2-4118. Violations; penalty.
2-4119. Commission; use of funds; restrictions.

2-4101 Act, how cited.

Sections 2-4101 to 2-4119 shall be known and may be cited as the Dry Pea and Lentil Resources Act.

Source: Laws 2020, LB803, § 1.

2-4102 Terms, defined.

For purposes of the Dry Pea and Lentil Resources Act, unless the context otherwise requires:

(1) Commercial channels means the sale of any dry peas and lentils for any use when sold to any commercial buyer, dealer, processor, or cooperative or any person, public or private, who resells any dry peas and lentils or product produced from dry peas and lentils;

(2) Commission means the Dry Pea and Lentil Commission;

(3) Dry peas and lentils means dry peas, lentils, chickpeas or garbanzo beans, faba beans, or lupins;

(4) First purchaser means any person, public or private corporation, association, partnership, or limited liability company buying, accepting for shipment, or otherwise acquiring the property rights in or to any dry peas and lentils from a grower and includes a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the grower when the actual or constructive possession of such dry peas and lentils is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim;

(5) Grower means any landowner personally engaged in growing any dry peas and lentils, a tenant of the landowner personally engaged in growing any dry peas and lentils, and both the owner and the tenant jointly and includes a person, partnership, limited liability company, association, corporation, cooperative, trust, sharecropper, and other business units, devices, and arrangements;

(6) Net market price means the sales price, or other value, per volumetric unit received by a grower for any dry peas and lentils after adjustment for any premium or discount;

(7) Net market value means the value found by multiplying the net market price by the appropriate quantity of the volumetric units or the minimum value in a production contract received by a grower for any dry peas and lentils after adjustments for any premium or discount. For any dry peas and lentils pledged as collateral for a loan issued under any Commodity Credit Corporation price support loan program, net market value means the principal amount of the loan; and

(8) Sale includes any pledge or mortgage of any dry peas and lentils after harvest to any person, public or private.

Source: Laws 2020, LB803, § 2.

2-4103 Dry Pea and Lentil Commission, created.

The Dry Pea and Lentil Commission is created. Members shall be appointed to the commission by the Governor pursuant to section 2-4104.

Source: Laws 2020, LB803, § 3.

2-4104 Commission; members; appointment; districts.

(1) The commission shall be composed of five members who shall:

(a) Be citizens of Nebraska;

(b) Be at least twenty-one years of age;

(c) Have been actually engaged in growing dry peas and lentils in this state for a period of at least five years;

(d) Reside in the district they represent; and

(e) Derive a substantial portion of their income from growing dry peas and lentils.

(2) The Director of Agriculture and the vice chancellor of the University of Nebraska Institute of Agriculture and Natural Resources shall serve as nonvoting members of the commission.

(3) With the exception of the nonvoting members, the Governor shall appoint the members to the commission. The Governor shall appoint the initial members no later than July 1, 2021. One member shall be appointed from each of the following five districts:

(a) District 1: The counties of Sioux, Scotts Bluff, Banner, Kimball, Dawes, Box Butte, Morrill, Cheyenne, Sheridan, Garden, and Deuel;

(b) District 2: The counties of Cherry, Grant, Hooker, Thomas, Arthur, McPherson, Logan, Keith, Perkins, Lincoln, Chase, Hayes, Frontier, Dundy, Hitchcock, and Red Willow;

(c) District 3: All counties other than those listed in subdivision (a) or (b) of this subsection;

(d) District 4: The state at-large; and

(e) District 5: The state at-large.

Source: Laws 2020, LB803, § 4.

2-4105 Commission; members; terms.

The term of the member first appointed to serve district 1 shall expire on June 30, 2022; the term of the members first appointed to serve district 2 and district 4 shall expire on June 30, 2023; and the term of the members first appointed to serve district 3 and district 5 shall expire on June 30, 2024. As the terms of office of the initial commission members expire as provided in this section, their successors shall be appointed to serve for terms of three years and until their successors are appointed and qualified. A member appointed to fill a vacancy, occurring before the expiration of the term of a member separated from the commission for any cause, shall be appointed for the remainder of the term of the member whose office has been so vacated in the same manner as his or her predecessor. Each commission member may serve a maximum of three consecutive terms.

Source: Laws 2020, LB803, § 5.

2-4106 Commission; members; expenses.

All voting members of the commission shall be entitled to expenses, as provided for in sections 81-1174 to 81-1177, while attending meetings of the commission or while engaged in the performance of official responsibilities as determined by the commission.

Source: Laws 2020, LB803, § 6.

2-4107 Commission; members; removal.

A member of the commission may be removed by the Governor for cause. He or she shall first be given a written copy of the cause or causes for removal and an opportunity to be heard publicly. In addition to all other causes, a member ceasing to (1) be a resident of the state, (2) live in the district from which he or

she was appointed, or (3) be actually engaged in growing dry peas and lentils in the state shall be deemed a sufficient cause for removal from the commission.

Source: Laws 2020, LB803, § 7.

2-4108 Commission; officers; meetings; quorum.

At the first meeting of the commission, it shall elect a chairperson from among its members. The commission shall meet at least once every year and at such other times as called by the chairperson or by any three voting members of the commission. The majority of the voting members of the commission shall constitute a quorum for transaction of business. The commission may hold meetings by virtual conferencing subject to the Open Meetings Act. No member shall vote by proxy, and the affirmative vote of the majority of all members of the commission shall be necessary for the adoption of rules and regulations.

Source: Laws 2020, LB803, § 8; Laws 2021, LB83, § 1.

Cross References

Open Meetings Act, see section 84-1407.

2-4109 Commission; purpose; powers.

It is hereby declared to be the public policy of the State of Nebraska to protect and foster the health, prosperity, and general welfare of its people by protecting and stabilizing the dry pea and lentil industry and the economy of the areas producing dry peas and lentils. The commission shall be the agency of the State of Nebraska for such purpose. In connection with and in furtherance of such purpose, the commission shall have the power to:

(1) Formulate the general policies and programs of the State of Nebraska respecting the discovery, promotion, and development of markets and industries for the utilization of dry peas and lentils grown within the State of Nebraska;

(2) Adopt and devise a program of education and publicity;

(3) Cooperate with local, state, or national organizations, whether public or private, in carrying out the purposes of the Dry Pea and Lentil Resources Act and enter into such contracts as may be necessary;

(4) Adopt and promulgate such rules and regulations as are necessary to promptly and effectively enforce the Dry Pea and Lentil Resources Act. The rules and regulations shall include provisions which prescribe the procedure for adjustment of the excise tax by the commission pursuant to section 2-4111;

(5) Conduct, in addition to the things enumerated in this section, any other program for the development, utilization, and marketing of dry peas and lentils grown in the State of Nebraska. Such programs may include a program to make grants and enter into contracts for research and accumulation of data;

(6) Make refunds for overpayments of the excise tax according to rules and regulations adopted and promulgated by the commission; and

(7) Employ personnel and contract for services which are necessary for the proper operation of the Dry Pea and Lentil Resources Act.

Source: Laws 2020, LB803, § 9.

2-4110 Commission; administrative office.

The commission may establish an administrative office in the State of Nebraska at such place as may be suitable for the furtherance of the Dry Pea and Lentil Resources Act. The commission shall not purchase, construct, or otherwise obtain title to its own administrative office, but shall be limited to leasing state or commercial office space.

Source: Laws 2020, LB803, § 10.

2-4111 Dry peas and lentils; excise tax; amount; adjustment.

(1) Beginning on July 1, 2021, there is hereby levied an excise tax of one percent of the net market value of dry peas and lentils sold through commercial channels in the State of Nebraska. The tax shall be levied and imposed on the grower at the time of sale or delivery and shall be collected by the first purchaser. Under the Dry Pea and Lentil Resources Act, no dry peas and lentils shall be subject to the tax more than once.

(2) After July 1, 2023, the commission may, whenever it determines that the excise tax levied by this section is yielding more or less than is required to carry out the intent and purposes of the Dry Pea and Lentil Resources Act, reduce or increase such levy for such period as it deems justifiable, but not less than one year, and such levy shall not be less than one percent of net market value and not exceed two percent of the net market value. Any adjustment to the levy shall be by rule and regulation adopted and promulgated by the commission.

Source: Laws 2020, LB803, § 11.

2-4112 Excise tax; deduct from loan proceeds.

In the case of a pledge or mortgage of dry peas and lentils as security for a loan under the federal price support program, the tax shall be deducted from the proceeds of such loan at the time the loan is made.

Source: Laws 2020, LB803, § 12.

2-4113 Excise tax; stored dry peas and lentils.

The tax provided for by section 2-4111 shall be deducted as provided by the Dry Pea and Lentil Resources Act, whether such dry peas and lentils are stored in this or any other state.

Source: Laws 2020, LB803, § 13.

2-4114 Excise tax; federal government; sale; exception.

The tax levied and imposed by section 2-4111 shall not apply to the sale of dry peas and lentils to the federal government for ultimate use or consumption by the people of the United States, where the State of Nebraska is prohibited from imposing such tax by the Constitution of the United States and laws enacted pursuant thereto.

Source: Laws 2020, LB803, § 14.

2-4115 Excise tax; first purchaser; records; statement; remittance.

(1) The first purchaser, at the time of settlement, shall deduct the dry pea and lentil excise tax as provided for in section 2-4111 and shall maintain the necessary records of the excise tax for each purchase of dry peas and lentils on the grain settlement form or check stub showing payment to the grower for

each purchase. Such records maintained by the first purchaser shall provide the following information:

(a) Name and address of the grower and seller;

(b) Date of the purchase;

(c) Number of pounds of dry peas and lentils sold;

(d) Total value of the dry peas and lentils sold; and

(e) Amount of the dry pea and lentil excise tax collected on each purchase.

(2) Such records shall be open for inspection and audit by authorized representatives of the commission during normal business hours observed by the first purchaser.

(3) The first purchaser shall render and have on file with the commission by the tenth day of each month on forms prescribed by the commission, a statement of the number of pounds of dry peas and lentils purchased in Nebraska during the prior month. At the time the statement is filed, the first purchaser shall pay and remit to the commission the tax as provided for in section 2-4111.

Source: Laws 2020, LB803, § 15.

2-4116 Dry Pea and Lentil Fund, created; use; investment.

The Dry Pea and Lentil Fund is created. All taxes collected by the commission pursuant to the Dry Pea and Lentil Resources Act and any repayments relating to the fund, including license fees or royalties, shall be remitted to the State Treasurer for credit to the fund. The fund shall be used to carry out such act. The commission shall at each regular meeting review and approve all expenditures made since its last regular meeting. 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, LB803, § 16.

Cross References

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

2-4117 Commission; restriction on authority; cooperate with agencies and organizations.

The commission shall not be authorized to set up research or development units or agencies of its own, but shall limit its activity to cooperation and contracts with the Department of Agriculture, University of Nebraska Institute of Agriculture and Natural Resources, or other proper local, state, or national organizations, public or private, in carrying out the Dry Pea and Lentil Resources Act.

Source: Laws 2020, LB803, § 17.

2-4118 Violations; penalty.

Any person violating the Dry Pea and Lentil Resources Act shall be guilty of a Class III misdemeanor.

Source: Laws 2020, LB803, § 18.

2-4119 Commission; use of funds; restrictions.

No funds collected by the commission shall be expended directly or indirectly to promote or oppose any candidate for public office or to influence state legislation. The commission shall not expend more than twenty-five percent of its annual budget to influence federal legislation.

Source: Laws 2020, LB803, § 19.

ARTICLE 42
CONSERVATION CORPORATION

Section
2-4201. Act, how cited.
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2-4201 Act, how cited.

Sections 2-4201 to 2-4246 shall be known and may be cited as the Conservation Corporation Act.

Source: Laws 1981, LB 385, § 1.

2-4202 Legislative policy.

It is hereby declared to be the policy of the Legislature to provide for the conservation and protection of the natural resources of this state through control and prevention of soil erosion, reduction of sediment damage, control of flood waters, enhancement of domestic water supply, improvement of water quality, and collection and containment of water. Within this state, the landowners involved in farm and ranch operations and the political subdivisions must be provided with financial assistance to encourage conservation of the state's water and related land resources. Without such conservation incentives, the control, containment, and utilization of our water resources and the productivity of our soil will be greatly threatened.

Assistance provided to landowners under the Conservation Corporation Act will enhance farm and ranch operations, one of the chief industries of this state, by protecting or enhancing agricultural productivity and will protect, preserve, and promote the source of food supplies to the citizens of this state. Assistance provided to political subdivisions under the Conservation Corporation Act will promote the general welfare of the citizens of such political subdivisions and further promote the productivity of business enterprises and the general health, welfare, and safety. The necessity for the Conservation Corporation Act to protect the health, safety, and general welfare of all people of this state is hereby declared as a matter of legislative determination.

Source: Laws 1981, LB 385, § 2; Laws 1983, LB 20, § 1; Laws 1985, LB 387, § 2.

2-4203 Nebraska Conservation Corporation; purpose.

The purpose of the Nebraska Conservation Corporation created in section 2-4205 shall be to provide conservation assistance to Nebraska landowners involved in farm and ranch operations in the form of low-cost conservation loans to facilitate the implementation of land treatment and water conservation practices and to assist the political subdivisions of the State of Nebraska by financing arrangements in connection with natural resource development practices.

Source: Laws 1981, LB 385, § 3; Laws 1983, LB 20, § 2; Laws 1985, LB 387, § 3.

2-4204 Terms, defined.

As used in the Conservation Corporation Act, unless the context otherwise requires:

(1) Conservation practice shall mean any work of improvement to farm and ranch land made by a landowner to protect or enhance agricultural productivity by controlling soil erosion or reducing sediment damage;

(2) Conservation loan shall mean a loan made by the corporation or a lender to a landowner to assist the landowner in the implementation of land treatment and water conservation practices;

(3) Corporation shall mean the Nebraska Conservation Corporation created by section 2-4205;

(4) Bond shall mean any bonds, notes, debentures, interim certificates, bond anticipation notes, or other evidences of financial indebtedness issued by the corporation;

(5) Landowner shall mean any resident of the state, any partnership of which eighty percent or more of the partnership interest is owned by residents of the state, any limited liability company of which eighty percent or more of the membership is owned by residents of the state, or any corporation of which more than eighty percent of the shares are owned by residents of the state, which resident, partnership, limited liability company, or corporation owns real estate in Nebraska which is utilized in the production of crops or raising of livestock;

(6) Mortgage shall mean a mortgage deed, deed of trust, or other instrument securing a conservation loan and constituting a lien on the real property or on the leasehold interest under a lease having a remaining term, at the time such mortgage is acquired, of not less than a term for repayment of the conservation loan secured by such mortgage, which is improved by conservation practices;

(7) Insurer shall mean an agency, department, administration, or instrumentality, corporate or otherwise, of or in any government agency in general, any private insurance company, or any other public or private agency which insures or guarantees payment of debt service on loans or bonds;

(8) Lender or lending institution shall mean any bank, trust company, savings and loan association, mortgage banker, insurance company, federal agency, or other financial institutions authorized to transact business in the State of Nebraska;

(9) Loan shall mean an interest-bearing obligation evidencing the money borrowed from the corporation;

(10) Board of directors shall mean the Board of Directors of the Nebraska Association of Resources Districts as organized under the Interlocal Cooperation Act which shall serve as the board of directors for the corporation. Such board shall consist of one representative director from each natural resources district in Nebraska. Selection and terms of office of such board of directors shall be governed by the interlocal cooperation agreement and by the articles and bylaws of such organization;

(11) Administrator shall mean the person appointed by the board of directors pursuant to section 2-4208;

(12) Natural resource development practice shall mean any work or program of improvement undertaken by a political subdivision, within its authorized powers, relating to soil erosion prevention and control; prevention and control of damage from storm water, flood water, and sediment; soil conservation; water supply for beneficial uses; management and conservation of ground water and surface water; pollution control; sanitary and solid waste disposal; drainage improvement and channel rectification; development and management of fish and wildlife habitat; development and management of recreational and park facilities; and forestry and range management;

(13) Natural resource development loan shall mean a loan made by the corporation to a political subdivision to assist the political subdivision with any natural resource development practice; and

(14) Political subdivision shall mean any natural resources district, drainage district, rural water district, irrigation district, public power and irrigation district, county, city, or village of the State of Nebraska.

Source: Laws 1981, LB 385, § 4; Laws 1983, LB 20, § 3; Laws 1985, LB 387, § 4; Laws 1993, LB 121, § 79.

Cross References

Interlocal Cooperation Act, see section 13-801.

2-4205 Nebraska Conservation Corporation; created; board of directors; officers.

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 Conservation Corporation. The board of directors shall administer the corporation. The board shall have the authority to determine the administrative structure and procedure of the corporation. The board shall select a chairperson and a secretary-treasurer from among its members. Selection and terms of office for the chairperson and secretary-treasurer shall be governed by the interlocal cooperation agreement and the articles and bylaws of the Nebraska Association of Resources Districts.

Source: Laws 1981, LB 385, § 5.

2-4206 Board of directors; quorum; action; executive committee.

The powers of the corporation shall be vested in the board of directors. Thirteen members of the board shall constitute a quorum for the transaction of business. The affirmative vote of at least thirteen members shall be necessary for any action to be taken by the board pursuant to the Conservation Corporation Act. The board of directors in a bylaw or other written procedure shall establish an executive committee composed of the administrator and three members of the board of directors, one of whom shall be a director from a natural resources district in which is located a city of the primary class or a city of the metropolitan class, for purposes of conducting hearings and reviewing and approving applications for conservation loans and natural resource development loans.

Source: Laws 1981, LB 385, § 6; Laws 1985, LB 387, § 5.

2-4207 Meetings.

Meetings of the members of the corporation shall be held at the call of the administrator or whenever any thirteen members so request.

Source: Laws 1981, LB 385, § 7.

2-4208 Administrator; appointment; duties; members; expenses.

The board of directors shall appoint an administrator who shall be an employee of the corporation, but not a member of the board, and who shall serve at the pleasure of the board and receive such compensation and benefits as shall be fixed by the board. The administrator shall administer, manage, and direct the affairs and the activities of the corporation in accordance with policies and under the control and direction of the board. The administrator shall approve all accounts for salaries, allowable expenses of the corporation or of any employee or consultant thereof, and expenses incidental to the operation

of the corporation. He or she shall perform such duties as may be directed by the members in carrying out the Conservation Corporation Act. Members of the board of directors and any employees of the corporation shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177. All employees of the corporation shall be administratively responsible to the administrator.

Source: Laws 1981, LB 385, § 8; Laws 2020, LB381, § 10.

2-4209 Administrator; meetings; records; seal; certified copies; effect.

The administrator shall attend the meetings of the board of directors of the corporation, shall keep a record of the proceedings of the corporation, and shall maintain and be custodian of all books, documents, and papers filed with the corporation, the minutes book or journal of the corporation, and its official seal. He or she may cause copies to be made of all minutes and other records and documents of the corporation and may give certificates under seal of the corporation to the effect that such copies are true copies and all persons dealing with the corporation may rely upon such certificates.

Source: Laws 1981, LB 385, § 9; Laws 1985, LB 387, § 6.

2-4210 Personnel; contract for services.

The corporation with advice of the administrator 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 corporation, and shall determine their qualifications, duties, compensation, and terms of office. The board may delegate to one or more agents or employees of the corporation such administrative duties as it deems proper. The corporation may contract for any service deemed necessary for its beneficial purposes.

Source: Laws 1981, LB 385, § 10.

2-4211 Member or employee; conflict of interest; disclosure; officer or employee of state; membership on or service to corporation; how treated.

Any board member or employee of the corporation who has, will have, or later acquires an interest, direct or indirect, in any transaction with the corporation shall immediately disclose the nature and extent of such interest in writing to the corporation as soon as he or she has knowledge of such actual or prospective interest. Such disclosure shall be entered upon the minutes of the corporation. Upon such disclosure, such member or employee shall not participate in any action by the corporation authorizing such transactions.

Notwithstanding the provisions of 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 his or her acceptance of office as a director of the corporation or by reason of providing services to such corporation. The fact that a member of the board of directors is a director of a natural resources district which is to receive a natural resource development loan or which may participate with the corporation in identifying and approving owners of real estate in such natural resources district who qualify for assistance from the corporation shall not be deemed an interest, direct or indirect, that would

disqualify such board member from participating in transactions affecting such natural resources district or such landowners.

Source: Laws 1981, LB 385, § 11; Laws 1983, LB 20, § 4; Laws 1985, LB 387, § 7.

2-4212 Members; administrator; surety bond.

Before the transaction of any business under sections 2-4201 to 2-4246, each member of the board of directors and the administrator shall execute a surety bond in the penal sum of fifty thousand dollars. To the extent any member of the board of directors or the administrator of the corporation is already covered by a bond required by state law, such member or the administrator need not obtain another bond so long as the bond required by the state law is in at least the penal sum specified in this section and covers the activities for the corporation by the member or administrator. In lieu of such bond, the administrator may execute a blanket surety bond covering each member and the administrator. Each surety bond shall be conditioned upon the faithful performance of the duties of the member or administrator, and shall be issued by a surety company authorized to transact business in this state as surety. At all times after the issuance of any surety bond, each member and the administrator shall maintain such surety bonds in full force and effect. All costs of the surety bonds shall be borne by the corporation.

Source: Laws 1981, LB 385, § 12.

2-4213 Powers; enumerated.

The corporation is hereby granted all powers necessary or appropriate to carry out and effectuate its public and corporate purposes, including, but not limited to, the following:

(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, consistent with the Conservation Corporation Act, to regulate its affairs and carry into effect the powers and purposes of the corporation and 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 necessary or convenient for the performance of its duties and the exercise of its powers and functions under the Conservation Corporation Act;

(7) To contract with any additional contractor, engineer, attorney, inspector, and financial expert, and such advisors, consultants, and agents, other than the corporation staff, as may be necessary in its judgment, and to fix their compensation;

(8) To procure insurance against any loss in connection with its property and other assets, including mortgages, conservation loans, and natural resource development loans, in such amounts and from such insurers as it may deem advisable;

(9) To borrow money;

(10) To issue bonds as provided by the Conservation Corporation Act;

(11) To procure insurance or guarantees from any insurer for payment of any bonds issued by the corporation, including the power to pay premiums on any such insurance;

(12) 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 Conservation Corporation Act subject to the conditions upon which the grants or contributions are made, including, but not limited to, gifts or grants from any department, agency, or instrumentality of the United States of America, or the State of Nebraska or subdivisions thereof, for any purposes consistent with the Conservation Corporation Act;

(13) To enter into agreements with any department, agency, or instrumentality of the United States of America or the State of Nebraska or subdivisions thereof, including political subdivisions, and with lending institutions for the purpose of planning, regulating, and providing for the financing and refinancing of any conservation practice for a landowner or for any natural resource development practice of a political subdivision undertaken with the assistance of the corporation under the Conservation Corporation Act;

(14) To enter into contracts or agreements with lending institutions for the servicing and processing of mortgages, conservation loans, and natural resource development loans pursuant to the Conservation Corporation Act;

(15) To provide technical assistance to local public bodies and to profit and nonprofit entities in the development of conservation practices for landowners and natural resource development practices for political subdivisions, based on current soil and conservation guidelines, and distribute data and information concerning the conservation and natural resource needs of landowners and political subdivisions within the State of Nebraska;

(16) To the extent permitted under its contract with the holders of bonds of the corporation, 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, mortgage, conservation loan, natural resource development loan, loan commitment, contract, or agreement of any kind to which the corporation is a party; and

(17) To the extent permitted under its contract with the holders of bonds of the corporation, to enter into contracts with any lending institution containing provisions enabling it to reduce the carrying charges to landowners 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 of Nebraska, the reduction can be made without jeopardizing the economic stability of the farmland or range area being financed.

Source: Laws 1981, LB 385, § 13; Laws 1983, LB 20, § 5; Laws 1985, LB 387, § 8.

2-4214 Duties; enumerated.

The corporation shall have the following duties:

(1) To 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 of America; obli-

gations issued by agencies of the United States of America; obligations of this state or of any political subdivision except obligations of sanitary and improvement districts organized under Chapter 31, article 7; certificates of deposit of banks whose deposits are insured or guaranteed by the Federal Deposit Insurance Corporation or collateralized by deposit of securities with the secretary-treasurer of the corporation, as, and to the extent not covered by insurance or guarantee, with securities which are eligible for securing the deposits of the state or counties, school districts, cities, or villages of the state; certificates of deposit of capital stock financial institutions as provided by section 77-2366; certificates of deposit of qualifying mutual financial institutions as provided by section 77-2365.01; repurchase agreements which are fully secured by any of such securities or obligations which may be unsecured and unrated, including investment agreements, of any corporation, national bank, capital stock financial institution, qualifying mutual financial institution, bank holding company, insurance company, or trust company which has outstanding debt obligations which are rated by a nationally recognized rating agency in one of the three highest rating categories established by such rating agency; 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;

(2) To collect fees and charges the corporation determines to be reasonable in connection with its loans, advances, insurance commitments, and servicing;

(3) To cooperate with and exchange services, personnel, and information with any federal, state, or local governmental agencies;

(4) To sell, assign, or otherwise dispose of at public or private sale, with or without public bidding, any mortgage or other obligations held by the corporation; and

(5) To do any act necessary or convenient to the exercise of the powers granted by the Conservation Corporation Act or reasonably implied from it.

Source: Laws 1981, LB 385, § 14; Laws 1985, LB 387, § 9; Laws 1989, LB 33, § 2; Laws 1989, LB 221, § 1; Laws 2001, LB 362, § 3; Laws 2009, LB259, § 1.

2-4215 Coordinate activities with state and natural resources districts.

In exercising any powers granted by the Conservation Corporation Act, the corporation shall coordinate its activities with the land and water resources policies, programs, and planning efforts of the state, particularly the Department of Environment and Energy and the Department of Natural Resources, and with the several natural resources districts throughout the state.

Source: Laws 1981, LB 385, § 15; Laws 1993, LB 3, § 4; Laws 2000, LB 900, § 62; Laws 2019, LB302, § 13.

2-4216 Loans to or deposits with lenders; conditions.

The corporation may make and undertake commitments to make loans to or deposits with lenders under terms and conditions requiring the lenders to make conservation loans to landowners or natural resource development loans to political subdivisions in an aggregate amount equal to the amount of the loan or deposit made by the corporation with the lenders. The conservation loans or natural resource development loans may be originated through and serviced by any lender authorized to transact business in the State of Nebraska. Any lender

making conservation loans or natural resource development loans pursuant to this section with funds borrowed from or deposited by the corporation may secure such loans in any manner such lender deems advisable.

Source: Laws 1981, LB 385, § 16; Laws 1983, LB 20, § 6; Laws 1985, LB 387, § 10.

2-4217 Investment in, purchase of, or assignment of loans; conditions.

The corporation may invest in, purchase, or make commitments to invest in or purchase, and take assignments or make commitments to take assignments of, conservation loans made to landowners for the construction or implementation of conservation practices by such landowners. No conservation loans shall be eligible for investment in, purchase, or assignment by the corporation if the conservation loan was made more than three years prior to the date of investment, purchase, or assignment by the corporation. A conservation loan invested in, purchased, or assigned by the corporation under this section may be secured by a mortgage or such other security device as the corporation deems necessary to secure the payment of principal and interest on such conservation loan.

The corporation may make, invest in, purchase, or make a commitment to make, invest in, or purchase natural resource development loans to any political subdivision. Such loans may be evidenced by any debt obligation which the political subdivision is authorized to issue in connection with any natural resource development practice and may be secured by such general or special revenue sources as the political subdivision is authorized to pledge or commit.

Source: Laws 1981, LB 385, § 17; Laws 1983, LB 20, § 7; Laws 1985, LB 387, § 11.

2-4218 Loans to lenders; requirements.

Prior to exercising any of the powers authorized in sections 2-4216 and 2-4217 in connection with any conservation loan, the corporation shall require the lender to certify and agree that:

(1) Any conservation loan made by the lender to the landowner under section 2-4216, or originated by the lender for sale or assignment to the corporation under section 2-4217, is, or if the same has not been made will at the time of making be, in all respects a prudent investment;

(2) The lender will, within a reasonable period of time after receipt of a loan amount or deposit from the corporation under section 2-4216, make conservation loans or purchase mortgages made to secure conservation loans in an aggregate amount equal to the amount of the loan or deposit made by the corporation to the lender or, if such lender has made a commitment to make conservation loans to landowners on the basis of a commitment from the corporation to purchase such conservation loans under section 2-4217, the lender will make such conservation loans and sell the same to the corporation within a reasonable period of time.

Source: Laws 1981, LB 385, § 18; Laws 1983, LB 20, § 8; Laws 1985, LB 387, § 12.

2-4219 Loans; optional requirements.

Prior to exercising any of the powers conferred by sections 2-4216 and 2-4217, the corporation may:

(1) Require that the conservation loan or natural resource development loan involved be insured by an insurer;

(2) Require any other type of security that it deems reasonable and necessary and which, in the case of a political subdivision, such political subdivision is authorized by law to grant; and

(3) Require appropriate evidence in the form of an opinion of counsel that any natural resource development loan is duly authorized and valid under the statutes governing the powers and procedures of such political subdivision.

Source: Laws 1981, LB 385, § 19; Laws 1983, LB 20, § 9; Laws 1985, LB 387, § 13.

2-4220 Rules and regulations; subject matter.

Prior to carrying out any of the powers granted under sections 2-4216 and 2-4217, the corporation shall adopt and promulgate rules and regulations governing its activities authorized under the Conservation Corporation Act, including rules and regulations relating to any or all of the following:

(1) The number and location of the conservation practices and natural resource development practices, including, to the extent reasonably possible, assurance that the conservation practices or natural resource development practices to be financed by an issue of bonds or series of issues will be adequate, as determined by the corporation, to be financed directly or indirectly by the lenders or by an issue of bonds of the corporation;

(2) Rates, fees, charges, and other terms and conditions of making, originating, or servicing conservation loans in order to protect against realization of an excessive financial return or benefit by the originator or servicer;

(3) The type and the amount of collateral or security to be provided to assure repayment of conservation loans or natural resource development loans or of deposits made to lenders under section 2-4216;

(4) The type of collateral, payment bond, performance bond, or other security to be provided by the lending institutions making conservation loans under section 2-4216 or originating and servicing conservation loans under section 2-4217;

(5) The nature and amount of fees to be charged by the corporation to provide for expenses and reserves of the corporation;

(6) Standards and requirements for the allocation of available money and the determination of the maturities, terms, conditions, and interest rates for conservation loans or natural resource development loans made, purchased, sold, assigned, or committed;

(7) Commitment requirements for conservation practices and financing for landowners by lending institutions involving money provided directly or indirectly by the lender; or

(8) Any other matters related to the duties or exercise of the corporation's powers or duties under the Conservation Corporation Act.

Source: Laws 1981, LB 385, § 20; Laws 1983, LB 20, § 10; Laws 1985, LB 387, § 14.

2-4221 Corporation; borrow money; issue bonds; purposes.

The corporation shall have the power to borrow money and to issue from time to time its bonds in such principal amounts as the corporation determines shall be necessary to provide sufficient funds to carry out its purposes as provided in sections 2-4201 to 2-4246, including:

(1) To carry out the powers provided in sections 2-4216 and 2-4217;

(2) The payment of interest on bonds of the corporation;

(3) The establishment of reserves to secure the bonds; and

(4) All other expenditures of the corporation incident to or necessary and convenient to carrying out its purposes and powers.

Source: Laws 1981, LB 385, § 21; Laws 1983, LB 20, § 11.

2-4222 Bond issuance; pay or refund bonds.

The corporation shall have the power to issue from time to time bonds to pay bonds, including the interest thereon and, whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds used 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. The proceeds from the bonds may also be used for capitalized interest, legal and consulting fees, and issuance expenses.

Source: Laws 1981, LB 385, § 22.

2-4223 Bond issuance; general obligation; how paid and secured.

Except as may otherwise be expressly provided by the corporation, every issue of its bonds shall be a general obligation of the corporation payable solely out of any revenue or money of the corporation, 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, state or local government, or any corporation, association, institution, or person or a pledge of any money, income, or revenue of the corporation from any source.

Source: Laws 1981, LB 385, § 23.

2-4224 Bond issuance; not obligation of state; statement required.

No bonds issued by the corporation under sections 2-4201 to 2-4246 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 2-4223. Each bond issued under sections 2-4201 to 2-4246 shall contain on the face thereof 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 1981, LB 385, § 24.

2-4225 Acceptance of money; when.

The corporation shall have the authority to accept money from any county or any natural resources district, and any other funds, including private funds, solely for the purpose of reducing the interest on conservation loans or in

specific geographic areas wherein lies a designated critical need for conservation practices.

Source: Laws 1981, LB 385, § 25; Laws 1983, LB 20, § 12.

2-4226 Bonds; authorized; resolution; contents; sale; manner.

The bonds shall be authorized by resolution of the corporation, shall bear such date or dates, and shall mature at such time or times as such resolution may provide, except that no bond shall mature more than fifty years from the date of its issue, as the resolution shall provide. The bonds shall bear interest at such rates, or rate, 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 may provide. Section 10-126 shall not apply to bonds issued by the corporation. Bonds of the corporation may be sold by the corporation at public or private sale and at such price or prices as the corporation shall determine. Such bonds shall be executed in the name and on behalf of the corporation and signed by the manual or facsimile signatures of the chairperson and secretary-treasurer with the seal of the corporation affixed thereto. Coupons attached to the bonds may bear facsimile or lithographic signatures of the chairperson and secretary-treasurer of the corporation.

Source: Laws 1981, LB 385, § 26; Laws 1985, LB 387, § 15.

2-4227 Bond issuance; resolution; provisions; part of contract with bond holders.

Any resolution authorizing the issuance of bonds may contain provisions, which 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 corporation to secure the payment of the bonds, subject to such agreements with bondholders as may then exist;

(2) Pledging all or any part of the assets of the corporation, including conservation loans or natural resource development loans, to secure the principal of and the interest on such bonds, subject to such agreement with bondholders as may then exist;

(3) The use and disposition of the gross income from conservation loans or natural resource development loans owned by the corporation and payment of the principal of conservation loans or natural resource development loans owned by the corporation;

(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 may consent thereto, and the manner in which the consent may be given;

(8) Limitations on the amount of money to be expended by the corporation for operating expenses of the corporation;

(9) Vesting in a trustee or trustees such property, rights, powers, and duties in trust as the corporation may determine, and limiting or abrogating the right of bondholders to appoint a trustee or limiting the rights, powers, and duties of the trustee;

(10) Defining the acts or omissions to act which shall constitute a default and the obligations or duties of the corporation 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; but the rights and remedies shall not be inconsistent with the general laws of this state and other provisions of the Conservation Corporation Act; and

(11) Any other matter, of like or different character, which in any way affects the security or protection of the holders of the bonds.

Source: Laws 1981, LB 385, § 27; Laws 1983, LB 20, § 13; Laws 1985, LB 387, § 16.

2-4228 Pledge; effect; lien; recording not required.

Any pledge made by the corporation 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 corporation 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 corporation, 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 1981, LB 385, § 28.

2-4229 Corporation; purchase bonds of corporation; canceled; price.

The corporation, subject to such agreements with bondholders as may then exist, shall have power out of any funds available therefor to purchase bonds of the corporation, 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 thereon.

Source: Laws 1981, LB 385, § 29.

2-4230 Bonds; secured by trust indenture; expenses; how treated.

The bonds may be secured by a trust indenture by and between the corporation and a corporate trustee which may be any bank having the power of a trust company or any trust company within or without 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 corporation in relation to the exercise of its powers and the custody, safekeeping, and application of all money. The corporation may provide by the trust indenture for the payment of the proceeds of the bonds and revenue to the trustee under the trust indenture or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as the corporation may determine. All expenses incurred in carrying out the trust indenture may be treated

as a part of the operating expenses of the corporation. If the bond shall be secured by a trust indenture, the bondholders shall have no authority to appoint a separate trustee to represent them.

Source: Laws 1981, LB 385, § 30.

2-4231 Bonds; negotiable instruments.

Whether or not the bonds are in the form and character of negotiable instruments, such bonds are hereby made negotiable instruments, subject only to provisions of the bonds relating to registration.

Source: Laws 1981, LB 385, § 31.

2-4232 Bonds; signatures of prior officers or members; validity.

In the event that any of the officers or members of the board of directors shall cease to be members or officers of the corporation 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, the same as if such members or officers had remained in office until such delivery.

Source: Laws 1981, LB 385, § 32.

2-4233 Person executing bonds; not subject to personal liability.

Neither the members of the board of directors of the corporation nor any other person executing the bonds issued under the Conservation Corporation Act shall be subject to personal liability or accountability by reason of the issuance thereof.

Source: Laws 1981, LB 385, § 33; Laws 1985, LB 387, § 17.

2-4234 Capital reserve fund; creation; expenditures.

The corporation may, if it deems the same desirable, create and establish a capital reserve fund for an issue of bonds or more than one issue of bonds. The corporation may create and establish one or more than one capital reserve fund. The capital reserve fund may be created and established from:

(1) Any proceeds of the sale of bonds, to the extent provided in the resolution of the corporation authorizing the issuance of such bonds;

(2) Money directed by the corporation to be transferred to such capital reserve fund; and

(3) Any other money which may be made available to the corporation for such fund from any other source or sources.

All money held in any capital reserve fund shall be used, as required, solely for the payment of the principal of bonds or of the sinking fund payments with respect to the bonds, the purchase or redemption of bonds, the payment of the interest on the bonds, or the payment of any redemption premium required to be paid when the bonds are redeemed prior to maturity.

Source: Laws 1981, LB 385, § 34.

2-4235 Capital reserve fund; withdrawals; when; income or interest earned; use.

Money in any capital reserve fund, if such fund is created, shall not be withdrawn therefrom at any time in an amount that would reduce the level of

money in such fund to less than the applicable capital reserve fund requirement, as such requirement is defined in the trust indenture creating the same, except for the purposes of paying the principal and the redemption price of or interest on the bonds and the sinking fund payment with respect to the bonds, as the same become due, and for the payment of which other money of the corporation is not available. Any income or interest earned by the investment of money held in any such capital reserve fund may be transferred by the corporation to other funds or accounts of the corporation to the extent that the transfer does not reduce the amount of such capital reserve fund to below the capital reserve fund requirement applicable thereto.

Source: Laws 1981, LB 385, § 35; Laws 1983, LB 20, § 14.

2-4236 Bond issuance; capital reserve fund; applicability.

The corporation may provide by resolution that it shall not issue bonds under a resolution at any time if upon issuance the amount in the capital reserve fund which will secure the bonds shall be less than the applicable capital reserve fund requirement, unless the corporation at the time of issuance of the bonds shall deposit in such capital reserve fund from the proceeds of the bonds to be issued, or other sources, an amount which, together with the amount then in such capital reserve fund, shall not be less than the applicable capital reserve fund requirement.

Source: Laws 1981, LB 385, § 36.

2-4237 Capital reserve fund; value; how computed.

In computing the amount of the capital reserve fund for the purposes of sections 2-4201 to 2-4246, securities in which all or a portion of the fund shall be invested shall be valued at a par, cost, or by such other method of valuation as the corporation may provide by resolution.

Source: Laws 1981, LB 385, § 37.

2-4238 Creation of other funds.

The corporation may also create and establish any other funds as may be necessary or desirable for its purposes.

Source: Laws 1981, LB 385, § 38.

2-4239 Money; deposits; secured; expenditures.

All money of the corporation, except as otherwise authorized or provided in sections 2-4201 to 2-4246, 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 the national banking associations. The money in such accounts shall be paid out on checks signed by the administrator or other officers or employees of the corporation as the corporation shall authorize. All deposits of money shall, if required by the corporation, be secured in such a manner as the corporation determines to be prudent, and all banks or trust companies are authorized to give security for the deposits.

Source: Laws 1981, LB 385, § 39.

2-4240 Contract with bondholders; purposes; money; how secured.

Notwithstanding the provisions of section 2-4239, the corporation shall have the power to contract with the holders of any of its bonds as to the custody, collection, security, investment, and payment of any money of the corporation and of any money held in trust or otherwise for the payment of bonds, and to 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 corporation, and all banks and trust companies are authorized to give security for the deposits.

Source: Laws 1981, LB 385, § 40.

2-4241 Bondholders; pledge of the state.

The state does hereby pledge to and agree with the holder of any bonds issued under sections 2-4201 to 2-4246 that the state will not limit or alter the rights vested in the corporation to fulfill the terms of any agreements made with the holders thereof or in any way impair the rights or remedies of the holders until the bonds, together with the interest thereon, with interest or any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of the holders, are fully met and discharged. The corporation is authorized to include this pledge and agreement of the state in any agreement with the holders of the bonds.

Source: Laws 1981, LB 385, § 41.

2-4242 Expenses; how paid; liability of state prohibited.

All expenses incurred by the corporation in carrying out the Conservation Corporation Act shall be payable solely from funds provided under such act, and nothing in such act shall be construed to authorize the corporation to incur debts, indebtedness, or liability on behalf of or payable by this state.

Source: Laws 1981, LB 385, § 42; Laws 1985, LB 387, § 18.

2-4243 Property, income, and bonds; exempt from taxation; dissolution; assets; how treated.

All property acquired or held by the corporation under the Conservation Corporation Act is declared to be public property. The property to the extent used for a public purpose, all the income therefrom, bonds issued under the act, interest payable thereon, and income derived therefrom, shall at all times be exempt from all taxes imposed by this state or any county, any city, or any other political subdivision of this state. The corporation 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 this state. If the corporation is dissolved after all indebtedness and other obligations of the corporation are discharged, its remaining assets shall inure to the benefit of the State of Nebraska.

Source: Laws 1981, LB 385, § 43; Laws 2001, LB 173, § 1.

2-4244 Bonds; legal investment; considered securities.

The bonds issued by and under the authority of sections 2-4201 to 2-4246 by the corporation 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, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business, all administrators, guardians, executors, trustees, 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 officials and bodies of this state or 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 1981, LB 385, § 44.

2-4245 Annual report; contents; audit.

The corporation shall, following the close of each fiscal year, submit an annual 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 administrator of the corporation. Each report shall set forth a complete operating and financial statement for the corporation 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 corporation.

Source: Laws 1981, LB 385, § 45; Laws 2012, LB782, § 7.

2-4246 Sections, how construed.

Nothing in sections 2-4201 to 2-4246 is or shall be construed as a restriction or limitation upon any power which the corporation might otherwise have under any other law of this state, and sections 2-4201 to 2-4246 is cumulative to such powers. Sections 2-4201 to 2-4246 do 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. Issuance of bonds under the provisions of sections 2-4201 to 2-4246 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 thereof, except as provided in sections 2-4201 to 2-4246. All conservation practices for which funds are advanced, loaned, or otherwise provided by the corporation under sections 2-4201 to 2-4246 must be in compliance with any land-use, zoning, and other laws of this state applicable to the land upon which such conservation practices are to be constructed or implemented.

Source: Laws 1981, LB 385, § 46.

ARTICLE 43
AGRICULTURAL LIMING MATERIALS

Section
2-4301. Act, how cited.
2-4302. Definitions, where found.

Section
2-4303. Agricultural liming material, defined.
2-4304. Limestone, defined.
2-4305. Burnt lime, defined.
2-4306. Hydrated lime, defined.
2-4307. Marl, defined.
2-4308. Industrial byproduct, defined.
2-4309. Brand, defined.
2-4310. Fineness, defined.
2-4311. Ton, defined.
2-4312. Bulk, defined.
2-4313. Label, defined.
2-4314. Calcium carbonate equivalent, defined.
2-4315. Weight, defined.
2-4316. Agricultural lime slurry, defined.
2-4317. Department, defined.
2-4318. Director, defined.
2-4318.01. Manufacturer, distributor, retailer; defined.
2-4319. Rules and regulations.
2-4320. Sale; label, statement, or delivery slip; information requirements.
2-4321. Sale or offer for sale; restrictions.
2-4322. Registration; license; when required; application; license fee.
2-4323. Retailer licensee; tonnage report; inspection fee; additional administrative fee; department; powers; director; duties.
2-4324. Fees; disbursement.
2-4325. Director; enforcement of act; inspections; testing; methods of analysis; results; distribution.
2-4326. Director; department; enforcement; orders; seizure of material; procedure.
2-4327. Violations; penalty; written warning; Attorney General or county attorney; duties; enforcement; appeal.

2-4301 Act, how cited.

Sections 2-4301 to 2-4327 shall be known and may be cited as the Agricultural Liming Materials Act.

Source: Laws 1981, LB 396, § 1; Laws 1988, LB 871, § 26.

2-4302 Definitions, where found.

As used in the Agricultural Liming Materials Act, unless the context otherwise requires, the definitions in sections 2-4303 to 2-4318.01 shall apply.

Source: Laws 1981, LB 396, § 2; Laws 1983, LB 539, § 1.

2-4303 Agricultural liming material, defined.

Agricultural liming material shall mean material which is distributed for agricultural purposes whose calcium and magnesium compounds are capable of neutralizing soil acidity, including limestone, burnt lime, hydrated lime, marl, an industrial byproduct, and agricultural lime slurry.

Source: Laws 1981, LB 396, § 3; Laws 1983, LB 539, § 2.

2-4304 Limestone, defined.

Limestone shall mean a material consisting essentially of calcium carbonate or a combination of calcium carbonate with magnesium carbonate capable of neutralizing soil acidity.

Source: Laws 1981, LB 396, § 4.

2-4305 Burnt lime, defined.

Burnt lime shall mean a material made from limestone which consists essentially of calcium oxide or a combination of calcium oxide with magnesium oxide.

Source: Laws 1981, LB 396, § 5.

2-4306 Hydrated lime, defined.

Hydrated lime shall mean a material made from burnt lime which consists of calcium hydroxide or a combination of calcium hydroxide with magnesium oxide or magnesium hydroxide.

Source: Laws 1981, LB 396, § 6.

2-4307 Marl, defined.

Marl shall mean a granular or loosely consolidated earthy material composed largely of seashell fragments and calcium carbonate.

Source: Laws 1981, LB 396, § 7.

2-4308 Industrial byproduct, defined.

Industrial byproduct shall mean any industrial waste or byproduct containing calcium or calcium and magnesium in forms that will neutralize soil acidity.

Source: Laws 1981, LB 396, § 8.

2-4309 Brand, defined.

Brand shall mean the term, designation, trademark, product name, or other specific designation under which individual agricultural liming material is offered for sale.

Source: Laws 1981, LB 396, § 9.

2-4310 Fineness, defined.

Fineness shall mean the percentage by weight of the material which will pass standard sieves of specified sizes to be determined by the director pursuant to section 2-4319.

Source: Laws 1981, LB 396, § 10; Laws 1983, LB 539, § 3.

2-4311 Ton, defined.

Ton shall mean a net weight of two thousand pounds avoirdupois.

Source: Laws 1981, LB 396, § 11.

2-4312 Bulk, defined.

Bulk shall mean in a nonpackaged form.

Source: Laws 1981, LB 396, § 12.

2-4313 Label, defined.

Label shall mean any written or printed matter on or attached to the package or on the delivery ticket which accompanies bulk shipments.

Source: Laws 1981, LB 396, § 13.

2-4314 Calcium carbonate equivalent, defined.

Calcium carbonate equivalent shall mean the acid-neutralizing capacity of an agricultural liming material expressed as a weight percentage of calcium carbonate. The weight of water contained by the liming material shall be included when calculating the calcium carbonate equivalent.

Source: Laws 1981, LB 396, § 14.

2-4315 Weight, defined.

Weight shall mean the weight of undried material as offered for sale.

Source: Laws 1981, LB 396, § 15.

2-4316 Agricultural lime slurry, defined.

Agricultural lime slurry shall mean pulverized limestone suspended in water and which may contain up to two percent by weight of appropriate clay and surfactant to maintain the liming material in suspension.

Source: Laws 1981, LB 396, § 16.

2-4317 Department, defined.

Department shall mean the Department of Agriculture.

Source: Laws 1981, LB 396, § 17.

2-4318 Director, defined.

Director shall mean the Director of Agriculture.

Source: Laws 1981, LB 396, § 18.

2-4318.01 Manufacturer, distributor, retailer; defined.

(1) Manufacturer shall mean a person who quarries, crushes, or grinds agricultural liming materials.

(2) Distributor shall mean one who sells agricultural liming material to any but the ultimate consumer.

(3) Retailer shall mean one who sells agricultural liming material to the ultimate consumer.

(4) Any person can be either a manufacturer, distributor, or seller, or any combination thereof, depending upon the function performed by such person in any given transaction.

Source: Laws 1983, LB 539, § 4.

2-4319 Rules and regulations.

The department shall adopt, promulgate, and enforce such rules and regulations as may be necessary to carry out the provisions of the Agricultural Liming Materials Act pursuant to the Administrative Procedure Act.

The director shall adopt and promulgate rules and regulations relating to fineness as defined in section 2-4310 and he or she shall refer in adopting such rules and regulations to specifications used by national testing and materials organizations.

Source: Laws 1981, LB 396, § 19; Laws 1983, LB 539, § 5.

Cross References

Administrative Procedure Act, see section 84-920.

2-4320 Sale; label, statement, or delivery slip; information requirements.

(1) Agricultural liming materials sold, offered, or exposed for sale in this state by any manufacturer, distributor, or retailer shall have affixed to each package in a conspicuous manner on the outside of such package a plainly printed, stamped, or otherwise marked label, tag, or statement or, in the case of bulk sales, a delivery slip, setting forth the following information:

(a) The name and principal office address of the manufacturer or distributor;

(b) The brand or trade name of the material;

(c) The identification of the product as to the type of the agricultural liming material;

(d) The net weight of the agricultural liming material;

(e) The minimum effective calcium carbonate equivalent, which is a percentage of weight function of calcium carbonate equivalent and fineness as prescribed by the rules and regulations of the director; and

(f) The pounds of effective calcium carbonate per ton.

Additional information may also be listed on the package including the minimum percentage by weight of calcium carbonate and magnesium carbonate.

(2) No information or statement shall appear on any package, label, delivery slip, or advertising matter which is false or misleading to the purchaser as to the quality, analysis type, or composition of the agricultural liming material.

(3) In the case of any material which has been changed in any way as to render inaccurate or misleading any of the information required by subsection (1) of this section subsequent to its packaging, labeling, or loading and before its delivery to the consumer, a plainly marked notice of the change shall be affixed by the manufacturer, distributor, or retailer to the package or delivery slip to identify the kind and degree of such change in such package.

(4) At every site from which agricultural liming materials are delivered in bulk and at every place where consumer orders for bulk deliveries are placed, there shall be conspicuously posted a copy of the statements required by subsections (1) and (3) of this section for each brand of material.

Source: Laws 1981, LB 396, § 20; Laws 1983, LB 539, § 6.

2-4321 Sale or offer for sale; restrictions.

(1) No agricultural liming material shall be sold or offered for sale in this state unless it complies with the Agricultural Liming Materials Act or the rules and regulations promulgated pursuant to the act.

(2) No agricultural liming material shall be sold or offered for sale in this state which contains toxic materials in quantities injurious to plants or animals.

Source: Laws 1981, LB 396, § 21.

2-4322 Registration; license; when required; application; license fee.

(1) Each separately identified agricultural liming material shall be registered before being distributed in this state. The person who first causes the distribution of the agricultural liming material into or within this state shall be

responsible for compliance with the registration requirements of this section. The application for registration shall be submitted to the department on forms furnished and approved by the department. Upon approval by the department a copy of the registration shall be furnished to the applicant. All registrations shall expire on December 31 of the same year. Agricultural lime slurry as defined in section 2-4316 shall be exempt from the registration requirements of this section.

A person shall not be required to register any brand of agricultural liming material which is already registered pursuant to the Agricultural Liming Materials Act by another person.

(2) Any out-of-state manufacturer, distributor, or retailer who has no distribution facility within this state shall obtain a registration for its principal out-of-state office if it markets or distributes agricultural liming materials in the State of Nebraska.

(3) Every manufacturer, distributor, or retailer of agricultural liming materials to be distributed in this state shall file with the department an application for a license on or before January 1 of each year or prior to manufacture, distribution, or sale of such liming materials. Upon acceptance of the application and proper fee, the department shall issue a license for the current year. The annual license fee shall be five dollars and the license shall expire on December 31 of the same year.

Source: Laws 1981, LB 396, § 22; Laws 1983, LB 539, § 7.

2-4323 Retailer licensee; tonnage report; inspection fee; additional administrative fee; department; powers; director; duties.

(1) Every retailer licensee shall file, not later than the last day of January and July of each year, a semiannual tonnage report on forms provided by the department, setting forth the number of net tons of each agricultural liming material sold in Nebraska during the preceding six-month period, which report shall cover the periods from July 1 to December 31 and January 1 to June 30, and such other information as the director shall deem necessary. All persons required to be licensed pursuant to the Agricultural Liming Materials Act shall file such report regardless of whether any inspection fee is due. Upon filing the report, such person shall pay the inspection fee at the rate prescribed pursuant to this section. The inspection fee shall be at the rate fixed by the director but not exceeding ten cents per ton. The fee shall be set at an amount to cover the expenses of the inspection provided in section 2-4325 and the costs of administering this section. The minimum inspection fee required pursuant to this section shall be five dollars, and no inspection fee shall be paid more than once for any one product. In the case of agricultural lime slurry, the fee shall be paid on the base lime material only.

(2) If a person fails to report and pay the fee required by subsection (1) of this section by January 31 and July 31, the fee shall be considered delinquent and the person owing the fee shall pay an additional administrative fee of twenty-five percent of the delinquent amount for each month it remains unpaid, not to exceed one hundred percent of the original amount due. The department may waive the additional administrative fee based upon the existence and extent of any mitigating circumstances that have resulted in the late payment of such fee. The purpose of the additional administrative fee is to cover the administrative costs associated with collecting fees, and all money collected as an additional

administrative fee shall be remitted to the State Treasurer for credit to the Fertilizers and Soil Conditioners Administrative Fund. Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided in this subsection shall constitute sufficient cause for the cancellation of all product registrations or licenses on file for such person.

(3) The director shall annually make information available in such form as he or she may deem proper concerning the tons of agricultural liming material sold in this state. Such report shall in no way divulge the operation of any registrant or licensee.

Source: Laws 1981, LB 396, § 23; Laws 1983, LB 539, § 8; Laws 2015, LB92, § 1.

2-4324 Fees; disbursement.

All fees paid to the department pursuant to the Agricultural Liming Materials Act shall be remitted to the State Treasurer for credit to the Fertilizers and Soil Conditioners Administrative Fund. All money credited to the fund shall be used by the department to aid in defraying expenses of administering the Agricultural Liming Materials Act and the Nebraska Commercial Fertilizer and Soil Conditioner Act.

Source: Laws 1981, LB 396, § 24; Laws 2003, LB 157, § 3; Laws 2015, LB92, § 2.

Cross References

Nebraska Commercial Fertilizer and Soil Conditioner Act, see section 81-2,162.22.

2-4325 Director; enforcement of act; inspections; testing; methods of analysis; results; distribution.

(1) To enforce the Agricultural Liming Materials 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 agricultural liming materials are 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 and production of agricultural liming materials, and other information necessary for the enforcement of the act;

(c) Obtain samples of agricultural liming materials. 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 agricultural liming materials are 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 official analyses of agricultural liming materials and portions of official samples shall be distributed by the department as provided in the rules and regulations.

Source: Laws 1981, LB 396, § 25; Laws 1983, LB 539, § 9; Laws 1992, LB 366, § 6; Laws 1993, LB 267, § 1.

2-4326 Director; department; enforcement; orders; seizure of material; procedure.

(1) When the director has reasonable cause to believe agricultural liming materials are being sold in violation of the Agricultural Liming Materials Act or the rules and regulations adopted and promulgated pursuant to the act, he or she may issue and enforce a written or printed stop-sale, stop-use, or removal order to the owner or custodian of any lot of agricultural liming material. The department may order the owner or custodian to hold such material at a designated place when the department finds such material is being offered or exposed for sale by the owner or custodian in violation of the act or the rules and regulations. Such material shall be released when the act or the rules and regulations have been complied with, such violations have otherwise been legally disposed of in writing, and all costs and expense incurred in connection with such material's holding have been paid. This section shall not apply if the owner or custodian is the ultimate consumer of the agricultural liming material and he or she has title to such materials.

(2) Any agricultural liming materials not in compliance with the act or the rules and regulations shall be subject to seizure on complaint of the director to a court of competent jurisdiction in the area in which the agricultural liming materials are located. If the court finds the agricultural liming materials to be in violation of the act or the rules and regulations and orders the condemnation of the agricultural liming materials, such agricultural liming materials shall be disposed of in any manner consistent with the quality of the agricultural liming materials and the laws of the State of Nebraska. The court shall not order disposition without first giving the claimant an opportunity to apply to the court for release of the agricultural liming materials or for permission to process or relabel such product to bring it into compliance with the act.

Source: Laws 1981, LB 396, § 26; Laws 1983, LB 539, § 10; Laws 1988, LB 871, § 27; Laws 2015, LB92, § 3.

2-4327 Violations; penalty; written warning; Attorney General or county attorney; duties; enforcement; appeal.

(1) Any person violating the Agricultural Liming Materials Act shall be guilty of a Class IV misdemeanor upon the first conviction thereof, and a Class II misdemeanor for each subsequent conviction thereof.

(2) Nothing in the act shall be construed to require the director or his or her duly authorized agent to report a violation in order to prosecute or to institute seizure proceedings as a result of minor violations of the act when he or she believes that the public interest will best be served by a suitable written warning to the violator.

(3) The Attorney General or the county attorney of the county in which any violation occurs or is about to occur, when notified by the department of such violation or threatened violation, shall pursue appropriate proceedings pursuant to section 2-4326 or this section or both without delay.

(4) In order to insure compliance with the 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 the act. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(5) Any person adversely affected by an action, order, or ruling made by the department pursuant to the act may appeal the action, order, or ruling, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1981, LB 396, § 27; Laws 2015, LB92, § 4.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 44
NEBRASKA RIGHT TO FARM ACT

Section
2-4401. Act, how cited.
2-4402. Terms, defined.
2-4403. Farm; farm operation; public grain warehouse; public grain warehouse operation; not a nuisance; when; suit; limitation.
2-4404. Applicability of other statutes.

2-4401 Act, how cited.

Sections 2-4401 to 2-4404 shall be known and may be cited as the Nebraska Right to Farm Act.

Source: Laws 1982, LB 668, § 1.

2-4402 Terms, defined.

As used in the Nebraska Right to Farm Act, unless the context otherwise requires:

(1) Farm or farm operation means any tract of land over ten acres in area used for or devoted to the commercial production of farm products;

(2) Farm product means those plants and animals useful to man and includes, but is not limited to, forages and sod crops, grains and feed crops, dairy and dairy products, poultry and poultry products, livestock, including breeding and grazing, fruits, vegetables, flowers, seeds, grasses, trees, fish,

apiaries, equine and other similar products, or any other product which incorporates the use of food, feed, fiber, or fur; and

(3) Public grain warehouse or public grain warehouse operation means any grain elevator building or receptacle in which grain is held for longer than ten days and includes, but is not limited to, all buildings, elevators, and warehouses consisting of one or more warehouse sections within the confines of a city, township, county, or state that are considered a single delivery point with the capability to receive, load out, weigh, and store grain.

Source: Laws 1982, LB 668, § 2; Laws 1998, LB 1193, § 6.

2-4403 Farm; farm operation; public grain warehouse; public grain warehouse operation; not a nuisance; when; suit; limitation.

(1) A farm or farm operation or a public grain warehouse or public grain warehouse operation shall not be found to be a public or private nuisance if the farm or farm operation or public grain warehouse or public grain warehouse operation existed before a change in the land use or occupancy of land in and about the locality of such farm or farm operation or public grain warehouse or public grain warehouse operation and before such change in land use or occupancy of land the farm or farm operation or public grain warehouse or public grain warehouse operation would not have been a nuisance.

(2) No suit shall be maintained against a farm or farm operation or public grain warehouse or public grain warehouse operation for public or private nuisance more than two years after the condition which is the subject matter of the suit reaches a level of offense sufficient to sustain a claim of nuisance.

(3) The limitation provided for in this section shall not apply to any action brought to determine compliance with or to enforce a previous order of a court related to the same claim of nuisance or to any claims for additional damages or equitable relief available when a farm or farm operation or public grain warehouse or public grain warehouse operation fails to remediate a nuisance pursuant to such court order.

Source: Laws 1982, LB 668, § 3; Laws 1998, LB 1193, § 7; Laws 2019, LB227, § 1.

This section, as amended by 1998 Neb. Laws, LB1193, contains no language evidencing an intent that it should be applied retrospectively and thus operates prospectively only. Soukop v. ConAgra, Inc., 264 Neb. 1015, 653 N.W.2d 655 (2002).

The Nebraska Right to Farm Act applies only where there has been a change in land use or occupancy of land in and about the locality of such farm or farm operation, not where the change has taken place on the farm itself. Flansburgh v. Coffey, 220 Neb. 381, 370 N.W.2d 127 (1985).

2-4404 Applicability of other statutes.

The Nebraska Right to Farm Act shall not affect the application of state and federal statutes.

Source: Laws 1982, LB 668, § 4; Laws 2019, LB227, § 2.

ARTICLE 45
WATER PROJECT BONDS

Section
2-4501. Repealed. Laws 1991, LB 772, § 8.
2-4502. Repealed. Laws 1991, LB 772, § 8.
2-4503. Repealed. Laws 1991, LB 772, § 8.
2-4504. Repealed. Laws 1991, LB 772, § 8.

Section
2-4505. Repealed. Laws 1991, LB 772, § 8.
2-4506. Repealed. Laws 1991, LB 772, § 8.
2-4507. Repealed. Laws 1991, LB 772, § 8.
2-4508. Repealed. Laws 1991, LB 772, § 8.
2-4509. Repealed. Laws 1991, LB 772, § 8.
2-4510. Repealed. Laws 1991, LB 772, § 8.
2-4511. Repealed. Laws 1991, LB 772, § 8.
2-4512. Repealed. Laws 1991, LB 772, § 8.
2-4513. Repealed. Laws 1991, LB 772, § 8.
2-4514. Repealed. Laws 1991, LB 772, § 8.
2-4515. Repealed. Laws 1991, LB 772, § 8.
2-4516. Repealed. Laws 1991, LB 772, § 8.
2-4517. Repealed. Laws 1991, LB 772, § 8.
2-4518. Repealed. Laws 1991, LB 772, § 8.
2-4519. Repealed. Laws 1991, LB 772, § 8.
2-4520. Repealed. Laws 1991, LB 772, § 8.
2-4520.01. Repealed. Laws 1991, LB 772, § 8.
2-4521. Repealed. Laws 1991, LB 772, § 8.
2-4522. Repealed. Laws 1991, LB 772, § 8.
2-4523. Repealed. Laws 1991, LB 772, § 8.
2-4524. Repealed. Laws 1991, LB 772, § 8.
2-4525. Repealed. Laws 1991, LB 772, § 8.
2-4526. Repealed. Laws 1991, LB 772, § 8.
2-4527. Repealed. Laws 1991, LB 772, § 8.
2-4528. Repealed. Laws 1991, LB 772, § 8.

2-4501 Repealed. Laws 1991, LB 772, § 8.

2-4502 Repealed. Laws 1991, LB 772, § 8.

2-4503 Repealed. Laws 1991, LB 772, § 8.

2-4504 Repealed. Laws 1991, LB 772, § 8.

2-4505 Repealed. Laws 1991, LB 772, § 8.

2-4506 Repealed. Laws 1991, LB 772, § 8.

2-4507 Repealed. Laws 1991, LB 772, § 8.

2-4508 Repealed. Laws 1991, LB 772, § 8.

2-4509 Repealed. Laws 1991, LB 772, § 8.

2-4510 Repealed. Laws 1991, LB 772, § 8.

2-4511 Repealed. Laws 1991, LB 772, § 8.

2-4512 Repealed. Laws 1991, LB 772, § 8.

2-4513 Repealed. Laws 1991, LB 772, § 8.

2-4514 Repealed. Laws 1991, LB 772, § 8.

2-4515 Repealed. Laws 1991, LB 772, § 8.

2-4516 Repealed. Laws 1991, LB 772, § 8.

2-4517 Repealed. Laws 1991, LB 772, § 8.

2-4518 Repealed. Laws 1991, LB 772, § 8.

2-4519 Repealed. Laws 1991, LB 772, § 8.

2-4520 Repealed. Laws 1991, LB 772, § 8.

2-4520.01 Repealed. Laws 1991, LB 772, § 8.

2-4521 Repealed. Laws 1991, LB 772, § 8.

2-4522 Repealed. Laws 1991, LB 772, § 8.

2-4523 Repealed. Laws 1991, LB 772, § 8.

2-4524 Repealed. Laws 1991, LB 772, § 8.

2-4525 Repealed. Laws 1991, LB 772, § 8.

2-4526 Repealed. Laws 1991, LB 772, § 8.

2-4527 Repealed. Laws 1991, LB 772, § 8.

2-4528 Repealed. Laws 1991, LB 772, § 8.

ARTICLE 46

EROSION AND SEDIMENT CONTROL

Section

2-4601. Act, how cited.
2-4602. Legislative findings.
2-4603. Terms, defined.
2-4604. State program; director; duties; program contents; revisions; hearings.
2-4605. District program; contents; review.
2-4606. Municipal or county rules and regulations; authorized; conformance with state program; enforcement; failure to conform, effect.
2-4607. District; adoption or revision of rules and regulations; procedure; availability.
2-4608. Excess soil erosion; complaint; inspection; remedial action; failure to comply; cease and desist order.
2-4609. Filing of complaint; effect.
2-4610. Conformance with farm unit conservation plan or soil-loss tolerance level; effect; cost-sharing assistance; availability; lack of cost-sharing assistance; effect.
2-4611. Administrative order; appeal.
2-4612. Order for immediate compliance; when authorized.
2-4613. District court action; procedures; order; appeal; failure to comply with order; effect.

2-4601 Act, how cited.

Sections 2-4601 to 2-4613 shall be known and may be cited as the Erosion and Sediment Control Act.

Source: Laws 1986, LB 474, § 1.

2-4602 Legislative findings.

The Legislature recognizes that erosion and sedimentation are serious problems throughout the state. Changes in farm and ranch enterprises, operations, and ownership, demands made upon farm and ranch enterprises which do not encourage sound resource utilization, rapid shifts in land use from agricultural and rural to nonagricultural and urban uses, construction of streets, highways, pipelines, recreation areas, schools and universities, public utilities and facili-

ties, conversion of grasslands to croplands, and other land-disturbing activities have caused excessive wind erosion and water runoff and accelerated the process of soil erosion and sediment deposition. This has resulted in the pollution of the waters of the state and damage to domestic, agricultural, industrial, recreational, fish and wildlife, and other resources. It is declared to be the policy of the state to strengthen and extend the present erosion and sediment control activities and programs of the state for both rural and urban lands, to improve water quality, and to establish and implement, through the Director of Natural Resources and the Nebraska Natural Resources Commission, a statewide, comprehensive, and coordinated erosion and sediment control program to reduce damage from wind erosion and storm water runoff, to retard nonpoint pollution from sediment and related pollutants, and to conserve and protect land, air, and other resources of the state. This program shall be carried out by the natural resources districts in cooperation with the counties, municipalities, and other local governments and political subdivisions of the state and other public and private entities.

Source: Laws 1986, LB 474, § 2.

2-4603 Terms, defined.

For purposes of the Erosion and Sediment Control Act, unless the context otherwise requires:

(1) Commission means the Nebraska Natural Resources Commission;

(2) Conservation agreement means an agreement between the owner or operator of a farm unit and the district in which the owner or operator agrees to implement a farm unit conservation plan or, with the approval of the district within which the farm unit is located, a portion of a farm unit conservation plan. The agreement shall include a schedule for implementation and may be conditioned on the district or other public entity furnishing technical, planning, or financial assistance in the establishment of the soil and water conservation practices necessary to implement the plan or a portion of the plan;

(3) Director means the Director of Natural Resources;

(4) District means a natural resources district;

(5) Erosion or sediment control practice means:

(a) The construction or installation and maintenance of permanent structures or devices necessary to carry, to a suitable outlet away from any building site, any commercial or industrial development, or any publicly or privately owned recreational or service facility not served by a central storm sewer system, any water which would otherwise cause erosion in excess of the applicable soil-loss tolerance level and which does not carry or constitute sewage or industrial or other waste;

(b) The employment of temporary devices or structures, temporary seeding, fiber mats, plastic, straw, diversions, silt fences, sediment traps, or other measures adequate either to prevent erosion in excess of the applicable soil-loss tolerance level or to prevent excessive downstream sedimentation from land which is the site of or is directly affected by any nonagricultural land-disturbing activity; or

(c) The establishment and maintenance of vegetation upon the right-of-way of any completed portion of any public street, road, or highway or the construction or installation thereon of permanent structures or devices or other meas-

ures adequate to prevent erosion of the right-of-way in excess of the applicable soil-loss tolerance level;

(6) Excess erosion means the occurrence of erosion in excess of the applicable soil-loss tolerance level which causes or contributes to an accumulation of sediment upon the lands of any other person to the detriment or damage of such other person;

(7) Farm unit conservation plan means a plan jointly developed by the owner and, if appropriate, the operator of a farm unit and the district within which the farm unit is located based upon the determined conservation needs for the farm unit and identifying the soil and water conservation practices which may be expected to prevent soil loss by erosion from that farm unit in excess of the applicable soil-loss tolerance level. The plan may also, if practicable, identify alternative practices by which such objective may be attained;

(8) Nonagricultural land-disturbing activity means a land change, including, but not limited to, tilling, clearing, grading, excavating, transporting, or filling land, which may result in soil erosion from wind or water and the movement of sediment and sediment-related pollutants into the waters of the state or onto lands in the state but does not include the following:

(a) Activities related directly to the production of agricultural, horticultural, or silvicultural crops, including, but not limited to, tilling, planting, or harvesting of such crops;

(b) Installation of aboveground public utility lines and connections, fenceposts, sign posts, telephone poles, electric poles, and other kinds of posts or poles;

(c) Emergency work to protect life or property;

(d) Activities related to the construction of housing, industrial, and commercial developments on sites under two acres in size; and

(e) Activities related to the operation, construction, or maintenance of industrial or commercial public power district or public power and irrigation district facilities or sites when such activity is conducted pursuant to state or federal law or is part of the operational plan for such facility or site;

(9) Person means any individual, partnership, limited liability company, firm, association, joint venture, public or private corporation, trust, estate, commission, board, institution, utility, cooperative, municipality or other political subdivision of this state, interstate body, or other legal entity;

(10) Soil and water conservation practice means a practice which serves to prevent erosion of soil by wind or water in excess of the applicable soil-loss tolerance level from land used only for agricultural, horticultural, or silvicultural purposes. Soil and water conservation practice includes, but is not limited to:

(a) Permanent soil and water conservation practice, including the planting of perennial grasses, legumes, shrubs, or trees, the establishment of grassed waterways, the construction of terraces, and other permanent soil and water practices approved by the district; and

(b) Temporary soil and water conservation practice, including the planting of annual or biennial crops, use of strip-cropping, contour planting, minimum or mulch tillage, and other cultural practices approved by the district; and

(11) Soil-loss tolerance level means the maximum amount of soil loss due to erosion by wind or water, expressed in terms of tons per acre per year, which is

determined to be acceptable in accordance with the Erosion and Sediment Control Act. Soil loss may be impacted by water erosion which may include (a) sheet and rill erosion which includes relatively uniform soil loss across the entire field slope which may leave small channels located at regular intervals across the slope and (b) ephemeral gully erosion which occurs in well-defined depressions or natural drainageways where concentrated overland flow results in the convergence of rills forming deeper and wider channels.

Source: Laws 1986, LB 474, § 3; Laws 1988, LB 594, § 1; Laws 1993, LB 121, § 80; Laws 1994, LB 480, § 22; Laws 2015, LB206, § 1.

2-4604 State program; director; duties; program contents; revisions; hearings.

(1) The director shall, in cooperation with the commission, the Department of Environment and Energy, the Natural Resources Conservation Service of the United States Department of Agriculture, and other appropriate state and federal agencies, develop and coordinate a comprehensive state erosion and sediment control program designed to reduce soil erosion in this state to tolerable levels. The program, which shall be reasonable and attainable, shall include:

(a) The soil-loss tolerance level for the various types of soils in the state;

(b) State goals and a state strategy for reducing soil losses on all lands in the state to an amount no more than the applicable soil-loss tolerance level;

(c) Guidelines for establishing priorities for implementation of the program at the state and local levels;

(d) Types of assistance to be provided by the state to districts, cities, and counties in the implementation of the state and local erosion and sediment control programs; and

(e) Such other elements as the director deems appropriate in accordance with the objectives of the Erosion and Sediment Control Act, including any recommendations for further legislative or administrative action.

(2) The state erosion and sediment control program may be revised by the director and the commission at any time. Before approving any such changes, the director and the commission shall conduct at least four public hearings or meetings to receive information from interested persons in different parts of the state.

Source: Laws 1986, LB 474, § 4; Laws 1993, LB 3, § 5; Laws 2015, LB206, § 2; Laws 2019, LB302, § 14.

2-4605 District program; contents; review.

(1) Each district shall, with the approval of the director, adopt a district program for implementation of the state erosion and sediment control program. Each district's program shall include the:

(a) Soil-loss tolerance levels for the various types of soils in the district. The soil-loss tolerance levels shall be adopted and promulgated as rules and regulations and may be more but not less stringent than those adopted by the director. It is the intent of the Legislature that no land within the state be assigned a soil-loss tolerance level that cannot reasonably be applied to such land;

(b) Recommended erosion or sediment control practices and soil and water conservation practices which are suitable for controlling erosion and sedimentation within the district; and

(c) Programs, procedures, and methods the district plans to adopt and employ to implement the state erosion and sediment control program. Each district may subsequently amend or modify the program as necessary, subject to the approval of the director.

(2) The director with the advice and recommendation of the commission shall review each district's program and all amendments thereto and shall approve the program or amendments if the director determines that the district's program is reasonable, attainable, and in conformance with the state erosion and sediment control program.

Source: Laws 1986, LB 474, § 5; Laws 1988, LB 594, § 2; Laws 2015, LB206, § 3.

2-4606 Municipal or county rules and regulations; authorized; conformance with state program; enforcement; failure to conform, effect.

Any municipality or county may adopt and promulgate rules and regulations governing erosion and sediment control within their respective jurisdictions. Any such municipal or county rules and regulations shall be in substantial conformance with the state erosion and sediment control program. If a municipality or county adopts and promulgates rules and regulations, it shall enforce such rules and regulations within the regulatory jurisdiction of such municipality or county. Whenever the rules and regulations of any municipality or county are deemed by the director not to be in substantial conformance with the state erosion and sediment control program, the municipality or county may either amend such rules and regulations to conform, adopt rules and regulations which are in conformance, or defer responsibility to adopt, administer, and enforce such rules and regulations to the appropriate district.

Source: Laws 1986, LB 474, § 6.

2-4607 District; adoption or revision of rules and regulations; procedure; availability.

Before adopting or revising its rules and regulations, each district shall, after publishing notice once each week for three consecutive weeks in a newspaper or newspapers having general circulation within the district, conduct a public hearing on the proposed rules and regulations or changes. The rules and regulations of the district shall be made available for public inspection at the principal office of the district.

Source: Laws 1986, LB 474, § 7.

2-4608 Excess soil erosion; complaint; inspection; remedial action; failure to comply; cease and desist order.

(1) Except to the extent jurisdiction has been assumed by a municipality or county in accordance with section 2-4606, the district may inspect or cause to be inspected any land within the district upon receipt of a written and signed complaint which alleges that soil erosion is occurring in excess of the applicable soil-loss tolerance level. Complaints shall be filed on a form provided by the director. Complaints may be filed by any owner or operator of land being

damaged by sediment, by any state agency or political subdivision whose roads or other public facilities are being damaged by sediment, by any state agency or political subdivision with responsibility for water quality maintenance if it is alleged that the soil erosion complained of is adversely affecting water quality, or by a staff member or other agent of the district authorized by the board of directors to file such complaints. Inspections following receipt of a written and signed complaint may be made only after notice to the owner and, if appropriate, the operator of the land involved, and such person shall be given an opportunity to accompany the inspector.

(2) The owner, the operator if appropriate, and the district may agree to a plan and schedule for eliminating excess erosion on and sedimentation from the land involved. Any such agreement may be enforced in district court in the same manner as an administrative order issued pursuant to the Erosion and Sediment Control Act. If no agreement is reached, the findings of the inspection shall be presented to the district board of directors and the owner and, if appropriate, the operator of the land shall be given a reasonable opportunity to be heard at a meeting of the board or, if requested, at a public hearing. If the district finds that the alleged sediment damage is occurring and that excess erosion is occurring on the land inspected, it shall issue an administrative order to the owner of record and, if appropriate, to the operator describing the land and stating as nearly as possible the extent to which the soil erosion exceeds the applicable soil-loss tolerance level. When the complained-of erosion is the result of agricultural, horticultural, or silvicultural activities, the district shall direct the owner and, if appropriate, the operator to bring the land into conformance with the applicable soil-loss tolerance level. When the complained-of erosion is the result of a nonagricultural land-disturbing activity, the district may authorize the owner and, if appropriate, the operator to either bring such land into conformance with the soil-loss tolerance level or to prevent sediment resulting from excess erosion from leaving such land.

(3) The district may specify, as applicable, alternative soil and water conservation practices or erosion or sediment control practices which the owner and, if appropriate, the operator may use to comply with the administrative order. A copy of the administrative order shall be delivered by either personal service or certified or registered mail to each person to whom it is directed and shall:

(a) In the case of erosion occurring on the site of any nonagricultural land-disturbing activity, state a reasonable time after service or mailing of the order when the work necessary to establish or maintain erosion or sediment control practices shall be commenced and the time, not more than forty-five days after service or mailing of the order, when the work shall be satisfactorily completed;

(b) In all other cases, state the time, not more than six months after service or mailing of the order, the work needed to establish or maintain the necessary soil and water conservation practices or permanent erosion control practices shall be commenced and the time, not more than one year after the service or mailing of the order, the work shall be satisfactorily completed, unless the requirements of the order are superseded by section 2-4610; and

(c) State any reasonable requirements regarding the operation, utilization, and maintenance of the practices to be installed, constructed, or applied.

(4) Following refusal of a landowner to discontinue an activity causing erosion described in this section and to establish a plan and schedule for eliminating excess erosion pursuant to subsection (2) of this section, and if the

immediate discontinuance of such activity is necessary to reduce or eliminate damage to neighboring property, the district may petition the district court for an order to the owner and, if appropriate, the operator, to immediately cease and desist such activity until excess erosion can be brought into conformance with the soil-loss tolerance level or sediment resulting from excess erosion is prevented from leaving the property.

(5) Upon failure to comply with the order, the owner or, if appropriate, the operator shall be deemed in violation of the Erosion and Sediment Control Act and subject to further actions as provided by such act.

Source: Laws 1986, LB 474, § 8; Laws 1988, LB 594, § 3; Laws 1994, LB 480, § 23; Laws 2015, LB206, § 4.

A landowner, who was required to implement conservation measures on his land, did not have standing to sue a city in an inverse condemnation action where the city filed a complaint under this section but the natural resources district was responsible for prosecuting the complaint. Strom v. City of Oakland, 255 Neb. 210, 583 N.W.2d 311 (1998).

2-4609 Filing of complaint; effect.

The filing of a complaint shall not preclude the complainant from pursuing any other remedy available to the complainant under the Erosion and Sediment Control Act, other law, or equity.

Source: Laws 1986, LB 474, § 9.

2-4610 Conformance with farm unit conservation plan or soil-loss tolerance level; effect; cost-sharing assistance; availability; lack of cost-sharing assistance; effect.

(1) Any person owning or operating private agricultural, horticultural, or silvicultural lands who has a farm unit conservation plan approved by the district and is implementing and maintaining the plan in strict compliance with a conservation agreement or any person whose normal agricultural, horticultural, and silvicultural practices are in conformance with the applicable soil-loss tolerance level shall, for purposes of such land, be deemed to be in compliance with the requirements of the Erosion and Sediment Control Act and any approved erosion and sediment control program.

(2) To prevent excess erosion and sediment from leaving the land due to any agricultural or nonagricultural land-disturbing activity, cost-sharing assistance may be available from any district. Such assistance may be used for any erosion or sediment control practice. The lack of available cost-sharing assistance does not offset the requirement that the owner and, if appropriate, the operator of such land comply with the terms of an approved plan of compliance or an administrative order.

Source: Laws 1986, LB 474, § 10; Laws 1988, LB 594, § 4; Laws 1994, LB 480, § 24; Laws 2015, LB206, § 5.

2-4611 Administrative order; appeal.

Any owner or operator served with an administrative order of a district may, within thirty days after service of the administrative order, appeal to the district court in the county in which a majority of the land is located. The appeal shall be de novo and shall be conducted in accordance with section 2-4613.

Source: Laws 1986, LB 474, § 11.

2-4612 Order for immediate compliance; when authorized.

The district shall petition the district court for a court order requiring immediate compliance with an administrative order previously issued by the district if:

(1) The work necessary to comply with the administrative order is not commenced on or before the date specified in such order or in any supplementary orders subsequently issued unless, in the judgment of the district, the failure to commence or complete the work as required by the administrative order is due to factors beyond the control of the person to whom such order is directed and the person can be relied upon to commence and complete the necessary work at the earliest possible time;

(2) The work is not being performed with due diligence or is not satisfactorily completed by the date specified in the administrative order or the practices are not being operated, utilized, or maintained as required;

(3) The work is not of a type or quality specified by the district and, when completed, it will not or does not reduce soil erosion from such land below the soil-loss tolerance level or, to the extent excess erosion is permitted by the district for a nonagricultural land-disturbing activity, will not or does not prevent sediment resulting from such excess erosion from leaving the land involved; or

(4) The person to whom the administrative order is directed advises the district that he or she does not intend to commence or complete such work.

Source: Laws 1986, LB 474, § 12; Laws 1988, LB 594, § 5; Laws 2015, LB206, § 6.

2-4613 District court action; procedures; order; appeal; failure to comply with order; effect.

In the district court action, the burden of proof shall be upon the district to show that soil erosion is occurring in excess of the applicable soil-loss tolerance level and that the landowner or operator has not established or maintained soil and water conservation practices or erosion or sediment control practices in compliance with the district's erosion and sediment control program. Upon receiving satisfactory proof, the court shall issue an order directing the owner or operator to comply with the administrative order previously issued by the district. The court may modify the administrative order if deemed necessary. Notice of the court order shall be given by either personal service or certified or registered mail to each person to whom the order is directed, who may, within thirty days from the date of the court order, appeal to the Court of Appeals. Any person who fails to comply with the court order issued within the time specified in such order, unless the order has been stayed pending an appeal, shall be deemed in contempt of court and punished accordingly.

Source: Laws 1986, LB 474, § 13; Laws 1991, LB 732, § 10; Laws 2015, LB206, § 7.

ARTICLE 47

AGRICULTURAL REVITALIZATION AUTHORITY

Section
2-4701. Repealed. Laws 1996, LB 966, § 4.
2-4702. Repealed. Laws 1996, LB 966, § 4.
2-4703. Repealed. Laws 1996, LB 966, § 4.
2-4704. Repealed. Laws 1996, LB 966, § 4.

Section
2-4705. Repealed. Laws 1996, LB 966, § 4.
2-4706. Repealed. Laws 1996, LB 966, § 4.
2-4707. Repealed. Laws 1996, LB 966, § 4.
2-4708. Repealed. Laws 1996, LB 966, § 4.
2-4709. Repealed. Laws 1996, LB 966, § 4.
2-4710. Repealed. Laws 1996, LB 966, § 4.
2-4711. Repealed. Laws 1996, LB 966, § 4.
2-4712. Repealed. Laws 1996, LB 966, § 4.
2-4713. Repealed. Laws 1996, LB 966, § 4.
2-4714. Repealed. Laws 1996, LB 966, § 4.
2-4715. Repealed. Laws 1996, LB 966, § 4.
2-4716. Repealed. Laws 1996, LB 966, § 4.
2-4717. Repealed. Laws 1996, LB 966, § 4.
2-4718. Repealed. Laws 1996, LB 966, § 4.
2-4719. Repealed. Laws 1996, LB 966, § 4.
2-4720. Repealed. Laws 1996, LB 966, § 4.
2-4721. Repealed. Laws 1996, LB 966, § 4.
2-4722. Repealed. Laws 1996, LB 966, § 4.
2-4723. Repealed. Laws 1996, LB 966, § 4.
2-4724. Repealed. Laws 1996, LB 966, § 4.
2-4725. Repealed. Laws 1996, LB 966, § 4.
2-4726. Repealed. Laws 1996, LB 966, § 4.
2-4727. Repealed. Laws 1996, LB 966, § 4.
2-4728. Repealed. Laws 1996, LB 966, § 4.
2-4729. Repealed. Laws 1996, LB 966, § 4.
2-4730. Repealed. Laws 1996, LB 966, § 4.
2-4731. Repealed. Laws 1996, LB 966, § 4.
2-4732. Repealed. Laws 1996, LB 966, § 4.
2-4733. Repealed. Laws 1996, LB 966, § 4.
2-4734. Repealed. Laws 1996, LB 966, § 4.
2-4735. Repealed. Laws 1996, LB 966, § 4.
2-4736. Repealed. Laws 1996, LB 966, § 4.
2-4737. Repealed. Laws 1996, LB 966, § 4.
2-4738. Repealed. Laws 1996, LB 966, § 4.
2-4739. Repealed. Laws 1996, LB 966, § 4.
2-4740. Repealed. Laws 1996, LB 966, § 4.
2-4741. Repealed. Laws 1996, LB 966, § 4.
2-4742. Repealed. Laws 1996, LB 966, § 4.
2-4743. Repealed. Laws 1996, LB 966, § 4.
2-4744. Repealed. Laws 1996, LB 966, § 4.
2-4745. Repealed. Laws 1996, LB 966, § 4.
2-4746. Repealed. Laws 1996, LB 966, § 4.
2-4747. Repealed. Laws 1996, LB 966, § 4.
2-4748. Repealed. Laws 1996, LB 966, § 4.

2-4701 Repealed. Laws 1996, LB 966, § 4.

2-4702 Repealed. Laws 1996, LB 966, § 4.

2-4703 Repealed. Laws 1996, LB 966, § 4.

2-4704 Repealed. Laws 1996, LB 966, § 4.

2-4705 Repealed. Laws 1996, LB 966, § 4.

2-4706 Repealed. Laws 1996, LB 966, § 4.

2-4707 Repealed. Laws 1996, LB 966, § 4.

2-4708 Repealed. Laws 1996, LB 966, § 4.

2-4709 Repealed. Laws 1996, LB 966, § 4.

2-4710 Repealed. Laws 1996, LB 966, § 4.

2-4711 Repealed. Laws 1996, LB 966, § 4.

2-4712 Repealed. Laws 1996, LB 966, § 4.

2-4713 Repealed. Laws 1996, LB 966, § 4.

2-4714 Repealed. Laws 1996, LB 966, § 4.

2-4715 Repealed. Laws 1996, LB 966, § 4.

2-4716 Repealed. Laws 1996, LB 966, § 4.

2-4717 Repealed. Laws 1996, LB 966, § 4.

2-4718 Repealed. Laws 1996, LB 966, § 4.

2-4719 Repealed. Laws 1996, LB 966, § 4.

2-4720 Repealed. Laws 1996, LB 966, § 4.

2-4721 Repealed. Laws 1996, LB 966, § 4.

2-4722 Repealed. Laws 1996, LB 966, § 4.

2-4723 Repealed. Laws 1996, LB 966, § 4.

2-4724 Repealed. Laws 1996, LB 966, § 4.

2-4725 Repealed. Laws 1996, LB 966, § 4.

2-4726 Repealed. Laws 1996, LB 966, § 4.

2-4727 Repealed. Laws 1996, LB 966, § 4.

2-4728 Repealed. Laws 1996, LB 966, § 4.

2-4729 Repealed. Laws 1996, LB 966, § 4.

2-4730 Repealed. Laws 1996, LB 966, § 4.

2-4731 Repealed. Laws 1996, LB 966, § 4.

2-4732 Repealed. Laws 1996, LB 966, § 4.

2-4733 Repealed. Laws 1996, LB 966, § 4.

2-4734 Repealed. Laws 1996, LB 966, § 4.

2-4735 Repealed. Laws 1996, LB 966, § 4.

2-4736 Repealed. Laws 1996, LB 966, § 4.

2-4737 Repealed. Laws 1996, LB 966, § 4.

2-4738 Repealed. Laws 1996, LB 966, § 4.

2-4739 Repealed. Laws 1996, LB 966, § 4.

2-4740 Repealed. Laws 1996, LB 966, § 4.

2-4741 Repealed. Laws 1996, LB 966, § 4.

2-4742 Repealed. Laws 1996, LB 966, § 4.

2-4743 Repealed. Laws 1996, LB 966, § 4.

2-4744 Repealed. Laws 1996, LB 966, § 4.

2-4745 Repealed. Laws 1996, LB 966, § 4.

2-4746 Repealed. Laws 1996, LB 966, § 4.

2-4747 Repealed. Laws 1996, LB 966, § 4.

2-4748 Repealed. Laws 1996, LB 966, § 4.

ARTICLE 48
FARM MEDIATION

Section
2-4801. Act, how cited.
2-4802. Terms, defined.
2-4803. Administrator; duties.
2-4804. Financial, legal, and farm mediation services; contracts to provide.
2-4805. Farm mediation service; advise borrower of assistance programs.
2-4806. Fees.
2-4807. Creditor; provide notification of availability of mediation; when.
2-4808. Mediation; request; participants.
2-4809. Initial mediation meeting.
2-4810. Mediation period; duration; continuation.
2-4811. Agreement; mediator; powers; enforcement.
2-4812. Mediator; duties; confidentiality required.
2-4813. Administrator; farm mediation service; promote services.
2-4814. Applicability of act.
2-4815. Farm mediation service; maintain statistical records.
2-4816. Repealed. Laws 2009, LB 101, § 3.

2-4801 Act, how cited.

Sections 2-4801 to 2-4815 shall be known and may be cited as the Farm Mediation Act.

Source: Laws 1988, LB 664, § 1; Laws 2009, LB101, § 1.

2-4802 Terms, defined.

As used in the Farm Mediation Act, unless the context otherwise requires:

(1) Administrator means the Department of Agriculture or any other appropriate state agency designated by the Governor;

(2) Borrower means an individual, limited liability company, corporation, trust, cooperative, joint venture, or other entity entitled to contract who is engaged in farming or ranching, who derives more than fifty percent of his or her gross income from farming or ranching, and who holds an agricultural loan;

(3) Creditor means any individual, organization, cooperative, partnership, limited liability company, trust, or state or federally chartered corporation to whom an agricultural loan is owed;

(4) Farm mediation service means an entity with which the administrator contracts to conduct mediation and related services pursuant to the act;

(5) Mediation means a process by which the parties present, discuss, and explore practical and realistic alternatives to the resolution of a dispute; and

(6) Mediator means anyone responsible for and engaged in the performance of mediation pursuant to the act.

Source: Laws 1988, LB 664, § 2; Laws 1993, LB 121, § 81; Laws 1997, LB 200, § 1.

2-4803 Administrator; duties.

The administrator shall serve as the farm mediation program coordinator and shall be responsible for placing into effect and implementing the Farm Mediation Act.

Source: Laws 1988, LB 664, § 3.

2-4804 Financial, legal, and farm mediation services; contracts to provide.

(1) Borrowers involved in mediation under the Farm Mediation Act shall be offered assistance, at no cost to borrowers, in the analysis of their business and personal financial situation. The administrator shall contract with one or more eligible persons to provide such assistance. A person shall be eligible to contract to provide services pursuant to this subsection if he or she has staff trained and experienced in farm and ranch financial analysis, is familiar with the unique aspects of production agriculture, is able to work effectively with borrowers and creditors, and demonstrates an ability to assist each borrower in developing alternatives and to evaluate such alternatives for potential viability.

(2) The administrator shall provide any available information regarding legal assistance programs for borrowers and may contract with one or more eligible persons to provide such assistance. A person shall be eligible to contract to provide services pursuant to this subsection if such assistance is provided by attorneys who are qualified in agricultural credit problems of borrowers.

(3) The administrator shall contract with one or more eligible persons to provide farm mediation services pursuant to the Farm Mediation Act. A person shall be eligible to contract to provide farm mediation services if he or she is qualified or provides agricultural mediation training of mediators to a level of expertise specified by the administrator and ensures that all mediation sessions are confidential.

(4) Any person contracting with the administrator to provide services pursuant to this section shall demonstrate an ability to perform high quality service for the least cost within the time limits established by the administrator.

(5) The contract or contracts entered into pursuant to this section may be terminated by either party upon written notice. Any person awarded a contract shall be designated as the contractor for the service area of the state set forth in such contract for the duration of the contract.

Source: Laws 1988, LB 664, § 4; Laws 1997, LB 200, § 2.

2-4805 Farm mediation service; advise borrower of assistance programs.

After receiving a mediation request, the farm mediation service shall advise the borrower that financial and legal preparation assistance may be available.

The farm mediation service shall provide any other available information regarding assistance programs to farmers.

Source: Laws 1988, LB 664, § 5.

2-4806 Fees.

The administrator shall adopt and promulgate rules and regulations setting appropriate fee guidelines for the services provided under the Farm Mediation Act, which fees shall not exceed actual costs and shall be borne equally by all parties, and setting forth any procedures or requirements necessary to implement the act. The rules and regulations shall provide that the fees shall be collected by the farm mediation service and retained by the farm mediation service to offset its costs and that the farm mediation service may require payment of the fees or a portion thereof prior to a mediation meeting. The administrator may adopt and promulgate rules and regulations that allow a separate fee schedule for mediation services that are not eligible for partial or full federal reimbursement.

Source: Laws 1988, LB 664, § 6; Laws 2007, LB108, § 1.

2-4807 Creditor; provide notification of availability of mediation; when.

(1) At least thirty days prior to the initiation of a proceeding on an agricultural debt in excess of forty thousand dollars, a creditor, except as provided in subsection (2) or (3) of this section, shall provide written notice directly to the borrower of the availability of mediation and the address and telephone number of the farm mediation service in the service area of the borrower.

(2) Subsection (1) of this section shall not apply to creditors subject to the federal Agricultural Credit Act of 1987 if such act and the rules and regulations adopted and promulgated thereunder require otherwise.

(3) Subsection (1) of this section shall not apply if a court of competent jurisdiction determines that the time delay required would cause the creditor to suffer irreparable harm because there are reasonable grounds to believe the borrower may dissipate or divert collateral.

Source: Laws 1988, LB 664, § 7.

While creditors subject to this section are required to provide notice of the availability of mediation, participation in mediation is optional. First Nat. Bank North Platte v. Cardenas, 299 Neb. 497, 909 N.W.2d 79 (2018).

2-4808 Mediation; request; participants.

(1) Any borrower or creditor may request mediation of any indebtedness incurred in relation to an agricultural loan by applying to the farm mediation service. Any party involved in an adverse decision from a United States Department of Agriculture agency may request mediation by applying to the farm mediation service. The farm mediation service may also accept disputes regarding division fences, including disputes referred by a court pursuant to section 34-112.02.

(2) The farm mediation service shall notify all the parties and, upon their consent, schedule a meeting with a mediator. The parties shall not be required to attend any mediation meetings under this section, and failure to attend any mediation meetings or to participate in mediation under this section shall not affect the rights of any party in any manner. Participation in mediation under

this section shall not be a prerequisite or a bar to the institution of or prosecution of legal proceedings by any party.

Source: Laws 1988, LB 664, § 8; Laws 1997, LB 200, § 3; Laws 2007, LB108, § 2.

While creditors subject to section 2-4807 are required to provide notice of the availability of mediation, participation in mediation is optional. First Nat. Bank North Platte v. Cardenas, 299 Neb. 497, 909 N.W.2d 79 (2018).

2-4809 Initial mediation meeting.

After receiving a mediation request under section 2-4808, the farm mediation service shall send a mediation meeting notice to all the consenting parties setting a time and place for an initial mediation meeting between the parties and a mediator associated with the farm mediation service. Adequate preparation by all parties shall be advised by the farm mediation service prior to the mediation meeting. An initial mediation meeting shall be held within forty days after receiving the mediation request or as otherwise agreed by the parties.

Source: Laws 1988, LB 664, § 9; Laws 1997, LB 200, § 4.

2-4810 Mediation period; duration; continuation.

The farm mediation service shall conduct and conclude a mediation meeting during the mediation period which extends for sixty days after the farm mediation service receives the mediation request. If all parties consent, mediation may continue after the end of the mediation period. If any party elects not to participate in mediation, the farm mediation service shall so notify all parties.

Source: Laws 1988, LB 664, § 10.

2-4811 Agreement; mediator; powers; enforcement.

If an agreement is reached between the parties, the mediator may (1) draft a written mediation agreement encompassing the agreement, (2) have it signed by the parties, and (3) file the agreement with the farm mediation service. Any party to the mediation agreement may enforce the agreement as a legal contract.

Source: Laws 1988, LB 664, § 11; Laws 1997, LB 200, § 5.

2-4812 Mediator; duties; confidentiality required.

(1) At the initial mediation meeting and any subsequent meetings, the mediator associated with the farm mediation service shall:

(a) Listen to every party desiring to be heard;

(b) Attempt to mediate between the parties;

(c) Allow for exploration of legitimate and fair interests of the parties; and

(d) Advise the parties as to the existence of any available assistance programs including financial preparation and legal assistance.

(2) All documents and data regarding the finances of borrowers and creditors or the involvement of parties in an adverse decision from a United States Department of Agriculture agency which are created, collected, and maintained by the farm mediation service shall not be public records and shall be held in strict confidence by the farm mediation service and all parties to the mediation.

If all parties consent to disclosure, such information may be disclosed pursuant to the terms of the consent.

(3) No mediation shall commence until the mediator makes a statement to the effect of language contained in subsection (2) of this section. At the end of a mediation session, the mediator shall obtain a signed statement by all parties to the mediation agreeing to abide by the requirements of this section.

Source: Laws 1988, LB 664, § 12; Laws 1997, LB 200, § 6.

2-4813 Administrator; farm mediation service; promote services.

The administrator and the farm mediation service shall make an extensive effort to educate borrowers and creditors and other eligible participants on the mediation process; financial, legal, and federal agricultural program issues; and the availability of farm mediation services.

Source: Laws 1988, LB 664, § 13; Laws 1997, LB 200, § 7.

2-4814 Applicability of act.

Except as otherwise provided in the Farm Mediation Act, nothing in the act shall be applicable to or shall affect any legal proceedings filed by any party in mediation.

Source: Laws 1988, LB 664, § 14; Laws 1997, LB 200, § 8.

2-4815 Farm mediation service; maintain statistical records.

The farm mediation service shall maintain complete statistical records of program participation and costs and make them available upon request.

Source: Laws 1988, LB 664, § 15.

2-4816 Repealed. Laws 2009, LB 101, § 3.

ARTICLE 49
CLIMATE ASSESSMENT

Section
2-4901. Climate Assessment Response Committee; created; members; expenses; meetings.
2-4902. Climate Assessment Response Committee; duties.

2-4901 Climate Assessment Response Committee; created; members; expenses; meetings.

(1) The Climate Assessment Response Committee is hereby created. The office of the Governor shall be the lead agency and shall oversee the committee and its activities. The committee shall be composed of representatives appointed by the Governor with the approval of a majority of the Legislature from livestock producers, crop producers, the Nebraska Emergency Management Agency, and the Conservation and Survey Division and Cooperative Extension Service of the University of Nebraska. The Director of Agriculture or his or her designee, the chief executive officer of the Department of Health and Human Services or his or her designee, and the Director of Natural Resources or his or her designee shall be ex officio members of the committee. Representatives from the federal Consolidated Farm Service Agency and Federal Crop Insurance Corporation

may also serve on the committee at the invitation of the Governor. The chairperson of the Committee on Agriculture of the Legislature and the chairperson of the Committee on Natural Resources of the Legislature shall be nonvoting, ex officio members of the committee. The Governor may appoint a member of the Governor's Policy Research Office and any other state agency representatives or invite any other federal agencies to name representatives as he or she deems necessary. The Governor shall appoint one of the Climate Assessment Response Committee members to serve as the chairperson of the committee. Committee members shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

(2) The committee shall meet at least twice each year and shall meet more frequently (a) at the call of the chairperson, (b) upon request of a majority of the committee members, and (c) during periods of drought or other severe climate situations.

(3) The chairperson may establish subcommittees and may invite representatives of agencies other than those with members on the committee to serve on such subcommittees.

(4) Any funds for the activities of the committee and for other climate-related expenditures may be appropriated directly to the office of the Governor for contracting with other agencies or persons for tasks approved by the committee.

Source: Laws 1992, LB 274, § 1; Laws 1996, LB 43, § 1; Laws 1996, LB 1044, § 43; Laws 1999, LB 403, § 5; Laws 2000, LB 900, § 63; Laws 2007, LB296, § 22; Laws 2009, LB389, § 1; Laws 2020, LB381, § 11.

2-4902 Climate Assessment Response Committee; duties.

The Climate Assessment Response Committee shall:

(1) Provide timely and systematic data collection, analysis, and dissemination of information about drought and other severe climate occurrences to the Governor and to other interested persons;

(2) Provide the Governor and other interested persons with information and advice relevant to requests for federal disaster declarations and to the use of funds and other types of assistance available to the state because of such declarations;

(3) Establish criteria for startup and shutdown of various assessment and response activities by state and federal agencies during drought and other climate-related emergencies;

(4) Provide an organizational structure that assures information flow and defines the duties and responsibilities of all agencies during times of drought and climate-related emergencies;

(5) Maintain a current inventory of state and federal agency responsibilities in assessing and responding to drought and other climate-related emergencies;

(6) Provide a mechanism for the improvement of methods of assessing impacts of drought on agriculture and industry;

(7) Provide such other coordination and communication among federal and state agencies as is deemed appropriate by such committee;

(8) Provide the Governor and other interested persons with information and research on the impacts of cyclical climate change in Nebraska, including impacts on physical, ecological, and economic areas, and attempt to anticipate the unintended consequences of climate adaptation and mitigation;

(9) Facilitate communication between stakeholders and the state about cyclical climate change impacts and response strategies;

(10) By December 1, 2014, provide a report on cyclical climate change in Nebraska to the Governor and electronically to the Legislature which includes key points, overarching recommendations, and options that emerge from other reports and recommendations submitted to the Climate Assessment Response Committee; and

(11) Perform such other climate-related assessment and response functions as are desired by the Governor.

Source: Laws 1992, LB 274, § 2; Laws 2013, LB583, § 1; Laws 2014, LB1008, § 1.

ARTICLE 50

AQUACULTURE

Section
2-5001. Legislative findings.
2-5002. Terms, defined.
2-5003. Nebraska Aquaculture Board; created; members; terms; expenses.
2-5004. Repealed. Laws 1994, LB 1165, § 22.
2-5005. Board; proposed legislation.
2-5006. Board; duties.

2-5001 Legislative findings.

The Legislature finds that it is in the interest of the people of the state that the practice of aquaculture be encouraged in order to promote agricultural diversification, augment food supplies, expand employment opportunities, promote economic activity, increase stocks of fish and other aquatic life, protect and better use and manage the natural resources of the state, and provide other benefits to the state.

Source: Laws 1993, LB 830, § 1.

2-5002 Terms, defined.

For purposes of sections 2-5002 to 2-5006:

(1) Aquaculture shall have the definition found in section 2-3804.01;

(2) Aquaculture facility shall mean any facility, structure, lake, pond, tank, or tanker truck used for the purpose of propagating, selling, brokering, trading, or transporting live fish or viable gametes;

(3) Aquaculturist shall mean any individual, partnership, limited liability company, or corporation, other than an employee of a state or federal hatchery, involved in producing, transporting, or marketing cultured aquatic stock or products thereof;

(4) Aquatic disease shall mean any departure from a normal state of health of aquatic organisms caused by disease agents;

(5) Aquatic organism shall mean an individual member of any species of fish, mollusk, crustacean, aquatic reptile, aquatic amphibian, aquatic insect, or other

aquatic invertebrate. Aquatic organism shall include the viable gametes, eggs or sperm, of an aquatic organism;

(6) Board shall mean the Nebraska Aquaculture Board;

(7) Commercial aquaculturist shall mean an aquaculturist engaged in the business of growing, selling, brokering, or processing live or viable aquatic organisms for commercial purposes;

(8) Commission shall mean the Game and Parks Commission;

(9) Cultured aquatic stock shall mean aquatic organisms raised from privately owned stocks and aquatic organisms lawfully acquired and held in private ownership until they become intermingled with wild aquatic organisms;

(10) Department shall mean the Department of Agriculture; and

(11) Director shall mean the Director of Agriculture.

Source: Laws 1993, LB 830, § 2; Laws 1994, LB 884, § 9; Laws 1994, LB 1165, § 1.

2-5003 Nebraska Aquaculture Board; created; members; terms; expenses.

There is hereby created the Nebraska Aquaculture Board. The board shall consist of (1) one employee of the commission who is familiar with aquatic disease, appointed by the secretary of the commission, (2) one employee of the department appointed by the director, (3) three aquaculturists, appointed by the Governor, and (4) a representative of an industry or product which is related to or used in aquaculture, appointed by the Governor. The board shall elect from its members a chairperson. The terms of the members of the board shall be three years, except that the terms of the initial aquaculturist members of the board appointed by the Governor shall be staggered so that one member is appointed for a term of one year, one for a term of two years, and one for a term of three years, as determined by the Governor. Members appointed under subdivisions (3) and (4) of this section shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1993, LB 830, § 3; Laws 1994, LB 1165, § 2; Laws 1999, LB 405, § 1; Laws 2011, LB334, § 2; Laws 2020, LB381, § 12.

2-5004 Repealed. Laws 1994, LB 1165, § 22.

2-5005 Board; proposed legislation.

The board may consider and recommend to the Legislature appropriate legislation, including, but not limited to, legislation concerning the following:

(1) Fees to fund all direct and indirect costs of the administration and enforcement of the legislation;

(2) Standards applicable to products of cultured aquatic stock offered for sale;

(3) The establishment of standards for and certification of private aquaculture facilities which may include, but need not be limited to, standards for commercial aquaculturists with respect to sanitation, financial stability, disease control, and the movement of aquaculture products offered for sale;

(4) Procedures regarding granting, denying, suspending, or revoking an aquaculture facility permit and appeals processes relating thereto;

(5) Procedures and responsibilities for quarantine of aquaculture facilities upon the determination that a situation exists which threatens imminent danger to existing wild aquatic populations or to human health and safety and that no more reasonable means exist to control the situation including, but not limited to, controlling unwanted aquatic species and procedures for controlling aquatic infectious diseases that may affect wild aquatic or cultured aquatic stock;

(6) Procedures for contracting services of any specialist in this state or in any other state or with any other government agency, through intergovernmental agreement, contract, or memorandum of understanding, to implement and enforce the legislation;

(7) Penalties for violations of the aquaculture plan developed by the board;

(8) The evaluation and consideration of which terms of the aquaculture industry need further definition as well as an evaluation of the impact of such legislation;

(9) Barriers to entry in the business of aquaculture and ways to reduce or eliminate such barriers which may include an evaluation of tax exemptions and education; and

(10) The interrelationship between the department in promotion of and the commission in the regulation of cultured aquatic stock.

Source: Laws 1993, LB 830, § 5; Laws 1994, LB 1165, § 3.

2-5006 Board; duties.

The board shall:

(1) Advise the commission, the department, and the University of Nebraska Institute of Agriculture and Natural Resources on current and future regulations and issues which may enhance the development of the aquaculture industry;

(2) Conduct public meetings for the purpose of addressing current issues affecting aquaculture, as well as obtaining feedback from the commercial aquaculturists;

(3) Join in consultation with the commission and department on all matters pertaining to commercial aquaculturists and aquaculture, including the importation of nonindigenous species into Nebraska for commercial use; and

(4) Review any orders of the commission for the quarantine or destruction of aquatic organisms which are affected with prohibited pathogens. The board may make recommendations to the commission regarding such orders.

Source: Laws 1994, LB 1165, § 4.

ARTICLE 51

BUFFER STRIP ACT

Section
2-5101. Act, how cited.
2-5102. Legislative findings.
2-5103. Terms, defined.
2-5104. Repealed. Laws 2000, LB 1135, § 34.
2-5105. Repealed. Laws 2000, LB 1135, § 34.
2-5106. Buffer Strip Incentive Fund; created; use; investment.
2-5107. Buffer strip; creation; application for reimbursement; procedure; district; duties.

Section
2-5108. Buffer strip reimbursement; department; duties.
2-5109. Contractual agreement; terms; payments; renewal.
2-5110. Contractual agreements; compliance; effect.
2-5111. Rules and regulations; department; powers and duties.

2-5101 Act, how cited.

Sections 2-5101 to 2-5111 shall be known and may be cited as the Buffer Strip Act.

Source: Laws 1998, LB 1126, § 1.

2-5102 Legislative findings.

The Legislature finds and declares that:

(1) Buffer strips help to reduce the levels of sediment, crop nutrient, pesticides, and other chemicals introduced into surface water resources; and

(2) Both wildlife and people benefit as a result of improved water quality.

Source: Laws 1998, LB 1126, § 2.

2-5103 Terms, defined.

For purposes of the Buffer Strip Act:

(1) Buffer strip means a strip of vegetation used to intercept or trap field sediment, organics, pesticides, and other potential pollutants before they reach surface water;

(2) Department means the Department of Agriculture;

(3) District means a natural resources district; and

(4) Person means any individual, partnership, firm, corporation, company, society, or association, the state or any department, agency, or subdivision thereof, or any other public or private entity.

Source: Laws 1998, LB 1126, § 3; Laws 2000, LB 1135, § 1.

2-5104 Repealed. Laws 2000, LB 1135, § 34.

2-5105 Repealed. Laws 2000, LB 1135, § 34.

2-5106 Buffer Strip Incentive Fund; created; use; investment.

The Buffer Strip Incentive Fund is created. Proceeds raised from fees imposed for the registration of pesticides and earmarked for the fund pursuant to section 2-2634, proceeds raised from federal grants earmarked for the fund, and any proceeds raised from public or private donations made to the fund shall be remitted to the State Treasurer for credit to the fund. The fund shall be administered by the department to maintain the buffer strip program and for expenses directly related to the program, including necessary expenses of the department in carrying out its duties and responsibilities under the Buffer Strip Act, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. The annual cost of administering the buffer strip program shall not exceed ten percent of the total annual proceeds credited to the Buffer Strip Incentive Fund. Such administrative costs shall include funds allocated by the department to the districts for their administrative costs. Any money in the fund available for investment shall be invested by the state

investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1998, LB 1126, § 6; Laws 2009, LB98, § 5; Laws 2009, First Spec. Sess., LB3, § 6.

Cross References

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

2-5107 Buffer strip; creation; application for reimbursement; procedure; district; duties.

(1) Any person who desires to create a buffer strip adjacent to surface water on his or her property may submit an application for buffer strip reimbursement to the district. The application shall include the location of the proposed buffer strip and the total number of acres to be included in the proposed buffer strip. If the person will receive any money from any other source for use of the land proposed for the buffer strip, the application shall include the identity of the source or sources, the amount of money to be received, and the length of time the money will be received.

(2) All applications for buffer strip reimbursement under the Buffer Strip Act shall be submitted by a date established by rules and regulations adopted and promulgated pursuant to section 2-5111.

(3) Upon receipt of an application for buffer strip reimbursement, the district shall review the application for compliance with the requirements set forth in the rules and regulations adopted and promulgated pursuant to section 2-5111.

(4) If the district determines that the application is not in compliance with the requirements established by the department, the district shall inform the applicant of the deficiencies in the plan and, if feasible, recommend an alternate plan which complies with the rules and regulations of the department. The applicant may then submit a new application consistent with the recommendation of the district.

(5) If the district determines that the application is in compliance with the standards established by the department, the district shall forward the application to the department. The application shall include a written evaluation of the applicant's compliance with the requirements set forth in rules and regulations adopted and promulgated pursuant to section 2-5111.

Source: Laws 1998, LB 1126, § 7.

2-5108 Buffer strip reimbursement; department; duties.

(1) Upon receipt of the application for buffer strip reimbursement, the department shall review the application for compliance with the rules and regulations adopted and promulgated pursuant to section 2-5111.

(2) If the department determines that the application is not in compliance with the rules and regulations adopted and promulgated pursuant to section 2-5111, the department shall inform the district of the deficiencies. The district shall then inform the applicant of the deficiencies and allow the applicant to submit a new application.

(3) The department shall determine which applications are in compliance with the rules and regulations adopted and promulgated under section 2-5111 and shall compile a list of all such applications according to the factors set

forth in the rules and regulations. From such prioritized list, and based upon the amount of funds available, the department shall notify the districts which applications are approved. Funds approved by the department for buffer strip reimbursement shall only be for buffer strips created after January 1, 1996. The total amount of funds available for all new and existing agreements shall not exceed the projected available cash balance of the Buffer Strip Incentive Fund for the entire term of the agreements.

Source: Laws 1998, LB 1126, § 8.

2-5109 Contractual agreement; terms; payments; renewal.

(1) Upon approval of an application by the district and the department, the district shall enter into a contractual agreement with the applicant for the land included in the buffer strip. The agreement shall include a provision that the applicant shall maintain the buffer strip in accordance with the approved plan during the term of the rental agreement. The agreement may also include a provision that the applicant shall not apply specified fertilizers on buffered fields between designated dates. Failure to maintain the buffer strip in accordance with the plan shall be cause for all future payments under the agreement to be forfeited and shall be cause for the recovery by the department of any payments previously made. Upon submission of a copy of the agreement to the department, it shall authorize the State Treasurer to transfer funds to the district from the Buffer Strip Incentive Fund in an amount equal to the total amount of funds due for the agreement in that district that year. Such transfer shall be made as soon as funds are available.

(2) If the applicant does not receive reimbursement from any other source for the land included in the buffer strip, the district shall pay the applicant annually an amount not to exceed two hundred fifty dollars per acre or fraction thereof included in the buffer strip.

(3) If the applicant receives reimbursement from any other source for the land included in the buffer strip, the district shall pay the applicant annually an amount not to exceed two hundred fifty dollars per acre included in the buffer strip, minus the amount of the other reimbursement.

(4) The actual amount of any payment made to an applicant under subsection (2) or (3) of this section shall be determined by the district using the sliding scale provided in rules and regulations adopted and promulgated pursuant to section 2-5111. Such amount shall be included as part of the application submitted to the department.

(5) Contractual agreements pursuant to this section shall be for a minimum term of five years and a maximum term of ten years.

(6) Following the expiration of any contractual agreement pursuant to this section, the applicant may apply to renew the agreement. Any application for renewal of an agreement shall be made in accordance with sections 2-5107 to 2-5109 and shall be considered with any new applications.

Source: Laws 1998, LB 1126, § 9; Laws 2008, LB790, § 1.

2-5110 Contractual agreements; compliance; effect.

Each district shall take reasonable steps to ensure that contractual agreements pursuant to section 2-5109 are complied with by the applicant. The department shall adequately reimburse the districts for the costs of such

purposes. If the applicant does not comply with the terms of the agreement, the district shall discontinue any payments to the applicant.

Source: Laws 1998, LB 1126, § 10.

2-5111 Rules and regulations; department; powers and duties.

The department shall adopt and promulgate such rules and regulations as are necessary for the enforcement and administration of the Buffer Strip Act. The rules and regulations shall include, but not be limited to, rules and regulations providing for:

(1) Types of vegetation suitable for buffer strips;

(2) Appropriate width of buffer strips;

(3) Types of surface water appropriate for protection by buffer strips;

(4) Soil types and classifications appropriate for protection by buffer strips;

(5) A sliding scale, based on land value and potential environmental benefit, to determine the amount to be paid as payment under the act for the buffer strip;

(6) An index to rank those applications that meet the technical requirements of the act to determine priority of funding. Such index shall, at a minimum, identify the factors that will be considered in scoring an application and assign a numerical value for each of those factors. In addition to those items listed in subdivisions (1) to (5) of this section, such factors shall also include an evaluation of each application for the water quality benefits from reduced soil erosion and runoff, the on-farm benefits of reduced soil erosion, and the cost per acre of an application. Priority may be given to those applications which create buffer strips at the lowest possible cost, assuming environmental protection benefits are equal in other respects;

(7) The minimum requirements necessary for any contractual agreement entered into between a district and applicant;

(8) A project map of the buffer strip program created by the Buffer Strip Act showing the location of buffer strips in each watershed; and

(9) Any other rule and regulation deemed appropriate for implementation of the Buffer Strip Act.

Source: Laws 1998, LB 1126, § 11.

ARTICLE 52

AGRICULTURAL STRUCTURE ASSESSMENT TASK FORCE

Section
2-5201. Repealed. Laws 2004, LB 940, § 4.

2-5201 Repealed. Laws 2004, LB 940, § 4.

ARTICLE 53

CARBON SEQUESTRATION

Section
2-5301. Repealed. Laws 2017, LB644, § 21.
2-5302. Repealed. Laws 2017, LB644, § 21.
2-5303. Repealed. Laws 2017, LB644, § 21.
2-5304. Repealed. Laws 2012, LB 782, § 253.

Section
2-5305. Repealed. Laws 2017, LB644, § 21.
2-5306. Repealed. Laws 2017, LB644, § 21.

2-5301 Repealed. Laws 2017, LB644, § 21.

2-5302 Repealed. Laws 2017, LB644, § 21.

2-5303 Repealed. Laws 2017, LB644, § 21.

2-5304 Repealed. Laws 2012, LB 782, § 253.

2-5305 Repealed. Laws 2017, LB644, § 21.

2-5306 Repealed. Laws 2017, LB644, § 21.

ARTICLE 54

AGRICULTURAL OPPORTUNITIES AND VALUE-ADDED PARTNERSHIPS ACT

Section
2-5401. Repealed. Laws 2005, LB 90, § 21.
2-5402. Repealed. Laws 2005, LB 90, § 21.
2-5403. Repealed. Laws 2005, LB 90, § 21.
2-5404. Repealed. Laws 2005, LB 90, § 21.
2-5405. Repealed. Laws 2005, LB 90, § 21.
2-5406. Repealed. Laws 2005, LB 90, § 21.
2-5407. Repealed. Laws 2005, LB 90, § 21.
2-5408. Repealed. Laws 2005, LB 90, § 21.
2-5409. Repealed. Laws 2005, LB 90, § 21.
2-5410. Repealed. Laws 2005, LB 90, § 21.
2-5411. Repealed. Laws 2005, LB 90, § 21.
2-5412. Repealed. Laws 2005, LB 90, § 21.
2-5413. Repealed. Laws 2011, LB 387, § 18.
2-5414. Repealed. Laws 2011, LB 387, § 18.
2-5415. Repealed. Laws 2011, LB 387, § 18.
2-5416. Repealed. Laws 2011, LB 387, § 18.
2-5417. Repealed. Laws 2011, LB 387, § 18.
2-5418. Repealed. Laws 2011, LB 387, § 18.
2-5419. Repealed. Laws 2011, LB 387, § 18.
2-5420. Repealed. Laws 2011, LB 387, § 18.
2-5421. Repealed. Laws 2011, LB 387, § 18.
2-5422. Repealed. Laws 2011, LB 387, § 18.
2-5423. Repealed. Laws 2011, LB 387, § 18.
2-5424. Repealed. Laws 2011, LB 387, § 18.

2-5401 Repealed. Laws 2005, LB 90, § 21.

2-5402 Repealed. Laws 2005, LB 90, § 21.

2-5403 Repealed. Laws 2005, LB 90, § 21.

2-5404 Repealed. Laws 2005, LB 90, § 21.

2-5405 Repealed. Laws 2005, LB 90, § 21.

2-5406 Repealed. Laws 2005, LB 90, § 21.

2-5407 Repealed. Laws 2005, LB 90, § 21.

2-5408 Repealed. Laws 2005, LB 90, § 21.

2-5409 Repealed. Laws 2005, LB 90, § 21.

2-5410 Repealed. Laws 2005, LB 90, § 21.

2-5411 Repealed. Laws 2005, LB 90, § 21.

2-5412 Repealed. Laws 2005, LB 90, § 21.

2-5413 Repealed. Laws 2011, LB 387, § 18.

2-5414 Repealed. Laws 2011, LB 387, § 18.

2-5415 Repealed. Laws 2011, LB 387, § 18.

2-5416 Repealed. Laws 2011, LB 387, § 18.

2-5417 Repealed. Laws 2011, LB 387, § 18.

2-5418 Repealed. Laws 2011, LB 387, § 18.

2-5419 Repealed. Laws 2011, LB 387, § 18.

2-5420 Repealed. Laws 2011, LB 387, § 18.

2-5421 Repealed. Laws 2011, LB 387, § 18.

2-5422 Repealed. Laws 2011, LB 387, § 18.

2-5423 Repealed. Laws 2011, LB 387, § 18.

2-5424 Repealed. Laws 2011, LB 387, § 18.

ARTICLE 55

AGRICULTURAL SUPPLIERS LEASE PROTECTION ACT

Section
2-5501. Act, how cited.
2-5502. Legislative findings.
2-5503. Terms, defined.
2-5504. Railroad land; lease renewal; conditions; controversy; department; duties.
2-5505. Railroad land; substantial improvements; offer to sell; agricultural tenant; rights; department; duties.
2-5506. Department of Agriculture; employ appraiser; costs.
2-5507. Act; applicability; effect.
2-5508. Agricultural Suppliers Lease Protection Cash Fund; created; use; investment.

2-5501 Act, how cited.

Sections 2-5501 to 2-5508 shall be known and may be cited as the Agricultural Suppliers Lease Protection Act.

Source: Laws 2002, LB 435, § 1.

2-5502 Legislative findings.

The Legislature finds that agricultural production in this state is highly dependent upon businesses providing inputs for agricultural producers and markets for agricultural commodities which have historically located on lands

owned and served by railroads. It is vital to the continued prosperity of agriculture that such businesses maintain reasonable access to rail service and maintain reasonable terms of tenancy upon land owned by railroads or their successors in interest. The Legislature also finds that agribusiness leaseholders' substantial investments in structures and improvements unique to their rail location, as well as dependency on rail access, place them at a disadvantage in negotiating lease renewals. The Legislature further finds that given the substantial investment in structures and improvements made by agribusiness leaseholders, it is equitable that such agribusiness leaseholders have a right of first refusal to purchase the land they lease, should it be offered for sale. The purpose of the Agricultural Suppliers Lease Protection Act is to establish a system for fair resolution of lease disputes that may arise between railroad property owners or their successors and agribusiness tenants and to guard against unreasonable lease renewal terms or unjust lease termination.

Source: Laws 2002, LB 435, § 2.

2-5503 Terms, defined.

For purposes of the Agricultural Suppliers Lease Protection Act:

(1) Agricultural tenant means any public warehouse licensee as defined in section 88-526, any livestock auction market as defined in section 54-1158, or any other persons primarily engaged in the sale or distribution of fertilizer or agricultural chemicals or farm implements, machinery, or equipment occupying railroad land owned or controlled by a railroad or its grantee or successor in interest;

(2) Fair market lease rate means the lease rate of comparable commercial properties adjusted according to accepted appraisal standards which may include, but are not necessarily limited to, lease terms, market conditions, location, physical characteristics, economic characteristics stipulated in the lease, and nonrealty components or, in the absence of comparability, the lease rate as determined by comparable rates of return realized on the lease of other commercial property in proximity to the lease site;

(3) Good faith means honesty in fact in the conduct of the transaction concerned;

(4) Lease means any agreement between a railroad and a tenant under the terms of which a tenant occupies the surface of railroad land;

(5) Railroad land means any land acquired by a railroad in strips for right-of-way and any parcel or tract acquired by a railroad adjacent to its right-of-way to aid in the construction, maintenance, and accommodation of its railway and which is occupied pursuant to a lease by a tenant who owns substantial improvements thereon;

(6) Substantial improvements means buildings or other structures or fixtures to structures that are permanent in nature and includes equipment that is affixed to real property or structures; and

(7) Successor in interest includes any agent, successor, assignee, trustee, receiver, or other person acquiring interests or rights in railroad land, including, but not limited to, the owner or holder of any servient estate or right of reversion relating to railroad land.

Source: Laws 2002, LB 435, § 3.

2-5504 Railroad land; lease renewal; conditions; controversy; department; duties.

(1) Except when an owner of railroad land has received a bona fide third-party offer to lease the property that the owner desires to accept, at the expiration of an existing lease, the agricultural tenant shall be given the opportunity to renew the lease at fair market lease rate. If a bona fide third-party offer has been made to lease the property that the owner desires to accept, then the agricultural tenant shall be given first opportunity for a period of thirty days after receipt of written notice of such third-party offer to renew the lease at a rate that is substantially equal in value to the third-party offer.

(2) All controversies regarding application and reasonableness of lease terms and conditions or fair market lease rate arising between a railroad or its successor in interest and an agricultural tenant who is the owner, lessee, or licensee of a substantial improvement situated on railroad land owned or controlled by the railroad or its successor in interest shall be resolved by negotiation or by Department of Agriculture action.

(3) The parties shall first negotiate in good faith to resolve any controversy. If any such controversy is not resolved within sixty days after notification is given to an agricultural tenant by a railroad or its successor in interest that it wishes to (a) renew a lease upon new terms, (b) terminate a lease, (c) not renew a lease upon the expiration of a current lease, or (d) change the terms of an existing lease, then either party may file a complaint with the department setting forth facts upon which such complaint is based.

(4) The department, after reasonable notice to the parties, shall hear and determine all matters in controversy and make such order as the facts of the controversy warrant. In conducting its hearing, the department shall have those powers granted to it under the Administrative Procedure Act. Any person shall have the right to appeal from such order in accordance with the act.

Source: Laws 2002, LB 435, § 4.

Cross References

Administrative Procedure Act, see section 84-920.

2-5505 Railroad land; substantial improvements; offer to sell; agricultural tenant; rights; department; duties.

(1)(a) Except when an owner of railroad land has received a bona fide third-party offer to purchase the property that the owner desires to accept, if a railroad or its successor in interest wishes to sell or offer to sell property leased to an agricultural tenant upon which substantial improvements owned by the agricultural tenant are located, then, except when the sale or offer to sell is made to a purchaser who is a common carrier who intends to operate a railroad on railroad right-of-way adjacent to the leased property for the public benefit or a purchaser who intends to use the railroad land for interim trail use under the National Trails System Act, 16 U.S.C. 1243, as such act existed on July 20, 2002, the railroad or its successor in interest shall first extend to the agricultural tenant a written offer to sell the railroad land to the agricultural tenant at fair market value.

(b) If a bona fide third-party offer that a railroad or its successor in interest desires to accept has been made to purchase property leased to an agricultural tenant upon which substantial improvements owned by the agricultural tenant

are located, the railroad or its successor in interest shall first extend to the agricultural tenant a written offer to sell the railroad land at a price that is substantially equal in value to such third-party offer of purchase. If the agricultural tenant does not accept such written offer within thirty days after receipt of the offer, then the railroad or its successor in interest may sell the property to the third party, and such third party is not bound under this section.

(2) The agricultural tenant shall have thirty days after a written offer made to the agricultural tenant pursuant to subdivision (1)(a) of this section to give written notice of either (a) acceptance of the offer to sell and of the offerer's determination of fair market value or (b) acceptance of the offer to sell and rejection of the offerer's determination of fair market value in which case the parties shall negotiate the fair market value and, if the parties cannot agree, the agricultural tenant shall have sixty days after the agricultural tenant gives notice of rejection to file a complaint with the Department of Agriculture seeking determination of fair market value.

(3) The Department of Agriculture, after reasonable notice to the parties, shall hear and determine the fair market value of the land offered for sale and make such order as the facts of the controversy warrant. In conducting its hearing, the department shall have those powers granted it under the Administrative Procedure Act. Any person shall have the right to appeal from such order in accordance with the act.

(4) If the agricultural tenant fails to give timely notice or to file a timely complaint under subsection (2) of this section or fails to complete the purchase of the railroad land within sixty days after the fair market value has been accepted by the agricultural tenant or determined by the department, unless the delay in completing the purchase is attributable to the railroad or its successor in interest, the railroad or its successor in interest may sell or offer to sell the railroad land to any purchaser and such purchaser shall not be bound by this section. If the railroad land is sold to a purchaser which will use the railroad land for railroad operating purposes or for interim trail use as described in subdivision (1)(a) of this section, then the purchaser shall be bound by all of the provisions of the Agricultural Suppliers Lease Protection Act.

Source: Laws 2002, LB 435, § 5.

Cross References

Administrative Procedure Act, see section 84-920.

2-5506 Department of Agriculture; employ appraiser; costs.

(1) The Department of Agriculture, in consultation with the parties, may employ the services of a certified general real property appraiser when determination of market value is a matter in controversy or relevant to the hearing and determination of the matter in controversy.

(2) All costs incurred by the department hearing and determining all matters in controversy pursuant to the Agricultural Suppliers Lease Protection Act shall be paid equally by the parties.

Source: Laws 2002, LB 435, § 6; Laws 2006, LB 778, § 2.

2-5507 Act; applicability; effect.

(1) The Agricultural Suppliers Lease Protection Act shall not apply to any valid lease entered into prior to July 20, 2002, or any renewal or extension thereof on the same terms and conditions, but the provisions of the act shall apply to and govern any renewal or extension of such lease on any different terms or conditions or any material modifications of any such lease effected on or after July 20, 2002.

(2) Any party having a right of first refusal or right of renewal under the Agricultural Suppliers Lease Protection Act shall be barred from making any subsequent claim to possession or title to the railroad land if it fails to bring an action asserting that it has been denied its right of first refusal or right of renewal in violation of the act within six months after the date of a lease or after the expiration of a lease or sale by the railroad to a party other than the agricultural tenant.

Source: Laws 2002, LB 435, § 7.

2-5508 Agricultural Suppliers Lease Protection Cash Fund; created; use; investment.

The Agricultural Suppliers Lease Protection Cash Fund is created. All funds collected by the Department of Agriculture under the Agricultural Suppliers Lease Protection Act shall be remitted to the State Treasurer for credit to the fund. The fund shall be used by the department to aid in defraying the expenses of administering the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2002, LB 435, § 8.

Cross References

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

ARTICLE 56
GRAPES

Section
2-5601. Terms, defined.
2-5602. Excise tax; amount; payment.
2-5603. Excise tax; first purchaser; deduction; records; contents; statement; remitted to State Treasurer.
2-5604. Department of Agriculture; calculate costs; report.
2-5605. Violation; penalty.

2-5601 Terms, defined.

For purposes of sections 2-5601 to 2-5604:

(1) Commercial channels means the sale or delivery of grapes for any use, except grapes intended for ultimate consumption as table grapes, to any commercial buyer, dealer, processor, or cooperative or to any person, public or private, who resells any grapes or product produced from grapes;

(2) Delivered or delivery means receiving grapes for utilization or as a result of sale in the State of Nebraska but excludes receiving grapes for storage;

(3) First purchaser means any person, public or private corporation, association, partnership, or limited liability company buying, accepting for shipment, or otherwise acquiring the property in or to grapes from a grower;

(4) Grower means any landowner personally engaged in growing grapes, a tenant of the landowner personally engaged in growing grapes, and both the owner and tenant jointly and includes a person, a partnership, a limited liability company, an association, a corporation, a cooperative, a trust, or any other business unit, device, or arrangement; and

(5) Table grapes means grapes intended for ultimate consumption as produce in fresh, unprocessed form and not intended for wine production, juice production, or drying.

Source: Laws 2007, LB441, § 2.

2-5602 Excise tax; amount; payment.

(1) Except as provided in subsection (2) of this section, an excise tax of one cent per pound is levied upon all grapes sold through commercial channels in Nebraska or delivered in Nebraska. The excise tax shall be paid by the grower at the time of sale or delivery and shall be collected by the first purchaser. Grapes shall not be subject to the excise tax imposed by this section more than once.

(2) The excise tax imposed by this section shall not apply to the sale of grapes to the federal government for the ultimate use or consumption by the people of the United States when the State of Nebraska is prohibited from imposing such excise tax by the United States Constitution and the laws enacted pursuant thereto.

Source: Laws 2007, LB441, § 3.

2-5603 Excise tax; first purchaser; deduction; records; contents; statement; remitted to State Treasurer.

(1) The first purchaser, at the time of settlement, shall deduct the excise tax imposed by section 2-5602. The excise tax shall be deducted whether the grapes are stored in this state or any other state. The first purchaser shall maintain the necessary records of the excise tax for each purchase or delivery of grapes on the settlement form or check stub showing payment to the grower for each purchase or delivery. Such records maintained by the first purchaser shall provide the following information:

(a) The name and address of the grower and seller;

(b) The date of the purchase or delivery;

(c) The number of pounds of grapes purchased; and

(d) The amount of excise taxes collected on each purchase or delivery.

Such records shall be open for inspection during normal business hours observed by the first purchaser.

(2) The first purchaser shall render and have on file with the Department of Agriculture by the last day of January and July of each year, on forms prescribed by the department, a statement of the number of pounds of grapes purchased in Nebraska. At the time the statement is filed, such first purchaser shall pay and remit to the department the excise tax imposed by section 2-5602.

(3) All excise taxes collected by the department pursuant to this section shall be remitted to the State Treasurer for credit to the Winery and Grape Produc-

ers Promotional Fund. The department shall remit the excise tax collected to the State Treasurer within ten days after receipt.

Source: Laws 2007, LB441, § 4.

2-5604 Department of Agriculture; calculate costs; report.

For each fiscal year beginning with FY2007-08, the Department of Agriculture shall calculate its costs in collecting and enforcing the excise tax imposed by section 2-5602 and shall report such costs to the Department of Administrative Services within thirty days after the end of the calendar quarter. Sufficient funds to cover such costs shall be transferred from the Winery and Grape Producers Promotional Fund to the Management Services Expense Revolving Fund at the end of each calendar quarter. Funds shall be transferred upon the receipt by the Department of Administrative Services of a report of costs incurred by the Department of Agriculture for the previous calendar quarter.

Source: Laws 2007, LB441, § 5.

2-5605 Violation; penalty.

Any person violating sections 2-5601 to 2-5603 shall be guilty of a Class III misdemeanor.

Source: Laws 2007, LB441, § 6.

ARTICLE 57
INDUSTRIAL HEMP

Section

2-5701. Postsecondary institution or Department of Agriculture; industrial hemp; cultivated for purposes of research; sites; certification; licensing agreements; activities authorized; fees; report; hearing; termination.

2-5701 Postsecondary institution or Department of Agriculture; industrial hemp; cultivated for purposes of research; sites; certification; licensing agreements; activities authorized; fees; report; hearing; termination.

(1) A postsecondary institution in this state or the Department of Agriculture may cultivate industrial hemp if the industrial hemp is cultivated for purposes of research conducted under an agricultural pilot program or other agricultural or academic research.

(2) Sites used for cultivating industrial hemp must be certified by, and registered with, the Department of Agriculture.

(3)(a) Prior to approval by the United States Secretary of Agriculture of the state plan as provided in section 2-516, a person with a valid licensing agreement with the department pursuant to this section may cultivate, handle, or process industrial hemp as a part of the department's agricultural pilot program. To be qualified to apply and to retain a valid licensing agreement, a cultivator or processor-handler shall comply with all applicable requirements set forth in the Nebraska Hemp Farming Act, except that a licensing agreement shall be required in lieu of any license requirements under the act.

(b) A cultivator or processor-handler shall pay the license application fee, site registration fee, and site modification fee, if applicable, established in section 2-508 for each one-year licensing agreement and shall be required to submit a report for department research purposes. The report shall be submitted as

required by the department. All fees collected by the department under this section shall be remitted to the State Treasurer for credit to the Nebraska Hemp Program Fund.

(c) Licensing agreements shall establish procedures for sampling and testing of industrial hemp, effective destruction of noncompliant industrial hemp, and department inspections to monitor compliance with the agreements.

(d) A cultivator or processor-handler who has had a licensing agreement terminated for failure to comply with the agreement or the Nebraska Hemp Farming Act, or any rules or regulations adopted and promulgated under the act, may request a hearing as set forth in section 2-513.

(e) The Department of Agriculture may adopt and promulgate rules and regulations as necessary to carry out this section.

(4) For purposes of this section:

(a) Agricultural pilot program means a pilot program to study the cultivation or marketing of industrial hemp;

(b) Cultivate and cultivator have the same meaning as in section 2-503;

(c) Handle has the same meaning as in section 2-503;

(d) Industrial hemp means hemp as defined in section 2-503;

(e) Postsecondary institution has the same meaning as in section 2-503; and

(f) Process and processor-handler have the same meaning as in section 2-503.

(5) This section terminates on November 1, 2020.

Source: Laws 2014, LB1001, § 1; Laws 2019, LB657, § 21; Laws 2020, LB1152, § 13.

Cross References

Nebraska Hemp Farming Act, see section 2-501.

CHAPTER 3
AERONAUTICS

Article.
1. General Provisions. 3-101 to 3-164.
2. Airports and Landing Fields. 3-201 to 3-244.
3. Airport Zoning. 3-301 to 3-333.
4. Regulation of Structures. 3-401 to 3-409.
5. City Airport Authority. 3-501 to 3-514.
6. County Airport Authority. 3-601 to 3-622.
7. Joint Airport Authority. 3-701 to 3-716.
8. Nebraska State Airline Authority. Repealed.

Cross References

Records Management Act, see section 84-1220.
Taxation:
Air carriers, see sections 77-1244 to 77-1250.05.
Fuel, sales tax exemption, see section 77-2704.03.
Nonresident purchases of aircraft, sales tax, exemption, see section 77-2704.26.
Retailer of aircraft, use tax, see section 77-2706.01.

ARTICLE 1
GENERAL PROVISIONS

Section
3-101. Terms, defined.
3-102. Purpose of act.
3-103. Division of Aeronautics; director; appointment; qualifications; duties; oath.
3-104. Nebraska Aeronautics Commission; created; members, appointment; term; qualification; chairperson; quorum; meetings; expenses; duties.
3-105. Division; seal; rules and regulations; adopt.
3-106. Division; aircraft; purchase; use; report; contents.
3-107. Division; general supervision; state funds; expenditure; recovery.
3-108. Division; cooperate with federal government, political subdivisions, and others engaged in aeronautics; hearings; reports; contents.
3-109. Division; powers; rules and regulations; applicability to federal government.
3-110. Rules and regulations; conform to federal regulation.
3-111. Rules and regulations; where kept.
3-112. Division; airways system.
3-113. Division; engineering and technical services; availability.
3-114. Division; represent state in aeronautical matters.
3-115. Actions by or against division; intervention.
3-116. Enforcement; intergovernmental cooperation.
3-117. Director; investigations; hearings; oaths; certify official acts; subpoenas; compel attendance of witnesses; violation; penalty.
3-118. Division; reports of investigations or hearings; evidence; how used.
3-119. Division; assist in acquisition, development, operation, or maintenance of airports.
3-120. Division; contracts; authorized.
3-121. Division; airway and airport; exclusive right prohibited.
3-122. Transferred to section 75-202.
3-123. Division; cooperate with federal government; comply with federal laws.
3-124. Division; acceptance of gifts of money, authorized; terms and conditions.
3-125. Division; contracts; laws governing.
3-125.01. Transferred to section 55-181.
3-126. Aeronautics Cash Fund; created; use; investment.
3-127. Director; duties.

Section
3-128. Division; regulation of airports.
3-129. Aircraft; license, certificate, or permit required.
3-129.01. Repealed. Laws 2010, LB 216, § 1.
3-130. License, certificate, or permit; exceptions.
3-131. License, certificate, permit, or registration; duty to carry, present for inspection, and exhibit.
3-132. Repealed. Laws 1976, LB 460, § 10.
3-133. Airports; license; requirement; approval of site; operation without license unlawful.
3-134. Air navigation facility; certificate of approval; hearing; notice; order; license.
3-135. Air navigation facility; certificate of approval; hearing; standards to be considered.
3-136. Certificate of approval; restricted landing area for personal use; exception.
3-137. Air navigation facility; certificate of approval; revocation, grounds.
3-138. Certificate of approval; federal government; exception.
3-139. Division; certificate of approval, permit, or license; refuse to issue; notice; set forth reasons; inspection of premises.
3-140. Appeal; procedure.
3-141. Division; air navigation facilities; acquire by purchase, gift, or condemnation; establish; improve; operate; dispose of property; exception.
3-142. Division; airports; easements; acquire by condemnation.
3-143. Division; joint activities; authorized.
3-144. Division; right of eminent domain; procedure.
3-145. Division; airport; lease; sell; supplies.
3-146. Division; rentals; power to determine; charges; lien; enforce.
3-147. Airports; acquisition of land; purpose.
3-148. Aircraft fuel tax; Aircraft Fuel Tax Fund; created; distribution; terms, defined.
3-149. Aircraft fuel tax; collection; violation; penalty.
3-150. Aircraft fuel tax; repayment; fuel used for air school purposes.
3-150.01. Repealed. Laws 1985, LB 272, § 4.
3-151. Aircraft fuel tax; repayment; presentation of claims.
3-152. Violations; penalty.
3-153. Repealed. Laws 1963, c. 339, § 1.
3-154. Act, how cited.
3-155. Real property formerly used as army airfields; disposal; conditions.
3-156. Aeronautics Trust Fund; created; real property; proceeds of sale; how used; investment.
3-157. Division; real property; lease; when; requirements.
3-158. Person renting aircraft; insurance information; notice.
3-159. Authorization to purchase new aircraft; sale of aircraft.
3-160. Employees of Department of Aeronautics; transfer to Division of Aeronautics; how treated.
3-161. Reference to Department of Aeronautics in contracts or other documents; how construed; contracts and property; how treated.
3-162. Actions and proceedings; how treated.
3-163. Provisions of law; how construed.
3-164. Property of Department of Aeronautics; transfer to Division of Aeronautics; appropriation and salary limit; how treated.

3-101 Terms, defined.

For purposes of the State Aeronautics Act and the laws of this state relating to aeronautics, the following words, terms, and phrases shall have the meanings given in this section, unless otherwise specifically defined or unless another intention clearly appears or the context otherwise requires:

(1) Aeronautics means transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants, and accessories, including the repair, packing, and maintenance of parachutes; and the design,

establishment, construction, extension, operation, improvement, repair, or maintenance of airports, restricted landing areas, or other air navigation facilities, and air instruction;

(2) Aircraft means any contrivance now known, hereafter invented, used, or designed for navigation of or flight in the air;

(3) Airport means (a) any area of land or water, except a restricted landing area, which is designed for the landing and takeoff of aircraft, whether or not facilities are provided for the sheltering, servicing, or repairing of aircraft or for receiving or discharging passengers or cargo, (b) all appurtenant areas used or suitable for airport buildings or other airport facilities, and (c) all appurtenant rights-of-way, whether heretofore or hereafter established;

(4) Air navigation facility means any facility, other than one owned or controlled by the federal government, used in, available for use in, or designed for use in aid of air navigation, including airports, restricted landing areas, and any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid or constituting an advantage or convenience to the safe takeoff, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted landing area and any combination of any or all of such facilities;

(5) Air navigation means the operation or navigation of aircraft in the air space over this state or upon any airport or restricted landing area within this state;

(6) Airman means any individual who engages, as the person in command, or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way and (excepting individuals employed outside the United States, any individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection therewith, and any individual performing inspection or mechanical duties in connection with aircraft owned or operated by him or her) any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, propellers, or appliances and any individual who serves in the capacity of aircraft dispatcher or air traffic control-tower operator;

(7) Air instruction means the imparting of aeronautical information by any aeronautics instructor or in or by any air school or flying club;

(8) Aeronautics instructor means any individual engaged in giving instruction, or offering to give instruction, in aeronautics, either in flying or ground subjects, or both, for hire or reward, without advertising such occupation, without calling his or her facilities an air school or anything equivalent thereto, and without employing or using other instructors. It does not include any instructor in any public school or university of this state or any institution of higher learning duly accredited and approved for carrying on collegiate work while engaged in his or her duties as such instructor;

(9) Airport protection privileges means easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to insure safe approaches to the landing areas of airports and restricted landing areas and the safe and efficient operation thereof;

(10) Airport hazard means any structure, object of natural growth, or use of land which obstructs the air space required for the flight of aircraft in landing or taking off at any airport or restricted landing area or is otherwise hazardous to such landing or taking off;

(11) Civil aircraft means any aircraft other than a public aircraft;

(12) Commission means the Nebraska Aeronautics Commission;

(13) Director means the Director of Aeronautics;

(14) Division means the Division of Aeronautics of the Department of Transportation;

(15) Flying club means any person, other than an individual, who, neither for profit nor reward, owns, leases, or uses one or more aircraft for the purpose of instruction or pleasure or both;

(16) Location means the general vicinity to be served by a specific airport;

(17) Municipality means any county, city, village, or town of this state and any other political subdivision, public corporation, authority, or district in this state which is or may be authorized by law to acquire, establish, construct, maintain, improve, and operate airports and other air navigation facilities;

(18) Navigable air space means air space above the minimum altitudes of flight prescribed by the laws of this state or by the rules and regulations adopted and promulgated by the division consistent therewith;

(19) Operation of aircraft or operate aircraft means the use of aircraft for the purpose of air navigation and includes the navigation or piloting of aircraft. Any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control, in the capacity of owner, lessee, or otherwise, of the aircraft, shall be deemed to be engaged in the operation of aircraft within the meaning of the statutes of this state;

(20) Privately owned public use airport means any airport owned by a person which is primarily engaged in the business of providing necessary services and facilities for the operation of civil aircraft and which (a) has at least one paved runway, (b) is engaged in the retail sale of aviation gasoline or aviation jet fuel, and (c) possesses facilities for the sheltering, servicing, or repair of aircraft;

(21) Public aircraft means an aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of any state, territory, or possession of the United States or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes;

(22) Restricted landing area means any area of land, water, or both, which is used or is made available for the landing and takeoff of aircraft, the use of which shall, except in case of emergency, be only as provided from time to time by the commission;

(23) Site means the specific land area to be used as an airport; and

(24) State airway means a route in the navigable air space over and above the lands or waters of this state, designated by the division as a route suitable for air navigation.

Source: Laws 1945, c. 5, § 1, p. 75; Laws 1976, LB 460, § 1; Laws 1993, LB 121, § 82; Laws 1995, LB 609, § 1; Laws 2017, LB339, § 1.

Department of Aeronautics is created by this article. State ex rel. Beck v. Obbink, 172 Neb. 242, 109 N.W.2d 288 (1961).

3-102 Purpose of act.

The purpose of the State Aeronautics Act is to further the public interest and aeronautical progress by (1) providing for the protection and promotion of safety in aeronautics, (2) cooperating in effecting a uniformity of the laws relating to the development and regulation of aeronautics in the several states, (3) revising existing statutes relative to the development and regulation of aeronautics so as to grant such powers to and impose such duties upon the division in order that the state may properly perform its functions relative to aeronautics and effectively exercise its jurisdiction over persons and property within such jurisdiction, may assist in the promotion of a statewide system of airports, may cooperate with and assist the political subdivisions of this state and others engaged in aeronautics, and may encourage and develop aeronautics, (4) establishing uniform regulations, consistent with federal regulations and those of other states, in order that those engaged in aeronautics of every character may so engage with the least possible restriction, consistent with the safety and the rights of others, and (5) providing for cooperation with the federal authorities in the development of a national system of civil aviation and for coordination of the aeronautical activities of those authorities and the authorities of this state by assisting in accomplishing the purposes of federal legislation and eliminating costly and unnecessary duplication of functions properly in the province of federal agencies.

Source: Laws 1945, c. 5, § 2, p. 79; Laws 2017, LB339, § 2.

A county should not be able to thwart the strong interest of the state in the promotion of aviation through the medium of its zoning authority. Seward County Board of Commissioners v. City of Seward, 196 Neb. 266, 242 N.W.2d 849 (1976).

Statute creating Department of Aeronautics was enacted for the promotion of safety and for cooperating in effecting uniformity of legislation in the several states consistent with federal regulations. In re Estate of Kinsey, 152 Neb. 95, 40 N.W.2d 526 (1949).

3-103 Division of Aeronautics; director; appointment; qualifications; duties; oath.

(1) The Division of Aeronautics shall be a division of the Department of Transportation.

(2)(a) Until December 31, 2017, the chief administrative officer of the division shall be the director, to be known as the Director of Aeronautics, and shall be appointed by the Governor, subject to confirmation by the Legislature, with due regard to his or her fitness through aeronautical education and by knowledge of and recent practical experience in aeronautics. The director shall devote full time to the performance of his or her official duties and shall not have any pecuniary interest in, stock in, or bonds of any civil aeronautics enterprise. The director shall, before assuming the duties of the office, take and subscribe an oath, such as is required by state officers. The director shall be bonded or insured as required by section 11-201. The director shall receive such compensation as the Governor, with the approval of the commission, shall determine, subject to the provisions of the legislative appropriations bill.

(b) Beginning January 1, 2018, the chief administrative officer of the division shall be the Director of Aeronautics who shall be appointed by and report directly to the Director-State Engineer, subject to confirmation by the Legislature, with due regard to his or her fitness through aeronautical education and

by knowledge of and recent practical experience in aeronautics. The director shall devote full time to the performance of his or her official duties and shall not have any pecuniary interest in, stock in, or bonds of any civil aeronautics enterprise. The director shall, before assuming the duties of the office, take and subscribe an oath, such as is required by state officers.

Source: Laws 1945, c. 5, § 3(1), p. 80; Laws 1947, c. 16, § 1, p. 95; Laws 1978, LB 653, § 3; Laws 2004, LB 884, § 2; Laws 2017, LB339, § 3.

Director of Aeronautics has no definite term and is removable at will by Governor. State ex rel. Beck v. Obbink, 172 Neb. 242, 109 N.W.2d 288 (1961).

3-104 Nebraska Aeronautics Commission; created; members, appointment; term; qualification; chairperson; quorum; meetings; expenses; duties.

(1) There is hereby created the Nebraska Aeronautics Commission which shall consist of five members, who shall be appointed by the Governor. The terms of office of the members of the commission initially appointed shall expire on March 1 of the years 1946, 1947, 1948, 1949, and 1950, as designated by the Governor in making the respective appointments. As the terms of members expire, the Governor shall, on or before March 1 of each year, appoint a member of the commission for a term of five years to succeed the member whose term expires. Each member shall serve until the appointment and qualification of his or her successor. In case of a vacancy occurring prior to the expiration of the term of a member, the appointment shall be made only for the remainder of the term. All members of the commission shall be citizens and bona fide residents of the state and, in making such an appointment, the Governor shall take into consideration the interest or training of the appointee in some one or all branches of aviation. The commission shall, in December of each year, select a chairperson for the ensuing year. The Director of Aeronautics shall serve as secretary as set forth in section 3-127. Three members shall constitute a quorum, and no action shall be taken by less than a majority of the commission.

(2) The commission shall meet upon the written call of the chairperson, the director, or any two members of the commission. Regular meetings shall be held at the office of the division but, whenever the convenience of the public or of the parties may be promoted or delay or expense may be prevented, the commission may hold meetings or proceedings at any other place designated by it. All meetings of the commission shall be open to the public. No member shall receive any salary for his or her service, but each shall be reimbursed for expenses incurred by him or her in the performance of his or her duties as provided in sections 81-1174 to 81-1177.

(3)(a) The commission shall advise the Director-State Engineer relative to the appointment of the Director of Aeronautics, and the commission shall report to the Director-State Engineer whenever the commission feels that the Director of Aeronautics is not properly fulfilling his or her duties. The commission shall also advise the Governor on the general status and state of aviation in Nebraska.

(b) The commission shall further act in an advisory capacity to the Director of Aeronautics and Director-State Engineer.

(4) The commission shall have, in addition, the following specific duties: (a) To allocate state funds and approve the use of federal funds to be spent for the construction or maintenance of airports; (b) to designate the locations and approve sites of airports; (c) to arrange and authorize the purchase of aircraft upon behalf of the state; (d) to select and approve pilots to be employed by the state, if any; and (e) to assist the Director of Aeronautics in formulating the regulations and policies to be carried out by the division under the terms of the State Aeronautics Act. The commission may allocate state funds for the promotion of aviation as defined for the purpose of this section by the division. The director may designate one or more members of the commission to represent the division in conferences with officials of the federal government, of other states, of other agencies or municipalities of this state, or of persons owning privately owned public use airports.

Source: Laws 1945, c. 5, § 3(2), p. 80; Laws 1976, LB 460, § 2; Laws 1981, LB 204, § 12; Laws 1995, LB 609, § 2; Laws 2004, LB 824, § 1; Laws 2017, LB339, § 4; Laws 2019, LB190, § 1; Laws 2020, LB381, § 13.

A county should not be able to thwart the strong interest of the state in the promotion of aviation through the medium of its zoning authority. Seward County Board of Commissioners v. City of Seward, 196 Neb. 266, 242 N.W.2d 849 (1976).

It is the duty of the Nebraska Aeronautics Commission to designate the locations and sites of airports in this state. Stones v. Plattsmouth Airport Authority, 193 Neb. 552, 228 N.W.2d 129 (1975).

3-105 Division; seal; rules and regulations; adopt.

The division shall adopt a seal and adopt and promulgate rules and regulations for its administration. All rules, regulations, and orders of the Department of Aeronautics adopted prior to July 1, 2017, in connection with the powers, duties, and functions transferred to the Division of Aeronautics of the Department of Transportation pursuant to Laws 2017, LB339, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

Source: Laws 1945, c. 5, § 4, p. 82; Laws 1955, c. 231, § 6, p. 719; Laws 1976, LB 460, § 3; Laws 1981, LB 545, § 3; Laws 2017, LB339, § 5.

Cross References

For promulgation of administrative rules, see Chapter 84, article 9.

Department of Aeronautics has power to adopt rules and regulations in conformity, as nearly as may be, with federal regulations. In re Estate of Kinsey, 152 Neb. 95, 40 N.W.2d 526 (1949).

3-106 Division; aircraft; purchase; use; report; contents.

(1) The division may purchase aircraft for the use of state government and may sell any state aircraft that is not needed or suitable for state uses. State aircraft shall be subject at all times to the written orders of the Governor for use and service in any branch of the state government. The division shall establish an hourly rate for use of a state aircraft by a state official or agency. The hourly rate shall not include an amount to recover the cost of acquisition by purchase, but shall include amounts for items such as variable fuel and oil costs, routine maintenance costs, landing fees, and preventive maintenance reserves. Such funds shall only be expended for the purposes provided for by this section.

(2) It is the intent of the Legislature that the use of state-owned, chartered, or rented aircraft by the division shall be for the sole purpose of state business.

The division shall electronically file with the Clerk of the Legislature a quarterly report on the use of all state-owned, chartered, or rented aircraft by the division that includes the following information for each trip: The name of the agency or other entity traveling; the name of each individual passenger; all purposes of the trip; the destination and intermediate stops; the miles flown; and the duration of the trip.

Source: Laws 1945, c. 5, § 5, p. 82; Laws 2014, LB1016, § 2; Laws 2017, LB339, § 6.

3-107 Division; general supervision; state funds; expenditure; recovery.

The division shall have general supervision over aeronautics within this state. It is empowered and directed to encourage, foster, and assist in the development of aeronautics in this state and encourage the establishment of airports and other air navigation facilities. No state funds for the acquisition, engineering, construction, improvement, or maintenance of airports shall be expended upon any project or for any work upon any such project which is not done under the supervision of the division. When any airport which has received state grant funds pursuant to the State Aeronautics Act ceases to be an airport or a privately owned public use airport, the division shall, consistent with all other provisions of state and federal law, seek to recover so much of the state funds provided to the airport as it may and shall deposit any such funds so recovered into the Aeronautics Cash Fund.

Source: Laws 1945, c. 5, § 6(1), p. 83; Laws 1995, LB 609, § 3; Laws 2017, LB339, § 7.

A county should not be able to thwart the strong interest of the state in the promotion of aviation through the medium of its zoning authority. Seward County Board of Commissioners v. City of Seward, 196 Neb. 266, 242 N.W.2d 849 (1976).

3-108 Division; cooperate with federal government, political subdivisions, and others engaged in aeronautics; hearings; reports; contents.

The division shall cooperate with and assist the federal government, the political subdivisions of this state, and others engaged in aeronautics or the promotion of aeronautics and seek to coordinate the aeronautical activities of these bodies. To this end, the division is empowered to confer with or to hold joint hearings with any federal aeronautical agency in connection with any matter arising under the State Aeronautics Act, or relating to the sound development of aeronautics, and to avail itself of the cooperation, services, records, and facilities of such federal agencies, as fully as may be practicable, in the administration and enforcement of the act. The division shall reciprocate by furnishing to the federal agencies its cooperation, services, records, and facilities, insofar as may be practicable. The division shall report to the appropriate federal agency all accidents in aeronautics in this state of which it is informed and preserve, protect, and prevent the removal of the component parts of any aircraft involved in an accident being investigated by it until a federal agency institutes an investigation. The division shall report to the appropriate federal agency all refusals to register federal licenses, certificates, or permits and all revocations of certificates of registration, and the reasons therefor, and all penalties, of which it has knowledge, imposed upon airmen for violations of the laws of this state relating to aeronautics or for violations of the rules, regulations, or orders of the division.

Source: Laws 1945, c. 5, § 6(2), p. 83; Laws 2017, LB339, § 8.

3-109 Division; powers; rules and regulations; applicability to federal government.

The division may (1) perform such acts, (2) issue and amend such orders, (3) adopt and promulgate such reasonable general or special rules, regulations, and procedure, and (4) establish such minimum standards, consistent with the State Aeronautics Act, as it shall deem necessary to carry out the act and to perform its duties under the act as commensurate with and for the purpose of protecting and insuring the general public interest and safety, the safety of persons receiving instruction concerning, or operating, using, or traveling in aircraft, and of persons and property on land or water, and to develop and promote aeronautics in this state. No rule or regulation of the division shall apply to airports or other air navigation facilities owned or controlled by the federal government within this state.

Source: Laws 1945, c. 5, § 6(3), p. 83; Laws 1947, c. 9, § 1; Laws 2017, LB339, § 9.

1947 amendment to this section was unconstitutional. State ex rel. State Railway Commission v. Ramsey, 151 Neb. 333, 37 N.W.2d 502 (1949).

3-110 Rules and regulations; conform to federal regulation.

All rules and regulations adopted and promulgated by the division under the authority of the State Aeronautics Act shall be kept in conformity, as nearly as may be, with the then current federal legislation governing aeronautics, the regulations duly promulgated thereunder, and rules and standards issued from time to time pursuant thereto.

Source: Laws 1945, c. 5, § 6(4), p. 84; Laws 2017, LB339, § 10.

Power to adopt rules in conformity with federal regulations already in existence did not involve delegation of power by state to federal government. In re Estate of Kinsey, 152 Neb. 95, 40 N.W.2d 526 (1949).

3-111 Rules and regulations; where kept.

The division shall keep on file with the Secretary of State and at the principal office of the division a copy of all its rules and regulations for public inspection.

Source: Laws 1945, c. 5, § 6(5), p. 84; Laws 1976, LB 460, § 4; Laws 2017, LB339, § 11.

3-112 Division; airways system.

It may designate, design, establish, expand or modify a state airways system which will best serve the interests of the state. It may chart such airways system and arrange for the publication and distribution of such maps, charts, notices and bulletins, relating to such airways, as may be required in the public interest. The system shall be supplementary to and coordinated in design and operation with the federal airways system. It may include all types of air navigation facilities, whether publicly or privately owned; *Provided*, that such facilities conform to federal safety standards.

Source: Laws 1945, c. 5, § 6(6), p. 84.

3-113 Division; engineering and technical services; availability.

The division may, insofar as is reasonably possible, offer its engineering or other technical services, without charge, to any municipality or to any person owning a privately owned public use airport desiring them in connection with

the construction, maintenance, or operation or the proposed construction, maintenance, or operation of an airport or restricted landing area.

Source: Laws 1945, c. 5, § 6(7), p. 84; Laws 1995, LB 609, § 4; Laws 2017, LB339, § 12.

3-114 Division; represent state in aeronautical matters.

The division may represent the state in aeronautical matters before federal agencies and other state agencies.

Source: Laws 1945, c. 5, § 6(8), p. 85; Laws 2017, LB339, § 13.

3-115 Actions by or against division; intervention.

The division may participate as party plaintiff or defendant, or as intervenor on behalf of this state, or any municipality or citizen thereof, in any controversy having to do with any claimed encroachment by the federal government or any foreign state upon any state or individual rights pertaining to aeronautics.

Source: Laws 1945, c. 5, § 6(9), p. 85; Laws 2017, LB339, § 14.

3-116 Enforcement; intergovernmental cooperation.

The division, the director, and every state, county, and municipal officer, charged with the enforcement of state and municipal laws, shall enforce and assist in the enforcement of the State Aeronautics Act, all rules and regulations adopted and promulgated pursuant thereto, and all other laws of this state relating to aeronautics. In the aid of such enforcement, general police powers are hereby conferred upon the director, and such of the officers and employees of the division as may be designated by it, to exercise such powers. The division is further authorized, in the name of this state, to enforce the act and the rules and regulations adopted and promulgated pursuant thereto by injunction in the courts of this state. Municipalities and persons owning privately owned public use airports are authorized to cooperate with the division in the development of aeronautics and aeronautical facilities in this state. The division may use the facilities and services of other agencies of the state to the utmost extent possible and such agencies are authorized and directed to make available such facilities and services.

Source: Laws 1945, c. 5, § 6(10), p. 85; Laws 1995, LB 609, § 5; Laws 2017, LB339, § 15.

3-117 Director; investigations; hearings; oaths; certify official acts; subpoenas; compel attendance of witnesses; violation; penalty.

The director, or any officer or employee of the division designated by it, shall have the power to hold investigations, inquiries, and hearings concerning matters covered by the State Aeronautics Act and orders, rules, and regulations of the division and concerning accidents in aeronautics within this state. All hearings so conducted shall be open to the public. The director, and every officer or employee of the division designated by it to hold any inquiry, investigation, or hearing, shall have power to administer oaths and affirmations, certify to all official acts, issue subpoenas, and compel the attendance and testimony of witnesses and the production of papers, books, and documents. In case of a failure to comply with any subpoena or order issued under the authority of the act, the division or its authorized representative may invoke

the aid of any court of this state of general jurisdiction. The court may thereupon order the witness to comply with the requirements of the subpoena or order or to give evidence touching the matter in question. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

Source: Laws 1945, c. 5, § 6(11), p. 85; Laws 2017, LB339, § 16.

3-118 Division; reports of investigations or hearings; evidence; how used.

In order to facilitate the making of investigations by the division, in the interest of public safety and the promotion of aeronautics, the public interest requires, and it is, therefor, provided, that the reports of investigations or hearings, or any part thereof, shall not be admitted in evidence or used for any purpose in any suit, action, or proceeding, growing out of any matter referred to in the investigation, hearing, or report thereof, except in case of criminal or other proceedings instituted on behalf of the division or this state under the State Aeronautics Act and other laws of this state relating to aeronautics, nor shall any member of the commission, the director, or any officer or employee of the division be required to testify to any facts ascertained in, or information gained by reason of, his or her official capacity, or be required to testify as an expert witness in any suit, action, or proceeding involving any aircraft. Subject to the foregoing provisions, the division may, in its discretion, make available to appropriate federal and state agencies information and material developed in the course of its hearings and investigations.

Source: Laws 1945, c. 5, § 6(12), p. 86; Laws 2017, LB339, § 17.

3-119 Division; assist in acquisition, development, operation, or maintenance of airports.

The division may render assistance in the acquisition, development, operation, or maintenance of privately owned public use airports or airports owned, controlled, or operated or to be owned, controlled, or operated by municipalities in this state out of appropriations made by the Legislature for that purpose.

Source: Laws 1945, c. 5, § 6(13), p. 87; Laws 1995, LB 609, § 6; Laws 2017, LB339, § 18.

3-120 Division; contracts; authorized.

The division may enter into any contracts necessary to the execution of the powers granted it by the State Aeronautics Act.

Source: Laws 1945, c. 5, § 6(14), p. 87; Laws 2017, LB339, § 19.

3-121 Division; airway and airport; exclusive right prohibited.

The division shall grant no exclusive right for the use of any airway, airport, restricted landing area, or other air navigation facility under its jurisdiction. This section shall not prevent the making of leases in accordance with other provisions of the State Aeronautics Act.

Source: Laws 1945, c. 5, § 6(15), p. 87; Laws 2017, LB339, § 20.

3-122 Transferred to section 75-202.

3-123 Division; cooperate with federal government; comply with federal laws.

The division is authorized to cooperate with the government of the United States, and any agency or department thereof, in the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities in this state and to comply with the provisions of the laws of the United States and any regulations made thereunder for the expenditure of federal money upon such airports and other navigation facilities.

Source: Laws 1945, c. 5, § 7(1), p. 87; Laws 2017, LB339, § 21.

3-124 Division; acceptance of gifts of money, authorized; terms and conditions.

The division is authorized to accept federal and other money, either public or private, for and on behalf of this state, any municipality, or any person owning a privately owned public use airport, for the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities, whether such work is to be done by the state, by such municipalities, or by any person owning a privately owned public use airport, or jointly, aided by grants of aid from the United States, upon such terms and conditions as are or may be prescribed by the laws of the United States and any regulations thereunder. The division may act as agent of any municipality of this state or any person owning a privately owned public use airport, upon the request of such municipality or person, in accepting such money in its behalf for airports or other air navigation facility purposes, and in contracting for the acquisition, construction, improvement, maintenance, or operation of airports or other air navigation facilities, financed either in whole or in part by federal money, and such person or the governing body of any such municipality is authorized to designate the division as its agent for such purposes and to enter into an agreement with the division prescribing the terms and conditions of such agency in accordance with federal laws, rules, and regulations and with the State Aeronautics Act. Such money as is paid over by the United States Government shall be retained by the state or paid over to the municipalities or persons under such terms and conditions as may be imposed by the United States Government in making such grants.

Source: Laws 1945, c. 5, § 7(2), p. 87; Laws 1995, LB 609, § 7; Laws 2017, LB339, § 22.

3-125 Division; contracts; laws governing.

All contracts for the acquisition, construction, improvement, maintenance, and operation of airports or other air navigation facilities made by the division, either as the agent of this state, as the agent of any municipality, or as the agent of any person owning a privately owned public use airport, shall be made pursuant to the laws of this state governing the making of like contracts. When the acquisition, construction, improvement, maintenance, and operation of any airport, landing strip, or other air navigation facility is financed wholly or partially with federal money, the division, as agent of the state, of any municipality, or of any person owning a privately owned public use airport, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules or regulations made thereunder, notwithstanding any other state law to the contrary.

Source: Laws 1945, c. 5, § 7(3), p. 88; Laws 1995, LB 609, § 8; Laws 2017, LB339, § 23.

3-125.01 Transferred to section 55-181.

3-126 Aeronautics Cash Fund; created; use; investment.

The Aeronautics Cash Fund is created. All money received by the division pursuant to the State Aeronautics Act shall be remitted to the State Treasurer for credit to the fund. The division is authorized, whether acting for this state, as the agent of any of its municipalities, or as the agent of any person owning a privately owned public use airport, or when requested by the United States Government or any agency or department thereof, to disburse such money. Any money in the Aeronautics 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 any money in the Department of Aeronautics Cash Fund on July 1, 2017, to the Aeronautics Cash Fund.

Source: Laws 1945, c. 5, § 7(4), p. 88; Laws 1965, c. 17, § 1, p. 150; Laws 1969, c. 584, § 32, p. 2360; Laws 1978, LB 637, § 1; Laws 1995, LB 7, § 25; Laws 1995, LB 609, § 9; Laws 2009, First Spec. Sess., LB3, § 7; Laws 2017, LB339, § 24.

Cross References

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

3-127 Director; duties.

The director shall (1) administer the State Aeronautics Act, the rules and regulations adopted and promulgated under the act, orders established under the act, and all other laws of the state relative to aeronautics, (2) attend and serve as secretary, but not vote, at all meetings of the commission, (3) appoint, subject to section 3-104, such experts, field and office assistants, clerks, and other employees as may be required and authorized for the proper discharge of the functions of the division and for whose services funds have been appropriated, (4) be in charge of the offices of the division and responsible for the preparation of reports and collection and dissemination of data and other public information relating to aeronautics, and (5) execute all contracts entered into by the division which are legally authorized and for which funds are appropriated.

Source: Laws 1945, c. 5, § 8, p. 89; Laws 2017, LB339, § 25.

3-128 Division; regulation of airports.

In order to safeguard and promote the general public interest and safety, the safety of persons using or traveling in aircraft and of persons and property on the ground, and the interest of aeronautical progress requiring that airports, restricted landing areas, and air navigation facilities be suitable for the purposes for which they are designed and to carry out the purposes of the State Aeronautics Act, the division may: Recommend airport and restricted landing area sites; license airports, restricted landing areas, or other air navigation facilities; and provide for the renewal and revocation of such licenses in accordance with rules and regulations adopted and promulgated by the division.

Source: Laws 1945, c. 5, § 9(1), p. 89; Laws 1967, c. 12, § 1, p. 98; Laws 1972, LB 285, § 1; Laws 1973, LB 391, § 1; Laws 1973, LB 341, § 1; Laws 1976, LB 460, § 5; Laws 2001, LB 329, § 8; Laws 2017, LB339, § 26.

A county should not be able to thwart the strong interest of the state in the promotion of aviation through the medium of its zoning authority. Seward County Board of Commissioners v. City of Seward, 196 Neb. 266, 242 N.W.2d 849 (1976).

3-129 Aircraft; license, certificate, or permit required.

Except as provided in section 3-130, it shall be unlawful for any person to operate or cause or authorize to be operated any civil aircraft within this state unless such aircraft has an appropriate effective license, certificate, or permit issued by the United States Government.

Source: Laws 1945, c. 5, § 9(2), p. 91; Laws 1973, LB 341, § 2; Laws 2002, LB 446, § 1.

3-129.01 Repealed. Laws 2010, LB 216, § 1.

3-130 License, certificate, or permit; exceptions.

The provisions of section 3-129 shall not apply to:

(1) An aircraft which has been licensed by a foreign country with which the United States has a reciprocal agreement covering the operations of such licensed aircraft;

(2) An airman operating military or public aircraft or any aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering the operation of such licensed aircraft;

(3) Persons operating model aircraft or to any person piloting an aircraft which is equipped with fully functioning dual controls when a licensed instructor is in full charge of one set of said controls and such flight is solely for instruction or for the demonstration of said aircraft to a bona fide prospective purchaser;

(4) A nonresident operating aircraft in this state who is lawfully entitled to operate aircraft in the state of residence; or

(5) An airman while operating or taking part in the operation of an aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce.

Source: Laws 1945, c. 5, § 9(3), p. 92; Laws 1973, LB 341, § 3.

3-131 License, certificate, permit, or registration; duty to carry, present for inspection, and exhibit.

The federal license, certificate, or permit, and the evidence of registration in this or another state, if any, required for an airman shall be kept in the personal possession of the airman when the airman is operating within this state and must be presented for inspection upon the demand of any passenger, peace officer of this state, authorized official or employee of the division, or official, manager, or person in charge of any airport in this state upon which the airman shall land or the reasonable request of any other person. The federal aircraft license, certificate, or permit required for aircraft must be carried in every aircraft operating in this state at all times and must be conspicuously posted therein where it may readily be seen by passengers or inspectors and must be presented for inspection upon the demand of any passenger, peace officer of this state, authorized official or employee of the division, or official,

manager, or person in charge of any airport in this state upon which the airman shall land or the reasonable request of any person.

Source: Laws 1945, c. 5, § 9(4), p. 92; Laws 1973, LB 341, § 4; Laws 2017, LB339, § 27.

3-132 Repealed. Laws 1976, LB 460, § 10.

3-133 Airports; license; requirement; approval of site; operation without license unlawful.

Any proposed airport or restricted landing area shall be first licensed by the division before such airport or area shall be used or operated. Any municipality or person acquiring property for the purpose of constructing or establishing an airport or restricted landing area shall, prior to such acquisition, make application to the division for a certificate of approval of the site selected and the general purpose or purposes for which the property is to be acquired, to insure that the property and its use shall conform to minimum standards of safety and shall serve the public interest. It shall be unlawful for any municipality or officer or employee thereof, or for any person, to operate an airport or restricted landing area for which a license has not been issued by the division.

Source: Laws 1945, c. 5, § 9(6), p. 93; Laws 2002, LB 446, § 2; Laws 2017, LB339, § 28.

A county should not be able to thwart the strong interest of the state in the promotion of aviation through the medium of its zoning authority. Seward County Board of Commissioners v. City of Seward, 196 Neb. 266, 242 N.W.2d 849 (1976).

The Revised Airports Act required the licensing of airports and restricted landing areas except restricted landing areas designed for personal use. Bruns v. City of Seward, 186 Neb. 658, 185 N.W.2d 853 (1971).

3-134 Air navigation facility; certificate of approval; hearing; notice; order; license.

Whenever the division makes an order granting or denying a certificate of approval of an airport or a restricted landing area, or an original license to use or operate an airport, restricted landing area, or other air navigation facility, and the applicant or any interested municipality, within fifteen days after notice of such order has been sent the applicant by registered or certified mail, demands a public hearing, or whenever the division desires to hold a public hearing, before making an order, such a public hearing in relation thereto shall be held in the municipality applying for the certificate of approval or license or, in case the application was made by anyone other than a municipality, at the county seat of the county in which the proposed airport, restricted landing area, or other air navigation facility is proposed to be situated, or the major portion thereof, if located in more than one county, at which hearing all parties in interest and other persons shall have an opportunity to be heard. Notice of the hearing shall be published by the division in a legal newspaper in or of general circulation in the county in which the hearing is to be held, at least twice, the first publication to be at least fifteen days prior to the date of hearing. After a proper and timely demand has been made, the order shall be stayed until after the hearing, when the division may affirm, modify, or reverse it, or make a new order. If no hearing is demanded, the order shall become effective upon the expiration of the time permitted for making a demand. Where a certificate of approval of an airport or restricted landing area has been issued by the division, it may grant a license for its operation and use, and no hearing may be demanded thereon.

Source: Laws 1945, c. 5, § 9(7), p. 94; Laws 1957, c. 242, § 1, p. 816; Laws 2017, LB339, § 29.

3-135 Air navigation facility; certificate of approval; hearing; standards to be considered.

In determining whether to issue a certificate of approval or license for the use or operation of any proposed airport or restricted landing area, the division shall take into consideration (1) its proposed location, size, and layout, (2) the relationship of the proposed airport or restricted landing area to a comprehensive plan for statewide and nationwide development, (3) whether there are safe areas available for expansion purposes, (4) whether the adjoining area is free from obstructions based on a proper glide ratio, (5) the nature of the terrain, (6) the nature of the uses to which the proposed airport or restricted landing area will be put, and (7) the possibilities for future development.

Source: Laws 1945, c. 5, § 9(8), p. 94; Laws 2017, LB339, § 30.

3-136 Certificate of approval; restricted landing area for personal use; exception.

The provisions of sections 3-133 to 3-135 shall not apply to restricted landing areas designed for personal use.

Source: Laws 1945, c. 5, § 9(9), p. 95.

This section specifically exempts from licensing requirements restricted landing areas designed for personal use and therefore the Department of Aeronautics is without authority to issue licenses for such landing areas. Nebraska Public Power Dist. v. Huebner, 202 Neb. 587, 276 N.W.2d 228 (1979).

3-137 Air navigation facility; certificate of approval; revocation, grounds.

The division is empowered to temporarily or permanently revoke any certificate of approval or license issued by it when it shall determine that an airport, restricted landing area, or other navigation facility is not being maintained or used in accordance with the State Aeronautics Act and the rules and regulations lawfully adopted and promulgated pursuant thereto.

Source: Laws 1945, c. 5, § 9(10), p. 95; Laws 2017, LB339, § 31.

3-138 Certificate of approval; federal government; exception.

The provisions of sections 3-133 to 3-136 shall not apply to any airport, restricted landing area or other air navigation facility owned or operated by the federal government within this state.

Source: Laws 1945, c. 5, § 9(11), p. 95.

3-139 Division; certificate of approval, permit, or license; refuse to issue; notice; set forth reasons; inspection of premises.

If the division refuses to (1) issue a certificate of approval of a license or the renewal of a license for an airport, restricted landing area, or other air navigation facility or (2) permit the registration of any license, certificate, or permit, the division shall set forth its reasons therefor and shall state the requirements to be met before such approval will be given, registration permitted, license granted, or order modified or changed. Any order made by the division pursuant to the State Aeronautics Act shall be served upon the interested persons by either registered or certified mail or in person. To carry out the act, the director, officers, and employees of the division and any officers, state or municipal, charged with the duty of enforcing the act may inspect and examine at reasonable hours any premises, and the buildings and

other structures thereon, where airports, restricted landing areas, flying clubs, or other air navigation facilities or aeronautical activities are operated or carried on.

Source: Laws 1945, c. 5, § 10(1), p. 95; Laws 1957, c. 242, § 2, p. 817; Laws 1976, LB 460, § 6; Laws 2017, LB339, § 32.

3-140 Appeal; procedure.

Any person aggrieved by an order of the division or by the granting or denial of any license, certificate, or registration may appeal the order or such granting or denial, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1945, c. 5, § 10(2), p. 96; Laws 1988, LB 352, § 8; Laws 2017, LB339, § 33.

Cross References

Administrative Procedure Act, see section 84-920.

3-141 Division; air navigation facilities; acquire by purchase, gift, or condemnation; establish; improve; operate; dispose of property; exception.

The division is authorized and empowered, on behalf of and in the name of this state, within the limitation of available appropriations, to (1) acquire, by purchase, gift, devise, lease, condemnation proceedings, or otherwise, real or personal property for the purpose of establishing and constructing airports, restricted landing areas, and other air navigation facilities, (2) acquire in like manner, own, control, establish, construct, enlarge, improve, maintain, equip, operate, regulate, and police such airports, restricted landing areas, and other air navigation facilities either within or without this state, (3) make, prior to any such acquisition, investigations, surveys, and plans, (4) erect, install, construct, and maintain at such airports facilities for the servicing of aircraft and for the comfort and accommodation of air travelers, and (5) dispose of any such property, airport, or restricted landing area or any other air navigation facility by sale, lease, or otherwise, in accordance with the laws of this state governing the disposition of other like property of the state. The division may not, however, acquire or take over any airport, restricted landing area, or other air navigation facility owned or controlled by a municipality of this state without the consent of such municipality. The division may erect, equip, operate, and maintain on any airport such buildings and equipment as are necessary and proper to establish, maintain, and conduct such airport and air navigation facilities connected therewith.

Source: Laws 1945, c. 5, § 11(1), p. 96; Laws 2017, LB339, § 34.

3-142 Division; airports; easements; acquire by condemnation.

Where necessary, in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports and restricted landing areas acquired or operated under the State Aeronautics Act, the division may acquire, in the same manner as is provided for the acquisition of property for airport purposes, easements through or other interests in air space over land or water, interest in airport hazards outside the boundaries of the airports or restricted landing areas, and such other airport protection privileges as are necessary to insure safe approaches to the landing areas of the airports and restricted landing areas

and the safe and efficient operation thereof. The division may acquire, in the same manner, the right or easement, for a term of years or perpetually, to place or maintain suitable marks for the daytime marking and suitable lights for the nighttime marking of airport hazards, including the right of ingress and egress to or from such airport hazards for the purpose of maintaining and repairing such lights and marks. This authority shall not be so construed as to limit the right, power, or authority of the state or any municipality to zone property adjacent to any airport or restricted landing area pursuant to any law of this state.

Source: Laws 1945, c. 5, § 11(2), p. 97; Laws 2017, LB339, § 35.

3-143 Division; joint activities; authorized.

The division may engage in all activities jointly with the United States, with other states, with municipalities or other agencies of this state, and with persons owning privately owned public use airports.

Source: Laws 1945, c. 5, § 11(3), p. 97; Laws 1995, LB 609, § 10; Laws 2017, LB339, § 36.

3-144 Division; right of eminent domain; procedure.

The division may exercise the right of eminent domain, in the name of the state, for the purpose of acquiring any property which it is authorized to acquire by condemnation. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724. The fact that the property so needed has been acquired by the owner under power of eminent domain shall not prevent its acquisition by the division by the exercise of the right of eminent domain conferred in the State Aeronautics Act. The division shall not be precluded from abandoning the condemnation of any such property in any case where possession thereof has not been taken. Nothing in the State Aeronautics Act shall be construed as granting to privately owned public use airports the authority to exercise the power of eminent domain nor shall anything in the State Aeronautics Act be construed as granting to the division or any municipality the authority to exercise the right of eminent domain for the purpose of acquiring lands or easements for the sole use or benefit of privately owned public use airports.

Source: Laws 1945, c. 5, § 11(4), p. 97; Laws 1951, c. 101, § 26, p. 458; Laws 1995, LB 609, § 11; Laws 2017, LB339, § 37.

3-145 Division; airport; lease; sell; supplies.

The division may (1) lease, for a term not exceeding ten years, such airports, other air navigation facilities, or real property acquired or set apart for airport purposes, to private parties, any municipal or state government, the national government, or any department of any such government for operation, (2) lease or assign, for a term not exceeding ten years, to private parties, any municipal or state government, the national government, or any department of any such government for operation or other use consistent with the purposes of the State Aeronautics Act, space, area, improvements, or equipment on such airports, (3) sell any part of such airports, other air navigation facilities, or real property to any municipal or state government, or to the United States or any department or instrumentality thereof, for aeronautical purposes or purposes incidental thereto, and (4) confer the privilege or concession of supplying, upon the

airports, goods, commodities, things, services, and facilities, so long as in each case in so doing the public is not deprived of its rightful, equal, and uniform use thereof.

Source: Laws 1945, c. 5, § 11(5), p. 98; Laws 2017, LB339, § 38.

3-146 Division; rentals; power to determine; charges; lien; enforce.

The division may determine the charges or rental for the use of any properties and the charges for any service or accommodations under its control and the terms and conditions under which such properties may be used, so long as in all cases the public shall not be deprived of its rightful, equal, and uniform use of such property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expenses of operation to the state. To enforce the payment of charges, the state shall have a lien which the division may enforce, substantially as is provided by law for liens and the enforcement thereof, for repairs to or the improvement, storage, or care of any personal property.

Source: Laws 1945, c. 5, § 11(6), p. 98; Laws 2017, LB339, § 39.

3-147 Airports; acquisition of land; purpose.

The acquisition of any lands for the purpose of establishing airports or other air navigation facilities; the acquisition of any airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation of airports and other air navigation facilities, whether by the state separately or jointly with any municipality, municipalities, or any person owning a privately owned public use airport; the assistance of this state in any such acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation; and the exercise of any other powers granted to the division are hereby declared to be public and governmental functions exercised for a public purpose and matters of public necessity. Such lands and other property and privileges acquired are declared to be public property.

Source: Laws 1945, c. 5, § 12, p. 99; Laws 1995, LB 609, § 12; Laws 2001, LB 173, § 2; Laws 2017, LB339, § 40.

3-148 Aircraft fuel tax; Aircraft Fuel Tax Fund; created; distribution; terms, defined.

There is hereby imposed a tax of five cents per gallon upon aviation gasoline and a tax of three cents per gallon upon aviation jet fuel purchased for and used in aircraft within the State of Nebraska. Such aircraft tax shall be levied, collected, and refunded in the manner provided in Chapter 66, article 4, with reference to other motor fuel. The State Treasurer shall credit the aircraft tax and fees so collected and remitted to a special fund to be known as the Aircraft Fuel Tax Fund, which fund shall be distributed as provided in this section. The State Treasurer shall make all refunds as provided in sections 3-150 and 3-151 from the fund, and the balance of the aircraft tax shall be credited to the Aeronautics Cash Fund.

For purposes of this section, aviation gasoline means fuel used in aircraft meeting the criteria established for motor vehicle fuel in section 66-482. The

terms aviation fuel and aircraft fuel as used in the statutes include both aviation gasoline and aviation jet fuel.

Source: Laws 1945, c. 5, § 13, p. 99; Laws 1947, c. 6, § 1, p. 67; Laws 1965, c. 18, § 1, p. 152; Laws 1965, c. 17, § 2, p. 150; Laws 1965, c. 8, § 8, p. 93; Laws 1985, LB 272, § 1; Laws 1991, LB 627, § 1; Laws 1992, LB 1013, § 1; Laws 2017, LB339, § 41.

3-149 Aircraft fuel tax; collection; violation; penalty.

The suppliers, distributors, wholesalers, and importers defined in Chapter 66, article 4, shall collect the tax as prescribed in section 3-148, keep an account thereof separately from other fuel tax, and remit the tax collected accordingly to the Tax Commissioner. The Tax Commissioner shall remit the tax to the State Treasurer in the same manner as is provided by law for the collection and remittance of motor vehicle fuel tax. No other or different tax shall be imposed for fuel bought for and used in aircraft. Such tax shall be used for the purposes set forth in the State Aeronautics Act. The penalty for violation of the provisions of this section relating to the collection and remittance of the tax shall be the same as set forth for the violation of the law with reference to the motor fuel tax contained in Chapter 66, article 7, and the right of enforcement and the penalties shall be likewise applicable as set forth therein.

Source: Laws 1945, c. 5, § 14, p. 100; Laws 1985, LB 272, § 2; Laws 1991, LB 627, § 2; Laws 1992, LB 1013, § 2; Laws 1994, LB 1160, § 48; Laws 2017, LB339, § 42.

3-150 Aircraft fuel tax; repayment; fuel used for air school purposes.

Any person, firm, partnership, limited liability company, company, agency, corporation, body politic, municipality, or National Guard or reserve officer of the United States Army who buys and uses aircraft fuel meeting the specifications set by the Department of Revenue, bought for and used only in aircraft in connection with any air school approved by the federal government, on which the tax has been paid or which is chargeable under section 3-148 and who consumes the same for purposes of operating or propelling aircraft used strictly for air school purposes shall be reimbursed the amount of tax so paid in the manner and subject to the conditions provided in this section and section 3-151.

Source: Laws 1945, c. 5, § 15, p. 100; Laws 1976, LB 460, § 7; Laws 1991, LB 627, § 3; Laws 1993, LB 121, § 83; Laws 2019, LB512, § 1.

3-150.01 Repealed. Laws 1985, LB 272, § 4.

3-151 Aircraft fuel tax; repayment; presentation of claims.

All claims for reimbursement shall be made by affidavit in such form and containing such information as the Tax Commissioner shall prescribe. Such claims shall be accompanied by the original invoices of sales and receipts and shall be filed with the commissioner within seven months from the date of purchase or invoice. The commissioner may require such further information as he shall deem necessary for the determination of such claims. He shall transmit all claims approved by him to the Director of Administrative Services, who shall forthwith draw his warrant against the proceeds of the tax levied

under section 3-148 and credited to the Aircraft Fuel Tax Fund in the state treasury upon the presentation of proper vouchers for each claim for reimbursement; and the State Treasurer shall pay such warrants out of money in such fund without specific appropriation.

Source: Laws 1945, c. 5, § 16, p. 100; Laws 1955, c. 6, § 1, p. 66; Laws 1967, c. 13, § 1, p. 101.

3-152 Violations; penalty.

Any person violating any of the provisions of the State Aeronautics Act, or any of the rules, regulations, or orders adopted, promulgated, or issued pursuant thereto, shall be guilty of a Class II misdemeanor.

Source: Laws 1945, c. 5, § 17, p. 101; Laws 1977, LB 40, § 29; Laws 2017, LB339, § 43.

3-153 Repealed. Laws 1963, c. 339, § 1.

3-154 Act, how cited.

Sections 3-101 to 3-164 shall be known and may be cited as the State Aeronautics Act.

Source: Laws 1945, c. 5, § 21, p. 101; Laws 2017, LB339, § 44.

3-155 Real property formerly used as army airfields; disposal; conditions.

(1) The division is hereby authorized and directed to dispose of all real property held by the division and formerly used by the United States as army airfields, and which is not required for airport operational use purposes. The division shall seek approval from the Federal Aviation Administration to dispose of such property. The property may be platted and subdivided into lots or parcels to be sold separately so as to obtain the greatest total sale price.

(2) The division shall dedicate the necessary roads for airport access and shall reserve such easements for access, utilities, drainage, and other purposes as may be necessary or convenient to maintain the airports as operational. The sales may be made subject to such terms, conditions, and restrictions as may be required by the deeds by which such property was conveyed to the State of Nebraska by the Federal Aviation Administration. When approval is received, the division shall have such property appraised by noninterested appraisers qualified to make appraisals based on experience and who have professional status as appraisers of real property. The appraisers shall be selected by the division based on competitive bids received after three weeks' notice of invitation for bids has been published in at least two newspapers of general circulation throughout the state. The notice shall state that the selection shall be made of the lowest and best qualified bidders and that the division reserves the right to reject any and all bids and to readvertise for further bids.

(3) Each appraiser's report shall contain (a) an opinion as to the fair market value of the lands appraised, showing a segregation of actual land value, elements and basis of damage, and depreciated in place value of buildings and improvements, if any, (b) a report of income derived from the land in recent years, (c) the adaptability of the land, including the most profitable or highest and best use, (d) a report of a personal inspection of the lands appraised, including a detailed description of their physical characteristics and conditions, (e) the general history of the property and its environs, and a statement of the

character of the area surrounding the land being appraised, indicating any of the favorable and unfavorable influences, (f) a listing of recent sales of similar property in the area, showing seller, purchaser, date of sale, selling price, acreage involved, buildings and improvements involved, if any, and an estimate of the value of such improvements, and if there is a difference in value between comparable sales and the property appraised, a discussion of the difference in value to be included, (g) a listing of recent offerings for sale of property in the same general area, including the property being appraised, if recently offered, and the prices quoted, if any, (h) a trend of land values in the area and current land or real estate market conditions, (i) the actual valuation of real property in the community, (j) the effective date of valuation, (k) a statement of the qualifications of the appraiser including a statement by the appraiser that he or she has no personal interest, present or prospective, in the land being appraised, and (l) the signature of the appraiser and date of report.

(4) Such property shall be sold to the highest bidder, but in no case shall such property be sold at less than the appraised value. Notice of such sale and time and place where the same will be held shall be given as provided in section 72-258. When the highest bid is less than the appraised value, the sale shall be canceled and except for property leased pursuant to section 3-157 the property shall be offered for sale again within one year after the date of the previous offering.

Source: Laws 1969, c. 23, § 1, p. 199; Laws 1971, LB 165, § 1; Laws 1972, LB 1481, § 1; Laws 1978, LB 637, § 2; Laws 1979, LB 187, § 11; Laws 2017, LB339, § 45.

3-156 Aeronautics Trust Fund; created; real property; proceeds of sale; how used; investment.

The Aeronautics Trust Fund is created. The necessary expenses incurred in the sale of property under section 3-155 shall be paid from the Aeronautics Cash Fund, and the proceeds from the sale of such property shall be credited to the Aeronautics Trust Fund after reimbursement of costs of sale have been made to the Aeronautics Cash Fund. The net proceeds from the disposal of such property shall be used by the division in conformance with any agreements upon which the Federal Aviation Administration conditions its consent to the sale of the aforementioned land and the quit claim deeds (1) filed in the office of the register of deeds of Dodge County on November 17, 1947, and recorded in Deeds Record 89 on page 342 and September 16, 1948, and recorded in Deeds Record 89 on page 578, (2) filed in the office of the register of deeds of Red Willow County on September 16, 1948, in Deeds Record 71 on page 17, September 14, 1966, in Deeds Record 91 on page 281, and December 17, 1968, in Deeds Record 93 on page 549, (3) filed in the office of the register of deeds of Clay County on November 17, 1947, in Deeds Record 86 on page 561, September 16, 1948, in Deeds Record 87 on page 148, and March 14, 1968, in Deeds Record 95 on page 321, (4) filed in the office of the register of deeds of Fillmore County on September 16, 1948, in Deeds Record 39 on page 229, February 21, 1968, in Deeds Record 25 on page 90, January 26, 1948, in Deeds Record 39 on page 189, September 21, 1948, in Deeds Record 39 on page 236, and February 13, 1968, in Deeds Record 25 on page 83, and (5) filed in the office of the register of deeds of Thayer County on January 31, 1948, in Deeds Record 48 on page 493, September 16, 1948, in Deeds Record 48 on page 581, and December 29, 1967, in Deeds Record 58 on page 531, and the rules and

regulations of the Federal Aviation Administration, part 155, adopted December 7, 1962. Any money in the Aeronautics Trust Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The State Treasurer shall transfer any money in the Department of Aeronautics Trust Fund on July 1, 2017, to the Aeronautics Trust Fund.

Source: Laws 1969, c. 23, § 2, p. 200; Laws 1971, LB 165, § 2; Laws 1995, LB 7, § 26; Laws 2017, LB339, § 46.

Cross References

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

3-157 Division; real property; lease; when; requirements.

The division may lease for a period not exceeding twelve years real property held by the division that has been offered for sale for two consecutive years and has not been sold. The lease shall provide for annual rental payments based on fair rental value. The rental payments shall be deposited in the Aeronautics Cash Fund. The division shall cause reappraisals to be made of the land under lease when it deems it necessary due to changes in buildings or improvements, changes in the land, or for other reasons. The division may, after the expiration of any lease, offer such land for sale by public auction as set forth in section 3-155 or may enter into another lease.

Source: Laws 1978, LB 637, § 3; Laws 1980, LB 896, § 1; Laws 2002, LB 446, § 3; Laws 2017, LB339, § 47.

3-158 Person renting aircraft; insurance information; notice.

Any person who in the ordinary course of his or her business rents an aircraft to another person shall deliver to the renter a written notice stating the nature and extent of insurance coverage provided, if any, for the renter against loss of or damage to the hull of the aircraft or liability arising out of the ownership, maintenance, or use of the aircraft. The notice shall contain the name of the person giving the notice.

Source: Laws 1986, LB 781, § 1; Laws 2017, LB339, § 48; Laws 2019, LB190, § 2.

3-159 Authorization to purchase new aircraft; sale of aircraft.

The Executive Board of the Legislative Council pursuant to the authority granted in Laws 2013, LB194, section 9, commissioned an independent study to enable the Legislature to determine whether the state should purchase or otherwise acquire an aircraft for state purposes and what type of aircraft should be acquired, if any. After completion and review of the study, the Legislature authorized the Department of Aeronautics to purchase a new aircraft in 2014. It is the intent of the Legislature to fund the purchase with General Funds and other funds. The Legislature also directed the department, upon taking possession of a new aircraft, to sell the state's 1982 Piper Cheyenne aircraft, with the proceeds retained for use for preventive maintenance funding for the new aircraft.

Source: Laws 2014, LB1016, § 1; Laws 2017, LB339, § 49.

3-160 Employees of Department of Aeronautics; transfer to Division of Aeronautics; how treated.

On and after July 1, 2017, positions of employment in the Department of Aeronautics related to the powers, duties, and functions transferred pursuant to Laws 2017, LB339, are transferred to the Division of Aeronautics of the Department of Transportation. For purposes of the transition, employees of the Department of Aeronautics shall be considered employees of the Department of Transportation and shall retain their rights under the state personnel system or pertinent bargaining agreement, and their service shall be deemed continuous. This section does not grant employees any new rights or benefits not otherwise provided by law or bargaining agreement or preclude the division or the director from exercising any of the prerogatives of management set forth in section 81-1311 or as otherwise provided by law. This section is not an amendment to or substitute for the provisions of any existing bargaining agreements.

Source: Laws 2017, LB339, § 50.

3-161 Reference to Department of Aeronautics in contracts or other documents; how construed; contracts and property; how treated.

On and after July 1, 2017, whenever the Department of Aeronautics is referred to or designated by any contract or other document in connection with the duties and functions transferred to the Division of Aeronautics of the Department of Transportation pursuant to Laws 2017, LB339, such reference or designation shall apply to such division. All contracts entered into by the Department of Aeronautics prior to July 1, 2017, in connection with the duties and functions transferred to the division are hereby recognized, with the division succeeding to all rights and obligations under such contracts. Any cash funds, custodial funds, gifts, trusts, grants, and any appropriations of funds from prior fiscal years available to satisfy obligations incurred under such contracts shall be transferred and appropriated to the division for the payments of such obligations. All documents and records transferred, or copies of the same, may be authenticated or certified by the division for all legal purposes.

Source: Laws 2017, LB339, § 51.

3-162 Actions and proceedings; how treated.

No suit, action, or other proceeding, judicial or administrative, lawfully commenced prior to July 1, 2017, or which could have been commenced prior to that date, by or against the Department of Aeronautics, or the director or any employee thereof in such director's or employee's official capacity or in relation to the discharge of his or her official duties, shall abate by reason of the transfer of duties and functions from the Department of Aeronautics to the Division of Aeronautics of the Department of Transportation.

Source: Laws 2017, LB339, § 52.

3-163 Provisions of law; how construed.

On and after July 1, 2017, unless otherwise specified, whenever any provision of law refers to the Department of Aeronautics in connection with duties and

functions transferred to the Division of Aeronautics of the Department of Transportation, such law shall be construed as referring to such division.

Source: Laws 2017, LB339, § 53.

3-164 Property of Department of Aeronautics; transfer to Division of Aeronautics; appropriation and salary limit; how treated.

On July 1, 2017, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the Department of Aeronautics pertaining to the duties and functions transferred to the Division of Aeronautics of the Department of Transportation pursuant to Laws 2017, LB339, shall become the property of such division.

Any appropriation and salary limit provided in any legislative bill enacted by the One Hundred Fifth Legislature, First Session, to Agency No. 17, Department of Aeronautics, in the following program classifications, shall be null and void, and any such amounts are hereby appropriated to Agency No. 27, Department of Transportation: Program No. 26, Administration and Services; Program No. 301, Public Airports; and Program No. 596, State-Owned Aircraft. Any financial obligations of the Department of Aeronautics that remain unpaid as of June 30, 2017, and that are subsequently certified as valid encumbrances to the accounting division of the Department of Administrative Services pursuant to sections 81-138.01 to 81-138.04, shall be paid by the Division of Aeronautics of the Department of Transportation from the unexpended balance of appropriations existing in such program classifications on June 30, 2017.

Source: Laws 2017, LB339, § 54.

ARTICLE 2

AIRPORTS AND LANDING FIELDS

Cross References

Cities and villages, see sections 18-1501 to 18-1509.
Cities of the metropolitan class, see sections 14-107 and 18-1501 to 18-1509.
Overhead lines, cables, and pipelines, construction near airports and landing fields, see sections 75-713 to 75-717.

Section
3-201. Terms, defined.
3-201.01. Temporary airports and landing fields; approval; application; purpose of landing area.
3-202. Municipality; powers.
3-203. Municipality; property, territorial or extraterritorial; acquire; right of eminent domain; procedure; effect.
3-204. Airport hazards; municipality; easements; acquire; right of eminent domain; effect on zoning.
3-205. Encroachment upon airport protection privileges; unlawful; removal.
3-206. Acquisition of property; purposes.
3-207. Repealed. Laws 1969, c. 138, § 28.
3-208. Acquisition of property; prior acts validated.
3-209. Municipality; acquired property and income; exempt from taxation.
3-210. Municipality; costs; paid by appropriation of funds or bonds; cost, defined.
3-211. Bonds; issuance; limitation.
3-212. Bonds; issuance; prior issues validated; issuance of additional bonds; legal obligations.
3-213. Municipalities; power to raise funds; use.
3-214. Revenue; disposition; excess.
3-215. Municipality; general powers; rules and regulations; adopt.
3-216. Municipality; accept gifts of money; expend.
3-217. Repealed. Laws 1947, c. 8, § 2.

Section
3-218. Contracts; laws governing.
3-219. Municipality; public waters; powers.
3-220. Municipalities; public waters; additional powers.
3-221. Joint exercise of powers, authorized; when.
3-222. Municipality; terms, defined.
3-223. Municipality; joint agreements and action; authorized.
3-224. Joint agreements; contents.
3-225. Joint agreements; board, created; members; terms; compensation.
3-226. Board; officers; adopt rules of procedure.
3-227. Board; powers.
3-228. Joint agreements; ordinances enacted concurrent with each other; effect; publication.
3-229. Joint agreements; condemnation proceedings; property acquired held as tenants in common.
3-230. Joint agreements; funds; revenue, use.
3-231. Joint agreements; funds; disbursed by order of board.
3-232. Joint agreements; specific performance authorized.
3-233. Municipality; assist another municipality; gift; lease; appropriation of money by taxation or bonds.
3-234. Purpose of sections.
3-235. Powers granted counties.
3-236. Airport and air navigational facility; laws governing; jurisdiction.
3-237. Sections, how construed.
3-238. Act, how cited.
3-239. Airport authorities or municipalities; project applications under federal act; approval by division; required; division, act as agent; direct receipt of federal funds; when.
3-240. Extraterritorial airport; terms, defined.
3-241. Extraterritorial airport; state or governmental agency; powers.
3-242. Extraterritorial airport; adjoining state; powers; right of eminent domain; reciprocity.
3-243. Extraterritorial airport; joint exercise of powers.
3-244. Act, how cited.

3-201 Terms, defined.

For the purpose of the Revised Airports Act, unless specifically otherwise provided in the act, the definitions of words, terms, and phrases appearing in the State Aeronautics Act are hereby adopted. The following words, terms, and phrases shall in the Revised Airports Act have the meanings given in this section, unless otherwise specifically defined, or unless another intention clearly appears, or the context otherwise requires: (1) Municipality means any county, city, or village of this state or any city airport authority established pursuant to the Cities Airport Authorities Act and (2) airport purposes means and includes airport, restricted landing area, and other air navigation facility purposes.

Source: Laws 1945, c. 34, § 1, p. 156; Laws 1957, c. 9, § 13, p. 125; Laws 2003, LB 5, § 1; Laws 2017, LB339, § 55.

Cross References

Cities Airport Authorities Act, see section 3-514.
For definitions in State Aeronautics Act, see section 3-101.
State Aeronautics Act, see section 3-154.

Municipal airport authorities are authorized to acquire property by condemnation for establishing airports. Seward County Board of Commissioners v. City of Seward, 196 Neb. 266, 242 N.W.2d 849 (1976).

Municipalities were empowered to acquire, establish, construct, improve, operate, and regulate municipal airports. City of Ord v. Biemond, 175 Neb. 333, 122 N.W.2d 6 (1963).

Constitutionality of Revised Airports Act raised but not decided. Brasier v. Cribbett, 166 Neb. 145, 88 N.W.2d 235 (1958).

Under former law municipality was defined as village, city, or county. Spencer v. Village of Wallace, 153 Neb. 536, 45 N.W.2d 473 (1951).

3-201.01 Temporary airports and landing fields; approval; application; purpose of landing area.

Any proposed airport, restricted landing area, or other air navigation facility which will be in existence for less than thirty consecutive days shall first be approved by the Division of Aeronautics of the Department of Transportation before any such airport, landing area, or other facility shall be used or operated. Any municipality or person proposing the use of property for such purpose shall first make application for a temporary permit for the site selected and the general purpose or purposes for which the property will be used, to insure that the property and its use shall conform to minimum standards of safety and shall serve the public interest. Designation of the location and approval of sites for the proposed temporary airports, restricted landing areas, and other air navigation facilities as provided in section 3-104 may be delegated to the division by the Nebraska Aeronautics Commission. The provisions of this section shall not apply to restricted landing areas designated for personal use pursuant to section 3-136.

Source: Laws 1976, LB 460, § 8; Laws 2017, LB339, § 56.

3-202 Municipality; powers.

Every municipality is hereby authorized, through its governing body, to (1) acquire property, real or personal, for the purpose of establishing, constructing, and enlarging airports and other air navigation facilities, (2) acquire, establish, construct, enlarge, improve, maintain, equip, operate, and regulate such airports and other air navigation facilities and structures and other property incidental to their operation, either within or without the territorial limits of such municipality and within or without this state, (3) make, prior to any such acquisition, investigations, surveys, and plans, (4) construct, install, and maintain airport facilities for the servicing of aircraft and for the comfort and accommodation of air travelers and (5) purchase and sell equipment and supplies as an incident to the operation of its airport properties. It may not, however, acquire or take over any airport or other air navigation facility owned or controlled by any other municipality of the state without the consent of such municipality. It may use for airport purposes any available property that is now or may at any time hereafter be owned or controlled by it. Such air navigation facilities as are established on airports shall be supplementary to and coordinated in design and operation with those established and operated by the federal and state governments.

Source: Laws 1945, c. 34, § 2(1), p. 156.

3-203 Municipality; property, territorial or extraterritorial; acquire; right of eminent domain; procedure; effect.

Property needed by a municipality for an airport or restricted landing area, for the enlargement of either, or for other airport purposes may be acquired by purchase, gift, devise, lease, or other means, if such municipality is able to agree with the owners of the property on the terms of such acquisition, and otherwise by condemnation. Full power to exercise the right of eminent domain for such purposes is hereby granted every municipality both within and without

its territorial limits. For all property which is to be acquired by a city of the metropolitan class outside of its zoning jurisdiction, approval must be obtained from the county board of the county where the property is located before the right of eminent domain may be exercised. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724. The title to real property so acquired shall be in fee simple, absolute, and unqualified in any way. The fact that the property needed has been acquired by the owner under power of eminent domain shall not prevent its acquisition by the municipality by the exercise of the right of eminent domain herein conferred. It shall not be precluded from abandoning the condemnation of any such property in any case where possession thereof has not been taken.

Source: Laws 1945, c. 34, § 2(2), p. 157; Laws 1947, c. 7, § 1, p. 69; Laws 1951, c. 101, § 27, p. 458; Laws 1981, LB 354, § 1.

Cross References

For acquisition of aviation fields by cities and villages through eminent domain, see section 18-1501.

Where but one municipality is involved and charter thereof prescribes procedure for condemnation, that procedure must be followed. Spencer v. Village of Wallace, 153 Neb. 536, 45 N.W.2d 473 (1951).

3-204 Airport hazards; municipality; easements; acquire; right of eminent domain; effect on zoning.

Where necessary, in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports or restricted landing areas acquired or operated under the provisions of sections 3-201 to 3-238 and 18-1502, every municipality is authorized to acquire, in the same manner as is provided for the acquisition of property for airport purposes, easements through or other interests in air spaces over land or water, interests in airport hazards outside the boundaries of the airports or restricted landing areas and such other airport protection privileges as are necessary to insure safe approaches to the landing areas of said airports or restricted landing areas and the safe and efficient operation thereof. It is also hereby authorized to acquire, in the same manner, the right or easement, for a term of years or perpetually, to place or maintain suitable marks for the daytime marking and suitable lights for the nighttime marking of airport hazards, including the right of ingress and egress to or from such airport hazards, for the purpose of maintaining and repairing such lights and marks. This authority shall not be so construed as to limit any right, power or authority to zone property adjacent to airports and restricted landing areas under the provisions of any law of this state.

Source: Laws 1945, c. 34, § 2(3), p. 157.

Airport authority was authorized to acquire by eminent domain an aviation easement. Johnson v. Airport Authority, 173 Neb. 801, 115 N.W.2d 426 (1962).

3-205 Encroachment upon airport protection privileges; unlawful; removal.

It shall be unlawful for anyone to build, rebuild, create, or cause to be built, rebuilt, or created any object, or plant, cause to be planted or permit to grow higher any tree or trees or other vegetation, which shall encroach upon any airport protection privileges acquired pursuant to the provisions of sections 3-202 to 3-204. Any such encroachment is declared to be a public nuisance and may be abated in the manner prescribed by law for the abatement of public nuisances, or the municipality in charge of the airport or restricted landing

area for which airport protection privileges have been acquired as in sections 3-202 to 3-204 provided may go upon the land of others and remove any such encroachment without being liable for damages in so doing.

Source: Laws 1945, c. 34, § 2(4), p. 158.

3-206 Acquisition of property; purposes.

(1) The acquisition of any lands for the purpose of establishing airports or other air navigation facilities, (2) the acquisition of airport protection privileges, (3) the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation of airports and other air navigation facilities, and (4) the exercise of any other powers herein granted to municipalities are hereby declared to be public, governmental, and municipal functions exercised for a public purpose and matters of public necessity. Such lands and other property, easements, and privileges acquired and used by such municipalities in the manner and for the purposes enumerated in the Revised Airports Act shall and are hereby declared to be public property.

Source: Laws 1945, c. 34, § 3(1), p. 158; Laws 2001, LB 173, § 3.

The statutes governing airports were not expressly or impliedly repealed by the passage of the 1998 constitutional amendment to Neb. Const. art. VIII, sec. 2, or subsection (1)(a) of section 77-202. Airports owned and operated by municipalities are exempt from taxation. City of York v. York Cty. Bd. of Equal., 266 Neb. 297, 664 N.W.2d 445 (2003).

Declaration of public purpose does not determine whether operation of airport is in a governmental or in a proprietary capacity. Brasier v. Cribbett, 166 Neb. 145, 88 N.W.2d 235 (1958).

3-207 Repealed. Laws 1969, c. 138, § 28.

3-208 Acquisition of property; prior acts validated.

Any acquisition of property, within or without the limits of any municipality, for airports and other air navigation facilities, or of airport protection privileges, heretofore made by any such municipality in any manner, together with the conveyance and acceptance thereof, is hereby legalized and made valid and effective.

Source: Laws 1945, c. 34, § 4, p. 159.

3-209 Municipality; acquired property and income; exempt from taxation.

Any property acquired by a municipality pursuant to the provisions of sections 3-201 to 3-238 and 18-1502 shall be exempt from taxation to the same extent as other property used for public purposes. All income received in connection with the operation by a municipality of any airport or other air navigation facility shall also be exempt from taxation.

Source: Laws 1945, c. 34, § 5, p. 159.

3-210 Municipality; costs; paid by appropriation of funds or bonds; cost, defined.

The cost of investigating, surveying, planning, acquiring, establishing, constructing, enlarging or improving or equipping airports and other air navigation facilities, and the sites therefor, including structures and other property incidental to their operation, in accordance with the provisions of sections 3-201 to 3-238 and 18-1502 may be paid for by appropriation of money available therefor, or wholly or partly from the proceeds of bonds of the municipality, as the governing body of the municipality shall determine. The

word cost includes awards in condemnation proceedings and rentals where an acquisition is by lease.

Source: Laws 1945, c. 34, § 6(1), p. 159.

3-211 Bonds; issuance; limitation.

Any bonds to be issued by any municipality pursuant to the provisions of sections 3-201 to 3-238 and 18-1502 shall be authorized and issued in the manner and within the limitation, except as herein otherwise provided, prescribed by the laws of this state or the charter of the municipality for the issuance and authorization of bonds thereof for the construction of works of internal improvements.

Source: Laws 1945, c. 34, § 6(2), p. 159.

3-212 Bonds; issuance; prior issues validated; issuance of additional bonds; legal obligations.

In all cases where a municipality has heretofore issued any bonds for the purpose of investigating, surveying, planning, acquiring, establishing, constructing, enlarging, equipping, or improving any airport, or other air navigation facility, or site therefor, or to meet the cost of structures of other property incidental to their operation, whether such airport or other air navigation facility was termed, under the law existing at the time of the issuance of such bonds, an airport, a landing field, a landing strip, an aviation field, or a flying field, or has incurred any other indebtedness, or entered into any lease or other contract in connection with the acquisition, establishment, construction, ownership, enlargement, control, leasing, equipment, improvement, maintenance, operation, or regulation of any such airport or other air navigation facility, or site therefor, or structure or other property incidental to its operation, the proceedings heretofore taken in all such cases are hereby in all respects validated and confirmed. Any bonds already issued thereunder are validated and made legal obligations of such municipality and such municipality is hereby authorized and empowered, pursuant to such proceedings, to issue further bonds for such purposes up to the limit fixed in the original authorization thereof, without limitation of the general power herein granted to all municipalities in this state, which bonds when issued shall be legal obligations of such municipality according to their terms.

Source: Laws 1945, c. 34, § 6(3), p. 160.

3-213 Municipalities; power to raise funds; use.

The governing bodies having power to appropriate money within the municipalities in this state acquiring, establishing, constructing, enlarging, improving, maintaining, equipping or operating airports and other air navigation facilities under the provisions of sections 3-201 to 3-238 and 18-1502, are hereby authorized to appropriate and cause to be raised by taxation or otherwise in such municipalities, sufficient money to carry out the provisions of sections 3-201 to 3-238 and 18-1502.

Source: Laws 1945, c. 34, § 7(1), p. 160.

3-214 Revenue; disposition; excess.

The revenue obtained from the ownership, control and operation of any such airport or other air navigation facility shall be used, first, to finance the maintenance, improvement and operating expenses thereof and, second, to make payments of interest on and current principal requirements of any outstanding bonds or certificates issued for the acquisition or improvement thereof, and to make payment of interest on any mortgage heretofore made. Revenue in excess of the foregoing requirements may be applied to finance the extension or improvement of the airport or other air navigation facilities.

Source: Laws 1945, c. 34, § 7(2), p. 160.

3-215 Municipality; general powers; rules and regulations; adopt.

In addition to the general power conferred in the Revised Airports Act and section 18-1502 and without limitation thereof, a municipality which has established or may hereafter establish airports, restricted landing areas, or other air navigation facilities, or which has acquired or set apart or may hereafter acquire or set apart real property for such purpose or purposes, is hereby authorized:

(1) To vest authority for the construction, enlargement, improvement, maintenance, equipment, operation, and regulation thereof in an officer, a board, or a body of such municipality by ordinance or resolution which shall prescribe the powers and duties of such officer, board, or body. The expense of such construction, enlargement, improvement, maintenance, equipment, operation, and regulation shall be a responsibility of the municipality;

(2) To adopt and amend all needful rules, regulations, and ordinances for the management, government, and use of any properties under its control, whether within or without the territorial limits of the municipality; to appoint airport guards or police, with full police powers; to fix by ordinance or resolution, as may be appropriate, penalties for the violation of the rules, regulations, and ordinances, and enforce the penalties in the same manner in which penalties prescribed by other rules, regulations, and ordinances of the municipality are enforced. For purposes of such management, government, and direction of public use, such part of all highways, roads, streets, avenues, boulevards, and territory as adjoins or lies within five hundred feet of the limits of any airport or restricted landing area acquired or maintained under the Revised Airports Act and section 18-1502 shall be under like control and management of the municipality. It may also adopt and enact rules, regulations, and ordinances designed to safeguard the public upon or beyond the limits of private airports or landing strips within such municipality or its police jurisdiction against the perils and hazards of instrumentalities used in aerial navigation. Rules, regulations, and ordinances shall be published as provided by general law or the charter of the municipality for the publication of similar rules, regulations, and ordinances. They must conform to and be consistent with the laws of this state and the rules and regulations of the Division of Aeronautics of the Department of Transportation and shall be kept in conformity, as nearly as may be, with the then current federal legislation governing aeronautics and the regulations duly promulgated thereunder and rules and standards issued from time to time pursuant thereto;

(3) To lease for a term not exceeding ten years such airports, other air navigation facilities, or real property acquired or set apart for airport purposes to private parties, any municipal or state government, the national government,

or any department of any such government for operation; to lease or assign space, area, improvements, or equipment on such airports for a term not exceeding ten years to private parties, any municipal or state government, the national government, or any department of any such government for operation or use consistent with the purposes of the Revised Airports Act and section 18-1502; to sell any part of such airports, other air navigation facilities, or real property to any municipal or state government, or to the United States or any department or instrumentality thereof, for aeronautical purposes or purposes incidental thereto, and to confer the privileges or concessions of supplying upon its airports goods, commodities, things, services, and facilities, so long as, in each case, the public is not thereby deprived of its rightful, equal, and uniform use thereof;

(4) To sell or lease any real or personal property, acquired for airport purposes and belonging to the municipality, which, in the judgment of its governing body, may not be required for aeronautic purposes, in accordance with the laws of this state, or the provisions of the charter of the municipality, governing the sale or leasing of similar municipally owned property. The proceeds of the sale of any property the purchase price of which was obtained by the sale of bonds shall be deposited in the sinking fund from which funds have been authorized to be taken to finance such bonds. In the event all the proceeds of such sale are not needed to pay the principal of the bonds remaining unpaid, the remainder shall be paid into the general fund of the municipality. The proceeds of sales of property the purchase price of which was paid from appropriations shall be paid into the general fund of the municipality;

(5) To determine the charges or rental for the use of any properties under its control and the charges for any services or accommodations, and the terms and conditions under which such properties may be used, so long as in all cases the public shall not be deprived of its rightful, equal, and uniform use of such property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expense of operation to the municipality. To enforce the payment of charges, the municipality shall have a lien and may enforce it, substantially as is provided by law for liens and the enforcement thereof, for repairs to or the improvement, storage, or care of any personal property; and

(6) To exercise all powers necessarily incidental to the exercise of the general and special powers granted in the Revised Airports Act.

Source: Laws 1945, c. 34, § 8, p. 161; Laws 2017, LB339, § 57.

The Legislature has empowered municipalities to impose use charges for the privilege of using municipal airport facilities. City of Ord v. Biemond, 175 Neb. 333, 122 N.W.2d 6 (1963).

City is given power to enact rules and regulations governing use of airport. Brasier v. Cribbett, 166 Neb. 145, 88 N.W.2d 235 (1958).

3-216 Municipality; accept gifts of money; expend.

A municipality is authorized to accept, receive, and receipt for federal money, and other money, either public or private, for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports and other air navigation facilities, and sites therefor, and to comply with the provisions of the laws of the United States and any rules and regulations made thereunder for the expenditure of federal money upon such airports and other air navigation facilities.

Source: Laws 1945, c. 34, § 9(1), p. 163.

3-217 Repealed. Laws 1947, c. 8, § 2.

3-218 Contracts; laws governing.

All contracts for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports or other air navigation facilities, made by the municipality itself or through the agency of the Division of Aeronautics of the Department of Transportation, shall be made pursuant to the laws of this state governing the making of like contracts, except that where such acquisition, construction, improvement, enlargement, maintenance, equipment, or operation is financed wholly or partly with federal money, the municipality or the division as its agent may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules or regulations made thereunder.

Source: Laws 1945, c. 34, § 9(3), p. 164; Laws 2017, LB339, § 58.

3-219 Municipality; public waters; powers.

The power herein granted to a municipality to establish and maintain airports shall include the power to establish and maintain such airports in, over and upon any public waters of this state within the limits or jurisdiction of or bordering on the municipality, any submerged land under such public waters, and any artificial or reclaimed land which before the artificial making or reclamation thereof constituted a portion of the submerged land under such public waters, and as well the power to construct and maintain terminal buildings, landing floats, causeways, roadways and bridges for approaches to or connecting with the airport, and landing floats and breakwaters for the protection of any such airport.

Source: Laws 1945, c. 34, § 10(1), p. 164.

3-220 Municipalities; public waters; additional powers.

All the other powers herein granted municipalities with reference to airports on land are granted to them with reference to such airports in, over and upon public waters, submerged land under public waters, and artificial or reclaimed land.

Source: Laws 1945, c. 34, § 10(2), p. 165.

3-221 Joint exercise of powers, authorized; when.

All powers, rights and authority granted to any municipality in sections 3-201 to 3-238 and 18-1502 may be exercised and enjoyed by two or more municipalities, or by this state and one or more municipalities therein, acting jointly, either within or without the territorial limits of either or any of said municipalities and within or without this state, or by this state or any municipality therein, acting jointly with any other state or municipality therein, either within or without this state, if the laws of such other state permit such joint action.

Source: Laws 1945, c. 34, § 11(1), p. 165.

Power to condemn may be exercised jointly by village and county. Spencer v. Village of Wallace, 153 Neb. 536, 45 N.W.2d 473 (1951).

3-222 Municipality; terms, defined.

For purposes of sections 3-221 to 3-232 only, unless another intention clearly appears or the context otherwise requires, this state shall be included in the

term municipality, and all the powers conferred upon municipalities in the Revised Airports Act and section 18-1502, if not otherwise conferred by law, are hereby conferred upon this state when acting jointly with any municipality or municipalities. Where reference is made to the governing body of a municipality, that term shall mean, as to the state, the Division of Aeronautics of the Department of Transportation.

Source: Laws 1945, c. 34, § 11(2), p. 165; Laws 2017, LB339, § 59.

State of Nebraska and municipality may act jointly in acquiring airport. Spencer v. Village of Wallace, 153 Neb. 536, 45 N.W.2d 473 (1951).

3-223 Municipality; joint agreements and action; authorized.

Any two or more municipalities may enter into agreements with each other, duly authorized by ordinance or resolution, as may be appropriate, for joint action pursuant to the provisions of sections 3-221 to 3-232. Concurrent action by the governing bodies of the municipalities involved shall constitute joint action.

Source: Laws 1945, c. 34, § 11(3), p. 165.

Two or more municipalities may agree with each other for joint action in establishing airport. Spencer v. Village of Wallace, 153 Neb. 536, 45 N.W.2d 473 (1951).

3-224 Joint agreements; contents.

Each such agreement shall (1) specify its terms, (2) the proportionate interest which each municipality shall have in the property, facilities and privileges involved, (3) the proportion of the preliminary costs, costs of acquisition, establishment, construction, enlargement, improvement and equipment, and of the expenses of maintenance, operation and regulation to be borne by each, (4) make such other provisions as may be necessary to carry out the provisions of sections 3-221 to 3-232, (5) provide for amendments thereof, (6) the conditions and methods of termination and (7) the disposition of all or any part of the property, facilities and privileges jointly owned if said property, facilities and privileges, or any part thereof, shall cease to be used for the purposes herein provided or if the agreement shall be terminated, and for the distribution of the proceeds received upon any such disposition, and of any funds or other property jointly owned and undisposed of, and the assumption or payment of any indebtedness arising from the joint venture which remains unpaid, upon any such disposition or upon a termination of the agreement.

Source: Laws 1945, c. 34, § 11(4), p. 165.

Two or more municipalities may agree for joint ownership and operation of an airport. Spencer v. Village of Wallace, 153 Neb. 536, 45 N.W.2d 473 (1951).

3-225 Joint agreements; board, created; members; terms; compensation.

Municipalities acting jointly as herein authorized shall create a board from the inhabitants of such municipalities for the purpose of acquiring property for, establishing, constructing, enlarging, improving, maintaining, equipping, operating and regulating the airports and other air navigation facilities and airport protection privileges to be jointly acquired, controlled, and operated. Such board shall consist of members to be appointed by the governing body of each municipality involved, the number to be appointed by each to be provided for

by the agreement for the joint venture. Each member shall serve for such time and upon such terms as to compensation, if any, as may be provided for in the agreement.

Source: Laws 1945, c. 34, § 11(5), p. 166.

3-226 Board; officers; adopt rules of procedure.

Each such board shall organize, select officers for terms to be fixed by the agreement, and adopt and from time to time amend rules of procedure.

Source: Laws 1945, c. 34, § 11(6), p. 166.

3-227 Board; powers.

Such board may exercise, on behalf of the municipalities acting jointly by which it is appointed, all the powers of each of such municipalities granted by the Revised Airports Act, except as otherwise provided in the act. Real property, airports, restricted landing areas, air protection privileges, or personal property costing in excess of a sum to be fixed by the joint agreement, may be acquired, and condemnation proceedings may be instituted, only by authority of the governing bodies of each of the municipalities involved. The total amount of expenditures to be made by the board for any purpose in any calendar year shall be determined by the municipalities involved by the approval by each on or before the preceding May 1, of a budget for the ensuing fiscal year. Rules and regulations provided for by subdivision (2) of section 3-215 shall become effective only upon approval of each of the appointing governing bodies and the Division of Aeronautics of the Department of Transportation. No real property and no airport, other air navigation facility, or air protection privilege, owned jointly, shall be disposed of by the board, by sale, lease, or otherwise, except by authority of all the appointing governing bodies, but the board may lease space, area, or improvements and grant concessions on airports for aeronautical purposes or purposes incidental thereto, subject to subdivision (3) of section 3-215. This section shall not be construed to affect the obligation of a lessee to pay taxes if taxes are due under sections 77-202, 77-202.11, and 77-202.12.

Source: Laws 1945, c. 34, § 11(7), p. 166; Laws 2001, LB 173, § 4; Laws 2017, LB339, § 60.

3-228 Joint agreements; ordinances enacted concurrent with each other; effect; publication.

Each municipality, acting jointly with another, pursuant to the Revised Airports Act, is authorized and empowered to enact, concurrently with the other municipalities involved, such ordinances as are provided for by subdivision (2) of section 3-215, and to fix by such ordinances penalties for the violation thereof. Such ordinances, when so concurrently adopted, shall have the same force and effect within the municipalities and on any property jointly controlled by them or adjacent thereto, whether within or without the territorial limits of either or any of them, as ordinances of each municipality involved, and may be enforced in any one of the municipalities in like manner as are its individual ordinances. The consent of the Division of Aeronautics of the Department of Transportation to any such ordinance, where the state is a party to the joint venture, shall be equivalent to the enactment of the ordinance by a municipality. The publication provided for in subdivision (2) of section 3-215

shall be made in each municipality involved in the manner provided by law or charter for publication of its individual ordinances.

Source: Laws 1945, c. 34, § 11(8), p. 167; Laws 2017, LB339, § 61.

3-229 Joint agreements; condemnation proceedings; property acquired held as tenants in common.

Condemnation proceedings shall be instituted, in the names of the municipalities jointly, and the property acquired shall be held by the municipalities as tenants in common. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1945, c. 34, § 11(9), p. 168; Laws 1951, c. 101, § 28, p. 459.

Condemnation may be instituted by municipalities jointly. Spencer v. Village of Wallace, 153 Neb. 536, 45 N.W.2d 473 (1951).

3-230 Joint agreements; funds; revenue, use.

For the purpose of providing funds for necessary expenditures in carrying out the provisions of sections 3-221 to 3-232, a joint fund shall be created and maintained, into which each of the municipalities involved shall deposit its proportionate share as provided by the joint agreement. Such funds are to be provided by bond issues, tax levies and appropriations made by each municipality in the same manner as though it were acting separately under the authority of sections 3-201 to 3-238 and 18-1502. The revenue obtained from the ownership, control and operation of the airports and other air navigation facilities jointly controlled shall be paid into such fund, to be expended as provided in section 3-214. Revenue in excess of the cost of maintenance and operating expenses of the joint properties shall be divided as may be provided in the original agreement for the joint venture.

Source: Laws 1945, c. 34, § 11(10), p. 168.

3-231 Joint agreements; funds; disbursed by order of board.

All disbursements from such fund shall be made by order of the board in accordance with such rules and regulations and for such purposes as the appointing governing bodies, acting jointly, shall prescribe.

Source: Laws 1945, c. 34, § 11(11), p. 168.

3-232 Joint agreements; specific performance authorized.

Specific performance of the provisions of any joint agreement entered into as provided for in sections 3-221 to 3-231 may be enforced as against any party thereto by the other party or parties thereto.

Source: Laws 1945, c. 34, § 11(12), p. 168.

3-233 Municipality; assist another municipality; gift; lease; appropriation of money by taxation or bonds.

Whenever the governing body of any municipality determines that the public interest and the interests of the municipality will be served by assisting any other municipality in exercising the powers and authority granted by sections 3-201 to 3-238 and 18-1502, such first-mentioned municipality is expressly authorized and empowered to furnish such assistance by gift, or lease with or

without rental, of real property, by the donation, lease with or without rental, or loan, of personal property, and by the appropriation of money, which may be provided for by taxation or the issuance of bonds in the same manner as funds might be provided for the same purposes if the municipality were exercising the powers heretofore granted in its own behalf.

Source: Laws 1945, c. 34, § 12, p. 168.

3-234 Purpose of sections.

The purposes of sections 3-201 to 3-238 and 18-1502 are specifically declared to be county purposes as well as generally public, governmental and municipal.

Source: Laws 1945, c. 34, § 13(1), p. 169.

3-235 Powers granted counties.

The powers herein granted to all municipalities are specifically declared to be granted to counties in this state, any other statute to the contrary notwithstanding.

Source: Laws 1945, c. 34, § 13(2), p. 169.

3-236 Airport and air navigational facility; laws governing; jurisdiction.

Every airport and other air navigation facility controlled and operated by any municipality, or jointly controlled and operated pursuant to the provisions of sections 3-201 to 3-238 and 18-1502, shall, subject to federal and state laws, rules, and regulations, be under the exclusive jurisdiction and control of the municipality or municipalities controlling and operating it and no other municipality in which such airport or air navigation facility shall have any police jurisdiction of the same or any authority to charge or exact any license fees or occupation taxes for the operations thereon. Such municipality or municipalities shall have concurrent jurisdiction over the adjacent territory described in subdivision (2) of section 3-215.

Source: Laws 1945, c. 34, § 14, p. 169.

3-237 Sections, how construed.

Sections 3-201 to 3-238 and 18-1502 shall be so interpreted and construed as to make uniform so far as possible the laws and regulations of this state and other states and of the government of the United States having to do with the subject of aeronautics.

Source: Laws 1945, c. 34, § 16, p. 169.

Uniformity of construction of act is sought. Brasier v. Cribbett, 166 Neb. 145, 88 N.W.2d 235 (1958).

3-238 Act, how cited.

Sections 3-201 to 3-238 and 18-1502 may be cited as the Revised Airports Act.

Source: Laws 1945, c. 34, § 18, p. 170.

Scope and manner of citation of act is set out. Brasier v. Cribbett, 166 Neb. 145, 88 N.W.2d 235 (1958).

3-239 Airport authorities or municipalities; project applications under federal act; approval by division; required; division, act as agent; direct receipt of federal funds; when.

(1) No city airport authority, county airport authority, joint airport authority, or municipality in this state, whether acting alone or jointly with another city airport authority, county airport authority, joint airport authority, or municipality, or with the state, shall submit to any federal agency or department any project application under the provisions of any act of Congress which provides airport planning or airport construction and development funds for the expansion and improvement of the airport system, unless the project and the project application have been first approved by the Division of Aeronautics of the Department of Transportation.

(2) Except as provided in subsection (3) of this section, no city airport authority, county airport authority, joint airport authority, or municipality shall directly accept, receive, receipt for, or disburse any funds granted by the United States under any act of Congress pursuant to subsection (1) of this section, but it shall designate the division as its agent and in its behalf to accept, receive, receipt for, and disburse such funds. Such authorities and municipalities shall enter into an agreement with the division prescribing the terms and conditions of such agency in accordance with federal laws, rules, and regulations, and applicable laws of this state. Such money as is paid by the United States shall be retained by the state or paid over to the city airport authority, county airport authority, joint airport authority, or municipality under such terms and conditions as may be imposed by the United States in making such grant.

(3) Any city airport authority, county airport authority, joint airport authority, or municipality operating a primary airport may directly accept, receive, receipt for, and disburse any funds granted by the United States for the primary airport under the provisions of any act of Congress pursuant to subsection (1) of this section by informing the division, in writing, of its intent to do so. If an airport loses its status as a primary airport before signing a grant agreement with the United States, the airport shall be subject to subsection (2) of this section.

(4) For purposes of this section:

(a) City airport authority means an authority established pursuant to the Cities Airport Authorities Act;

(b) County airport authority means an authority established under sections 3-601 to 3-622;

(c) Joint airport authority means an authority established under the Joint Airport Authorities Act;

(d) Municipality means any county, city, or village of this state and any other political subdivision, public corporation, authority, or district in this state which is or may be authorized by law to acquire, establish, construct, maintain, improve, and operate airports and other air navigation facilities; and

(e) Primary airport means any airport which:

(i) Receives scheduled passenger air service;

(ii) Has at least ten thousand revenue passenger enplanements or boardings, as officially recorded by the United States, in at least one of the most recent five calendar years for which official numbers are available; and

(iii) Does not receive any funds apportioned by the United States for nonprimary airports.

Source: Laws 1947, c. 8, § 1, p. 70; Laws 1957, c. 9, § 15, p. 126; Laws 1980, LB 925, § 1; Laws 2002, LB 446, § 4; Laws 2017, LB339, § 62.

Cross References

Cities Airport Authorities Act, see section 3-514.
Joint Airport Authorities Act, see section 3-716.

3-240 Extraterritorial airport; terms, defined.

As used in sections 3-240 to 3-244, unless the context otherwise requires:

(1) Airport means any area of land or water which is used or intended for use, for the landing and taking off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

(2) Air navigation facility means any facility, other than one owned and operated by the United States, used in, available for use in, or designed for use in, aid of air navigation, including any structures, mechanisms, lights, beacons, markers, communicating systems, or other instrumentalities, or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.

(3) Governmental agency means any municipality, city, village, county, public corporation, or other public agency.

Source: Laws 1949, c. 1, § 1, p. 55.

3-241 Extraterritorial airport; state or governmental agency; powers.

This state or any governmental agency of this state having any powers with respect to planning, establishing, acquiring, developing, constructing, enlarging, improving, maintaining, equipping, operating, regulating, or protecting airports or air navigation facilities within this state, may exercise those powers within any state or jurisdiction adjoining this state, subject to the laws of that state or jurisdiction.

Source: Laws 1949, c. 1, § 2, p. 55.

3-242 Extraterritorial airport; adjoining state; powers; right of eminent domain; reciprocity.

Any state adjoining this state or any governmental agency thereof may plan, establish, acquire, develop, construct, enlarge, improve, maintain, equip, operate, regulate, and protect airports and air navigation facilities within this state, subject to the laws of this state applicable to airports and air navigation facilities. The adjoining state or governmental agency shall have the power of eminent domain in this state, if the adjoining state authorizes the exercise of that power therein by this state or any governmental agency thereof having any of the powers mentioned in section 3-241. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1949, c. 1, § 3, p. 56; Laws 1951, c. 101, § 29, p. 459.

3-243 Extraterritorial airport; joint exercise of powers.

The powers granted by sections 3-241 and 3-242 may be exercised jointly by two or more states or governmental agencies, including this state and its governmental agencies, in such combination as may be agreed upon by them.

Source: Laws 1949, c. 1, § 4, p. 56.

3-244 Act, how cited.

Sections 3-240 to 3-244 may be cited as the Extraterritorial Airports Act.

Source: Laws 1949, c. 1, § 5, p. 56.

ARTICLE 3

AIRPORT ZONING

Section

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3-301 Terms, defined.

For purposes of the Airport Zoning Act, unless the context otherwise requires:

(1)(a) Airport means an area of land or water that is used or intended to be used for the landing and takeoff of aircraft and includes any related buildings and facilities;

(b) Airport includes only public-use airports with state or federally approved airport layout plans and military airports with military service-approved military layout plans;

(2) Airport hazard means any structure or tree or use of land that penetrates any approach, operation, transition, or turning zone;

(3) Airport hazard area means any area of land or water upon which an airport hazard might be established if not prevented as provided in the act, but such area shall not extend in any direction a distance in excess of the limits provided for approach, operation, transition, and turning zones;

(4) Airport layout plan means a scaled drawing of existing and proposed land, buildings, and facilities necessary for the operation and development of an airport prepared in accordance with state rules and regulations and federal regulations and guidelines;

(5) Approach zone means a zone that extends from the end of each operation zone and is centered along the extended runway centerlines. Approach zone dimensions are as follows:

(a) For an existing or proposed instrument runway:

(i) An approach zone extends ten miles from the operation zone, measured along the extended runway centerline. The approach zone is one thousand feet wide at the end of the zone nearest the runway and expands uniformly to sixteen thousand eight hundred forty feet wide at the farthest end of the zone; and

(ii) The height limit of an approach zone begins at the elevation of the runway end for which it is the approach and rises one foot vertically for every fifty feet horizontally, except that the height limit shall not exceed one hundred fifty feet above the nearest existing or proposed runway end elevation within three miles of the end of the operation zone at that runway end. At three miles from such operation zone, the height limit resumes sloping one foot vertically for every fifty feet horizontally and continues to the ten-mile limit; and

(b) For an existing or proposed visual runway:

(i) An approach zone extends from the operation zone to the limits of the turning zone, measured along the extended runway centerline. The approach zone is five hundred feet wide at the end of the zone nearest the runway and expands uniformly so that at a point on the extended runway centerline three miles from the operation zone, the approach zone is three thousand seven hundred feet wide; and

(ii) The height limit of an approach zone begins at the elevation of the runway end for which it is the approach and rises one foot vertically for every forty feet horizontally, except that the height limit shall not exceed one hundred fifty feet above the nearest existing or proposed runway end elevation within three miles of the end of the operation zone at that runway end;

(6) Electric facility means an overhead electrical line, including poles or other supporting structures, owned or operated by an electric supplier as defined in section 70-1001.01, for the transmission or distribution of electrical power to the electric supplier's customers;

(7) Existing runway means an instrument runway or a visual runway that is paved or made of turf that has been constructed or is under construction;

(8) Instrument runway means an existing runway with precision or nonprecision instrument approaches as developed and published by the Federal Aviation Administration or an existing or proposed runway with future precision or nonprecision instrument approaches reflected on the airport layout plan. After September 6, 2013, an airport shall not designate an existing or proposed

runway as an instrument runway if the runway was not previously designated as such without the approval of the airport's governing body after a public hearing on such designation;

(9) Operation zone means a zone that is longitudinally centered on each existing or proposed runway. Operation zone dimensions are as follows:

(a) For existing and proposed paved runways, the operation zone extends two hundred feet beyond the ends of each runway. For existing and proposed turf runways, the operation zone begins and ends at the same points as the runway begins and ends;

(b) For existing and proposed instrument runways, the operation zone is one thousand feet wide, with five hundred feet on either side of the runway centerline. For all other existing and proposed runways, the operation zone is five hundred feet wide, with two hundred fifty feet on either side of the runway centerline; and

(c) The height limit of the operation zone is the same as the height of the runway centerline elevation on an existing or proposed runway or the surface of the ground, whichever is higher;

(10) Person means any individual, firm, partnership, limited liability company, corporation, company, association, joint-stock association, or body politic and includes any trustee, receiver, assignee, or other similar representative thereof;

(11) Political subdivision means any municipality, city, village, or county;

(12) Proposed runway means an instrument runway or a visual runway that has not been constructed and is not under construction but that is depicted on the airport layout plan that has been conditionally or unconditionally approved by, or has been submitted for approval to, the Federal Aviation Administration;

(13) Runway means a defined area at an airport that is prepared for the landing and takeoff of aircraft along its length;

(14) Structure means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission or distribution lines;

(15) Transition zone means a zone that extends outward at a right angle to the runway centerline and upward at a rate of one foot vertically for every seven feet horizontally. The height limit of a transition zone begins at the height limit of the adjacent approach zone or operation zone and ends at a height of one hundred fifty feet above the highest elevation on the existing or proposed runway;

(16) Tree means any object of natural growth;

(17) Turning zone's outer limit means the area located at a distance of three miles as a radius from the corners of the operation zone of each runway and connecting adjacent arcs with tangent lines, excluding any area within the approach zone, operation zone, or transition zone. The height limit of the turning zone is one hundred fifty feet above the highest elevation on the existing or proposed runway; and

(18) Visual runway means a runway intended solely for the operation of aircraft using visual approach procedures, with no straight-in instrument approach procedure and no instrument designation indicated on an airport layout plan approved by the Federal Aviation Administration, a military service-

approved military layout plan, or any planning documents submitted to the Federal Aviation Administration by a competent authority.

Source: Laws 1945, c. 233, § 1, p. 682; Laws 1993, LB 121, § 84; Laws 2013, LB140, § 1.

3-302 Airport hazard; public nuisance; prevention.

(1) It is hereby found that an airport hazard endangers the lives and property of the users of an airport and occupants of land in its vicinity and also, if of the obstruction type, in effect reduces the size of the area available for the landing, takeoff, and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein.

(2) Accordingly, it is hereby declared that (a) the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question, (b) it is necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented, and (c) the prevention of airport hazards should be accomplished, to the extent legally possible, by the exercise of the police power, without compensation.

(3) It is further declared that both the prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds and acquire land or property interests therein.

Source: Laws 1945, c. 233, § 2, p. 683; Laws 2013, LB140, § 2.

3-303 Airport hazard; zoning regulations; modifications and exceptions.

In order to prevent the creation or establishment of airport hazards, every political subdivision that has an airport hazard area within the area of its zoning jurisdiction shall adopt, administer, and enforce, under the police power and in the manner and upon the conditions prescribed in the Airport Zoning Act, airport zoning regulations for such airport hazard area. The regulations shall meet the minimum regulations as prescribed by the Division of Aeronautics of the Department of Transportation and may divide such area into zones and, within such zones, specify the land uses permitted and regulate and restrict the height to which structures may be erected and trees allowed to grow, except that a political subdivision or a joint airport zoning board provided for in section 3-304 may include modifications or exceptions to the airport zoning regulations adopted under the Airport Zoning Act that the political subdivision or joint airport zoning board deems appropriate. Such modifications and exceptions shall not be considered a conflict for purposes of section 3-306. The authority of a political subdivision to adopt airport zoning regulations shall not be conditional upon prior adoption of a comprehensive development plan or a comprehensive zoning ordinance.

Source: Laws 1945, c. 233, § 3(1), p. 683; Laws 1961, c. 9, § 1, p. 96; Laws 2010, LB512, § 1; Laws 2013, LB140, § 3; Laws 2017, LB339, § 63.

3-304 Joint airport zoning board; airport zoning regulation; filing.

If an airport is owned or controlled by a political subdivision and any airport hazard area appertaining to such airport is located outside of the political subdivision's zoning jurisdiction, the political subdivision owning or controlling the airport and the political subdivision or political subdivisions within whose zoning jurisdiction the airport hazard area or areas are located may, by ordinance or resolution duly adopted, create a joint airport zoning board, which board shall have the same power to adopt, by resolution approved by a majority of the board, airport zoning regulations applicable to an airport hazard area as that vested by section 3-303 in any political subdivision within whose zoning jurisdiction such area is located. Any airport zoning regulation, or any amendment thereto, adopted by a joint airport zoning board shall be filed with the official or administrative agency responsible for the enforcement of zoning regulations in each of the political subdivisions participating in the creation of the joint airport zoning board and shall be enforced as provided in section 3-319.

Source: Laws 1945, c. 233, § 3(2), p. 683; Laws 1961, c. 9, § 2, p. 96; Laws 1984, LB 837, § 1; Laws 2010, LB512, § 2; Laws 2013, LB140, § 4.

3-304.01 Joint airport zoning board; members; term.

If a joint airport zoning board is created pursuant to section 3-304, such board shall have two representatives appointed by each political subdivision participating in its creation as members thereof and also a chairperson elected by a majority of the members so appointed. The term of each member shall be four years.

Source: Laws 2013, LB140, § 5.

3-305 Zoning regulations; comprehensive zoning ordinance.

In the event that a political subdivision has adopted or hereafter adopts a comprehensive zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations applicable to the same area or portion thereof may be incorporated in and made a part of such comprehensive zoning regulations and be administered and enforced in connection therewith.

Source: Laws 1945, c. 233, § 4(1), p. 684.

3-306 Zoning regulations; conflict; stringent limitation or requirement prevails.

In the event of any conflict between any airport zoning regulations adopted under the Airport Zoning Act and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, and whether such other regulations were adopted by the political subdivision which adopted the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail.

Source: Laws 1945, c. 233, § 4(2), p. 684; Laws 2013, LB140, § 6.

3-307 Zoning regulations; adoption; notice; hearing.

No airport zoning regulations shall be adopted, amended, or changed under the Airport Zoning Act except by the action of the legislative body of the

political subdivision in question, or the joint airport zoning board provided for in section 3-304, after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least ten days' notice of the hearing shall be published in an official paper, or a paper of general circulation, in the political subdivision or subdivisions in which the airport hazard area is located.

Source: Laws 1945, c. 233, § 5(1), p. 684; Laws 2013, LB140, § 7.

3-308 Zoning regulations; procedure for adoption; commission; appointment; preliminary report; public hearings; final report.

Prior to the initial zoning of any airport hazard area under the Airport Zoning Act, the political subdivision or joint airport zoning board which is to adopt the regulations shall appoint a commission, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report. The legislative body of the political subdivision or the joint airport zoning board shall not hold its public hearings or take other action until it has received the final report of such commission. If a city or county planning commission or a joint or interjurisdictional planning commission already exists, it may be appointed as the airport zoning commission.

Source: Laws 1945, c. 233, § 5(2), p. 685; Laws 2013, LB140, § 8.

3-309 Zoning regulations; requirements; reasonable.

All airport zoning regulations adopted under the Airport Zoning Act shall be reasonable and not impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of the act. In determining what regulations it may adopt, each political subdivision and joint airport zoning board shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area, the character of the neighborhood, and the uses to which the property to be zoned is put and adaptable. If an airport layout plan has been submitted for approval to the Federal Aviation Administration with a proposed instrument runway depicted thereon and such airport layout plan is conditionally or unconditionally approved without such proposed instrument runway, the political subdivision shall adopt or revise, as necessary, airport zoning regulations to protect any approach zone for a visual runway only.

Source: Laws 1945, c. 233, § 6(1), p. 685; Laws 2013, LB140, § 9.

3-310 Zoning regulations; nonconforming use; exception.

(1) No airport zoning regulations adopted under the Airport Zoning Act shall require the removal, lowering, or other change or alteration of any existing structure or tree not conforming to the regulations when adopted or amended or otherwise interfere with the continuance of any nonconforming use, except as provided in section 3-311.

(2) Any structure that has not yet been constructed but that has received, prior to August 1, 2013, zoning approval from the political subdivision exercis-

ing zoning jurisdiction over such structure may be constructed and shall thereafter be considered an existing structure for purposes of this section.

Source: Laws 1945, c. 233, § 6(2), p. 685; Laws 2013, LB140, § 10.

3-311 Zoning regulations; new or changed structure; nonconforming use; permit.

(1) Airport zoning regulations adopted under the Airport Zoning Act may require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially changed, altered, or repaired.

(2) Except as provided in subsection (3) of this section for certain electric facilities, all airport zoning regulations adopted under the act shall provide that before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit authorizing any replacement, alteration, repair, reconstruction, growth, or replanting must be secured from the administrative agency authorized to administer and enforce the regulations. A permit shall be granted under this subsection if the applicant shows that the replacement, alteration, repair, reconstruction, growth, or replanting of the nonconforming structure, tree, or nonconforming use would not result in an increase in height or a greater hazard to air navigation than the condition that existed when the applicable regulation was adopted. For nonconforming structures other than electric facilities, no permit under this subsection shall be required for repairs necessitated by fire, explosion, act of God, or the common enemy or for repairs which do not involve expenditures exceeding more than sixty percent of the fair market value of the nonconforming structure, so long as the height of the nonconforming structure is not increased over its preexisting height.

(3) An electric supplier owning or operating an electric facility made nonconforming by the adoption of airport zoning regulations under the Airport Zoning Act may, without a permit or other approval by the political subdivision adopting such regulations, repair, reconstruct, or replace such electric facility if the height of such electric facility is not increased over its preexisting height. Any construction, repair, reconstruction, or replacement of an electric facility, the height of which will exceed the preexisting height of such electric facility, shall require a permit from the political subdivision adopting such regulations. The permit shall be granted only upon a showing that the excess height of the electric facility will not establish or create an airport hazard or become a greater hazard to air navigation than the electric facility that previously existed.

Source: Laws 1945, c. 233, § 7(1), p. 685; Laws 2013, LB140, § 11.

3-312 Zoning regulations; property inconsistent with regulations; variance; allowance; exception.

Any person desiring to erect any structure, increase the height of any structure, permit the growth of any tree, or otherwise use his or her property in a manner inconsistent with the airport zoning regulations adopted under the Airport Zoning Act may apply to the board of adjustment for a variance from the zoning regulations in question. Such variances shall be allowed only if the board of adjustment makes the same findings for the granting of variances generally as set forth in subsection (2) of section 19-910, except that if the applicant demonstrates that the proposed structure or alteration of a structure

does not require any modification or revision to any approach or approach procedure as approved or written by the Federal Aviation Administration on either an existing or proposed runway and the applicant provides signed documentation from the Federal Aviation Administration that the proposed structure or alteration of the structure will not require any modification or revision of any airport minimums, such documentation may constitute evidence of undue hardship and the board of adjustment may grant the requested variance without such findings. Any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of the act.

Source: Laws 1945, c. 233, § 7(2), p. 686; Laws 2013, LB140, § 12.

3-313 Zoning regulations; permit or variance; hazard marking and lighting.

In granting any permit under or variance from any airport zoning regulation adopted under the Airport Zoning Act, the administrative agency or board of adjustment may, if it deems it advisable to effectuate the purposes of the act and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

Source: Laws 1945, c. 233, § 7(3), p. 686; Laws 2013, LB140, § 13.

3-314 Transferred to section 3-319.01.

3-315 Repealed. Laws 2013, LB 140, § 23.

3-316 Repealed. Laws 2013, LB 140, § 23.

3-317 Repealed. Laws 2013, LB 140, § 23.

3-318 Repealed. Laws 2013, LB 140, § 23.

3-319 Zoning regulations; provide for administration and enforcement.

All airport zoning regulations adopted under the Airport Zoning Act shall provide for the administration and enforcement of such regulations by an administrative agency which may be an agency created by such regulations or any official, board, or other existing agency of the political subdivision adopting the regulations. In the case of airport zoning regulations adopted by a joint airport zoning board, each of the political subdivisions which participated in the creation of the joint airport zoning board shall create or designate an official or an administrative agency to administer and enforce the airport zoning regulations within its respective zoning jurisdiction. The duties of any official or administrative agency designated pursuant to the act shall include that of reviewing and acting upon all applications for permits under the airport zoning regulations, but such agency shall not have or exercise any of the powers herein delegated to the board of adjustment. In no event shall such official or administrative agency be or include any member of the board of adjustment.

Source: Laws 1945, c. 233, § 9, p. 687; Laws 2013, LB140, § 14.

3-319.01 Zoning regulations; appeal; hearing; procedure; board; duties.

(1) Any person aggrieved or taxpayer affected by any decision of an administrative agency made in its administration of airport zoning regulations adopted under the Airport Zoning Act, or any governing body of a political subdivision which is of the opinion that a decision of such an administrative agency is an improper application of airport zoning regulations of concern to such governing body, may appeal to the board of adjustment authorized to hear and decide appeals from the decisions of such administrative agency.

(2) Any appeal taken under this section shall be taken within a reasonable amount of time, as provided by the rules of the board, by filing with the agency from which the appeal is taken and with the board, a notice of appeal specifying the grounds thereof. The agency from which the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(3) An appeal shall stay any proceeding in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such cases the proceedings shall not be stayed except by an order of the board after notice to the agency from which the appeal is taken and upon due cause shown.

(4) The board shall fix a reasonable time for the hearing of appeals, give public notice thereof, give due notice to the parties in interest, and decide the appeal within sixty days after the date of filing such appeal. Any party may appear in person or by an agent or attorney at the hearing.

Source: Laws 1945, c. 233, § 8(1), p. 686; R.S.1943, (2012), § 3-314; Laws 2013, LB140, § 15.

3-320 Zoning regulations; board of adjustment; members; terms; powers.

(1) All airport zoning regulations adopted under the Airport Zoning Act shall provide for a board of adjustment to have and exercise the following powers:

(a) To hear and decide appeals from any order, requirement, decision, or determination made by the administrative agency in the enforcement of the airport zoning regulations;

(b) To hear and decide any special exceptions to the terms of the airport zoning regulations upon which such board may be required to pass under such regulations; and

(c) To hear and decide petitions for variances from the strict application of airport zoning regulations.

(2) A board of adjustment shall consist of five regular members, each to be appointed for a term of three years by the political subdivision or joint airport zoning board adopting the regulations. Any member thereof may be removed by the appointing authority for cause, upon written charges and after a public hearing. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of the administrative agency or to decide in favor of the applicant on any matter upon which the board is required to pass under the airport zoning regulations or to effect any variation in such regulations.

(3) The board of adjustment may, consistent with the Airport Zoning Act, reverse or affirm wholly or partly or modify the order, requirement, decision,

or determination appealed from and may make such order, requirement, decision, or determination as it deems right and proper under the circumstances.

(4) A board of adjustment, board of zoning appeals, or similar zoning appeals board that exists on September 6, 2013, may be designated as and shall exercise the power of the board of adjustment for airport zoning regulations as required by this section.

Source: Laws 1945, c. 233, § 10(1), p. 688; Laws 2013, LB140, § 16.

3-321 Repealed. Laws 2013, LB 140, § 23.

3-322 Repealed. Laws 2013, LB 140, § 23.

3-323 Board of adjustment; adopt rules; meetings; oaths; public hearings; record of proceedings.

The board shall adopt rules in accordance with the provisions of the ordinance or resolution by which it was created. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All hearings of the board shall be public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact. It shall also keep records of its examinations and other official actions. Such minutes and records shall immediately be filed in the office of the board and be a public record.

Source: Laws 1945, c. 233, § 10(4), p. 688.

3-324 Board of adjustment; judicial review; petition; grounds.

Any (1) person aggrieved or taxpayer affected by any decision of a board of adjustment, (2) governing body of a political subdivision, or (3) joint airport zoning board, which is of the opinion that a decision of a board of adjustment is arbitrary or capricious, illegal, or unsupported by evidence, may obtain judicial review of such decision by filing a petition in error in the district court of the county in which the structure or tree that is the subject of the decision is located. The filing of and proceeding on the petition in error shall be in accordance with sections 25-1901 to 25-1937.

Source: Laws 1945, c. 233, § 11(1), p. 689; Laws 2013, LB140, § 17.

3-325 Repealed. Laws 2013, LB 140, § 23.

3-326 Repealed. Laws 2013, LB 140, § 23.

3-327 Repealed. Laws 2013, LB 140, § 23.

3-328 Judicial review; costs.

Costs shall not be allowed against the board of adjustment unless it appears to the court that it acted with gross negligence, in bad faith or with malice in making the decision appealed from.

Source: Laws 1945, c. 233, § 11(5), p. 690.

3-329 Judicial review; effect of decision on other structures.

In any case in which airport zoning regulations adopted under the Airport Zoning Act, although generally reasonable, are held by a court to interfere with the use or enjoyment of a particular structure or parcel of land to such an extent or to be so onerous in their application to such a structure or parcel of land as to constitute a taking or deprivation of that property in violation of the Constitution of Nebraska or the Constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land.

Source: Laws 1945, c. 233, § 11(6), p. 690; Laws 2013, LB140, § 18.

3-330 Violation; penalty; injunctions.

Each violation of the Airport Zoning Act or of any regulations, orders, or rulings promulgated or made pursuant to the act shall constitute a Class IV misdemeanor. Each day a violation continues to exist shall constitute a separate offense. In addition, the political subdivision or agency adopting zoning regulations under the act may institute, in any court of competent jurisdiction, an action to prevent, restrain, correct, or abate any violation of (1) the act, (2) airport zoning regulations adopted under the act, or (3) any order or ruling made in connection with the administration or enforcement of the act or such regulations. The court in such proceedings shall adjudge to the plaintiff such relief by way of injunction, which may be mandatory or otherwise, as may be proper under all the facts and circumstances of the case in order to fully effectuate the purposes of the act and of the regulations adopted and orders and rulings made pursuant thereto.

Source: Laws 1945, c. 233, § 12, p. 690; Laws 1977, LB 40, § 30; Laws 2013, LB140, § 19.

3-331 Acquisition of property interest; purchase; grant; condemnation; procedure.

In any case in which (1) it is desired to remove, lower, or otherwise terminate a nonconforming structure or use, (2) the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under the Airport Zoning Act, or (3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property or nonconforming use is located or the political subdivision owning or operating the airport or served by it may acquire by purchase, grant, or condemnation, such air right, aviation easement, or other estate or interest in the property or nonconforming structure or use in question as may be necessary to effectuate the purposes of the act. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1945, c. 233, § 13, p. 691; Laws 1951, c. 101, § 30, p. 460; Laws 2013, LB140, § 20.

3-332 Division of Aeronautics; municipalities and political subdivisions; assist in planning and developing.

The Division of Aeronautics of the Department of Transportation may aid and assist municipalities and other political subdivisions of the state in planning,

developing, and carrying out programs for airport zoning in order to secure uniformity therein as far as possible.

Source: Laws 1945, c. 233, § 16, p. 691; Laws 2017, LB339, § 64.

3-333 Act, how cited.

Sections 3-301 to 3-333 shall be known and may be cited as the Airport Zoning Act.

Source: Laws 1945, c. 233, § 15, p. 691; Laws 2013, LB140, § 21.

ARTICLE 4
REGULATION OF STRUCTURES

Section
3-401. Obstructions to air navigation; regulation; purpose.
3-402. Terms, defined.
3-403. Structures; erection, maintenance in excess of one hundred fifty feet; permit required.
3-404. Structures; erection, maintenance in excess of one hundred fifty feet; application; form; contents; permit; issuance; considerations; Nebraska National Guard; duties.
3-405. Appeal; procedure.
3-406. Existing structures; structures erected under authority of federal or state agency; zoning regulations; applicability of sections.
3-407. Structures; lighting; rules and regulations; division adopt.
3-407.01. Meteorological evaluation tower; marking; owner; registration; contents; duties; failure to comply; effect.
3-408. Violations; penalty.
3-409. Structure; violations; injunction; removal.

3-401 Obstructions to air navigation; regulation; purpose.

There is hereby recognized, declared, and found (1) to exist, in behalf of the citizens of the United States, a public right of freedom of transit in air commerce through the air space of the State of Nebraska, (2) that any obstruction to air navigation (a) interferes with the public right of freedom of transit in air commerce, (b) endangers the lives and property of those using the air space for travel and transportation by air, and (c) endangers the lives and property of the occupants of land in the State of Nebraska, and (3) that the public health, safety, and welfare require that the erection and maintenance of obstructions to air navigation be regulated and controlled.

Source: Laws 1955, c. 7, § 1, p. 67.

3-402 Terms, defined.

As used in sections 3-401 to 3-409, unless the context otherwise requires:

(1) Meteorological evaluation tower means an anchored structure, including all guy wires and accessory facilities, on which one or more meteorological instruments are mounted for the purpose of meteorological data collection;

(2) Obstruction means any structure which obstructs the air space required for the flight of aircraft and in the landing and taking off of aircraft at any airport or restricted landing area;

(3) Person means any public utility, public district, or other governmental division or subdivision or any person, corporation, partnership, or limited liability company;

(4) Structure means any manmade object which is built, constructed, projected, or erected upon, from, and above the surface of the earth, including, but not limited to, towers, antennas, buildings, wires, cables, and chimneys; and

(5) Terrain flight training area means an area established by the Nebraska National Guard within which military and related flight training is conducted using rotary-wing aircraft and which existed as of July 19, 2018.

Source: Laws 1955, c. 7, § 2, p. 68; Laws 1993, LB 121, § 85; Laws 2015, LB469, § 5; Laws 2018, LB901, § 1.

3-403 Structures; erection, maintenance in excess of one hundred fifty feet; permit required.

It shall be unlawful for any person, firm, or corporation, without having first applied for and obtained a permit in writing from the Division of Aeronautics of the Department of Transportation, to build, erect, or maintain any structure within the State of Nebraska, the height of which exceeds one hundred fifty feet above the surface of the ground at point of installation.

Source: Laws 1955, c. 7, § 3, p. 68; Laws 1963, c. 17, § 1, p. 96; Laws 2017, LB339, § 65.

3-404 Structures; erection, maintenance in excess of one hundred fifty feet; application; form; contents; permit; issuance; considerations; Nebraska National Guard; duties.

(1) The application for the permit required by section 3-403 shall be made in writing on forms prescribed by the Division of Aeronautics of the Department of Transportation and shall contain or be accompanied by details as to the location, construction, height, and dimensions of the proposed structure, the nature of its intended use, and such other information as the Director of Aeronautics may require. If the proposed structure is proposed to be built inside the boundaries of or within one thousand meters of the boundaries of any terrain flight training area, the application for a permit shall be accompanied by a written mitigation agreement between the applicant and the Nebraska National Guard.

(2) Upon the filing of an application, the director shall make an investigation and an aeronautical study of such proposed construction and its effect, if any, upon air navigation, and the health, welfare, and safety of the public. In making such investigation and aeronautical study and making his or her determination under this section, the director shall consider (a) the character of flying operations expected to be conducted in the area concerned, (b) the nature of the terrain, (c) the character of the neighborhood, (d) the uses to which the property concerned is devoted or adaptable, (e) the proximity to existing airports, airways, control areas, and control zones, (f) the height of existing adjacent structures, and (g) all the facts and circumstances existing at the time of application.

(3) If the director, upon such investigation, determines that such proposed structure will not constitute a hazard to air navigation and will not interfere unduly with the public right of freedom of transit in commerce through the air space affected thereby, the director shall issue to the applicant a permit, required by section 3-403, authorizing the erection and construction of such structure, subject to such conditions as to marking and lighting as the division may prescribe by its rules and regulations, authorized by section 3-407. The

director shall impose only such restrictions or requirements as may be reasonably necessary to effectuate sections 3-401 to 3-409. If the director does not so determine, the director shall deny the application.

(4) On or before August 1, 2018, the Nebraska National Guard shall provide the Division of Aeronautics of the Department of Transportation a description of the boundaries of the terrain flight training areas by metes and bounds or an official map that shows the boundaries of the terrain flight training areas. The description or map shall be used by the division in its management of the airspace of the State of Nebraska pursuant to sections 3-401 to 3-409.

Source: Laws 1955, c. 7, § 4, p. 68; Laws 2017, LB339, § 66; Laws 2018, LB901, § 2.

3-405 Appeal; procedure.

Any person aggrieved by any action of the Division of Aeronautics of the Department of Transportation in granting or denying a permit under the terms of sections 3-401 to 3-409 may appeal the action, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1955, c. 7, § 5, p. 69; Laws 1988, LB 352, § 9; Laws 2017, LB339, § 67.

Cross References

Administrative Procedure Act, see section 84-920.

3-406 Existing structures; structures erected under authority of federal or state agency; zoning regulations; applicability of sections.

The provisions of sections 3-403 to 3-405 shall not apply to structures hereafter erected under the authority of a license or permit issued by a federal agency or other state agency now having specific statutory jurisdiction over the air space, including authority to prohibit or regulate the height of structures for the promotion of safety in aviation, nor to existing structures. Nothing in sections 3-401 to 3-409 shall be construed to limit or abridge any right, power, or authority to zone property under the provisions of any other law of this state or of the federal government except, that in the event of any conflict between the regulations for height limits of structures, lighting, and marking adopted under the provisions of sections 3-401 to 3-409, and any other regulations applicable to the same area, the more stringent limitation or requirement shall govern and prevail.

Source: Laws 1955, c. 7, § 6, p. 69.

3-407 Structures; lighting; rules and regulations; division adopt.

All structures outside the corporate limits of cities and villages, exceeding a height of two hundred feet above the surface of the ground, and all structures within the corporate limits of cities and villages exceeding a height of five hundred feet shall be marked and lighted in accordance with rules and regulations adopted and promulgated by the Division of Aeronautics of the Department of Transportation. The division may adopt and promulgate rules and regulations for the marking and lighting of such structures in a manner calculated to prevent collisions with such structures by aircraft. It shall be the

duty of the persons, firms, and corporations owning, maintaining, or using such structures to provide and maintain such marking and lighting.

Source: Laws 1955, c. 7, § 7, p. 70; Laws 1993, LB 472, § 1; Laws 2017, LB339, § 68.

3-407.01 Meteorological evaluation tower; marking; owner; registration; contents; duties; failure to comply; effect.

(1) A meteorological evaluation tower, the height of which is at least fifty feet above the surface of the ground at point of installation, shall be marked according to subsection (2) of this section. This section applies to a meteorological evaluation tower that is located outside the corporate limits of a city or village.

(2) A meteorological evaluation tower described in subsection (1) of this section shall: (a) Be painted in seven equal-width and alternating bands of aviation orange and white beginning with orange at the top of the tower and ending with orange at the base; (b) have two or more spherical marker balls at least twenty-one inches in diameter that are aviation orange in color and attached to each outer guy wire connected to the tower with the top ball no further than twenty feet from the top wire connection and the remaining ball or balls at or below the midpoint of the tower on the outer guy wires; and (c) have yellow safety sleeves installed on each outer guy wire extending at least fourteen feet above the anchor point of the guy wire.

(3) The owner of a meteorological evaluation tower subject to this section shall, not less than ten business days prior to erecting the tower, register with the Division of Aeronautics of the Department of Transportation the name and address of the owner, the height and location of the tower, and any other information that the division deems necessary for aviation safety. The owner of a tower subject to this section shall also report the removal of the tower to the division not more than thirty business days after its removal. The division shall make the information received pursuant to this subsection available to the public within five business days.

(4) The owner of a meteorological evaluation tower described in subsection (1) of this section that was erected prior to May 28, 2015, and which is either lighted, marked with balls at least twenty-one inches in diameter, painted, or modified in some other manner so it is recognizable in clear air during daylight hours from a distance of not less than two thousand feet, shall mark the tower as required by subsection (2) of this section within two years after May 28, 2015, or at such time the tower is taken down for maintenance or other purposes, whichever comes first, except that the owner of a tower erected prior to May 28, 2015, which is not lighted, marked, painted, or modified as described in this subsection shall mark such tower as required by subsection (2) of this section within ninety days after May 28, 2015. The registration requirements of subsection (3) of this section shall be performed by the owner of a tower erected prior to May 28, 2015, within fifteen business days after May 28, 2015.

(5) A material failure to comply with the marking and registration requirements of this section shall be admissible as evidence of negligence on the part of an owner of a meteorological evaluation tower in an action in tort for property damage, bodily injury, or death resulting from an aerial collision with such unmarked or unregistered tower.

(6) The division may adopt and promulgate rules and regulations for carrying out the purposes of this section.

Source: Laws 2015, LB469, § 6; Laws 2017, LB339, § 69.

3-408 Violations; penalty.

Any person, firm, or corporation (1) violating any of the provisions of sections 3-401 to 3-409, (2) submitting false information in the application for a permit, (3) violating any rule or regulation adopted and promulgated by the Division of Aeronautics of the Department of Transportation pursuant to sections 3-401 to 3-409, (4) failing to do and perform any act required by sections 3-401 to 3-409, or (5) violating the terms of any permit issued pursuant to sections 3-401 to 3-409, shall be guilty of a Class III misdemeanor. Each day any violation continues or any structure erected in violation of sections 3-401 to 3-409 shall continue in existence shall constitute a separate offense.

Source: Laws 1955, c. 7, § 8, p. 70; Laws 1977, LB 40, § 31; Laws 2015, LB469, § 7; Laws 2017, LB339, § 70.

3-409 Structure; violations; injunction; removal.

In addition to the penalties provided for by section 3-408, the erection and maintenance of any structure in violation of sections 3-401 to 3-409 may be enjoined by any court of competent jurisdiction in an action for that purpose commenced by the Division of Aeronautics of the Department of Transportation or any other interested person. The erection of such structure and permitting the same to stand or remain, in violation of sections 3-401 to 3-409, is hereby declared to be a nuisance and the division, or its authorized agent, is authorized to go upon the premises and abate such nuisance by removing such structure after five days' notice to the interested parties, to be served by mail addressed to them at their last-known place of business or residence. The expense incident to the removal of such structure shall be paid by the owners thereof, and if the division removes such structures as provided in this section, the expense incurred by the division may be recovered from the sale of the structure or its salvage material.

Source: Laws 1955, c. 7, § 9, p. 71; Laws 2017, LB339, § 71.

ARTICLE 5

CITY AIRPORT AUTHORITY

Section
3-501. Terms, defined.
3-502. Airport authority; created; board; members; expenses; delegation of authority; period of corporate existence; jurisdiction.
3-502.01. Repealed. Laws 1969, c. 25, § 3.
3-502.02. Repealed. Laws 1969, c. 25, § 3.
3-503. Airport authority; acquisition of property; terms; eminent domain; relinquishment; insurance.
3-504. Airport authority; powers.
3-504.01. Airport authority; authority for creation; election not required; supremacy over city charter; validation of proceedings.
3-504.02. Airport authority; cities of primary class; development of commercial aviation; representation in commercial air service hearings; additional tax levy.
3-505. Airport authority; city officers and employees; transfer; retention of privileges; social security and pension plans; continuance of coverage.

Section
3-506. Airport authority; finances; how handled.
3-506.01. Airport authority; treasurer; appointed; bond.
3-507. Airport authority; bonds; general; limited purposes; bond anticipation notes; issuance; powers conferred; personal liability.
3-508. Airport authority; bondholders; no impairment of rights or remedies.
3-509. Airport authority; obligations of authority; limited liability.
3-510. Airport authority; bonds; eligibility for investment; use as security.
3-511. Airport authority; declaration of public purpose; exemption of property from taxation.
3-512. Repealed. Laws 1969, c. 138, § 28.
3-513. Airport authority; applicability of sections.
3-514. Act, how cited.

3-501 Terms, defined.

As used in the Cities Airport Authorities Act, unless the context otherwise requires:

(1) Authority means an airport authority which shall be a body politic and corporate organized pursuant to section 3-502;

(2) City means any city or village of the State of Nebraska;

(3) Bonds means bonds issued by the authority pursuant to the provisions of the Cities Airport Authorities Act;

(4) Board means the members of the authority;

(5) Mayor and city council means, in the case of a village, the chairperson of the board of trustees and the board of trustees, respectively;

(6) Real property means lands, structures, and interests in land, including lands under water and riparian rights, and any and all things and rights usually included within the term real property, including not only fee simple absolute but also any and all lesser interests, such as easements, rights-of-way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property; and

(7) Project means any airport operated by the authority, including all real and personal property, structures, machinery, equipment, and appurtenances or facilities which are part of such airport or used or useful in connection therewith either as ground facilities for the convenience of handling aviation equipment, passengers, and freight or as part of aviation operation, air navigation, and air safety operation.

Source: Laws 1957, c. 9, § 1, p. 110; Laws 2002, LB 446, § 5; Laws 2003, LB 5, § 2.

An airport authority is a body corporate and politic. Bowley v. City of Omaha, 181 Neb. 515, 149 N.W.2d 417 (1967).

The Airport Authority Act sustained as constitutional. Obitz v. Airport Authority of City of Red Cloud, 181 Neb. 410, 149 N.W.2d 105 (1967).

3-502 Airport authority; created; board; members; expenses; delegation of authority; period of corporate existence; jurisdiction.

(1) Any city may create an airport authority to be managed and controlled by a board. The board, when and if appointed, shall have full and exclusive jurisdiction and control over all facilities owned or thereafter acquired by such city for the purpose of aviation operation, air navigation, and air safety operation.

(2) The Cities Airport Authorities Act shall not become operative as to any city unless the mayor and city council in their discretion activate the airport

authority by the mayor appointing and the council approving the board members as provided in this section. Each such board shall be a body corporate and politic, constituting a public corporation and an agency of the city for which such board is established.

(3) Each board in cities of the primary, first, and second classes and in villages shall consist of five members to be appointed by the mayor with the approval of the city council to serve until their successors elected pursuant to section 32-547 take office. Members of such board shall be residents of the city for which such authority is created. Any vacancy on such board shall be filled by appointment by the mayor, with the approval of the city council, to serve the unexpired portion of the term. A member of such board may be removed from office for incompetence, neglect of duty, or malfeasance in office. An action for the removal of such officer may be brought, upon resolution of the city council, in the district court of the county in which such city is located.

(4) Each board in cities of the metropolitan class shall consist of five members who shall be nominated by the mayor and approved by the city council and shall serve for terms of five years. Any vacancy on such board shall be filled, not later than six months after the date of such vacancy, by appointment by the mayor with the approval of the city council, and such appointee shall serve the unexpired portion of the term of the member whose office was vacated. Any member of such board may be removed from office by the mayor, for incompetence, neglect of duty, or malfeasance in office, with the consent and approval of the city council.

(5) The members of the board hereby created shall not be entitled to compensation for their services but shall be entitled to reimbursement of expenses paid or incurred in the performance of the duties imposed upon them by the Cities Airport Authorities Act, to be paid as provided in section 23-1112 for county officers and employees. A majority of the members of the board then in office shall constitute a quorum. The board may delegate to one or more of the members, or to its officers, agents, and employees, such powers and duties as it may deem proper.

(6) The board and its corporate existence shall continue only for a period of twenty years from the date of appointment of the members thereof and thereafter until all its liabilities have been met and its bonds have been paid in full or such liabilities and bonds have otherwise been discharged. When all liabilities incurred by the authority of every kind and character have been met and all its bonds have been paid in full or such liabilities and bonds have otherwise been discharged, all rights and properties of the authority shall pass to and be vested in the city. The authority shall have and retain full and exclusive jurisdiction and control over all projects under its jurisdiction, with the right and duty to charge and collect revenue therefrom, for the benefit of the holders of any of its bonds or other liabilities. Upon the authority's ceasing to exist, all its remaining rights and properties shall pass to and vest in the city.

Source: Laws 1957, c. 9, § 2, p. 111; Laws 1959, c. 12, § 1, p. 120; Laws 1965, c. 19, § 1, p. 153; Laws 1967, c. 14, § 1, p. 102; Laws 1967, c. 15, § 1, p. 106; Laws 1969, c. 25, § 1, p. 218; Laws 1971, LB 164, § 1; Laws 1972, LB 661, § 1; Laws 1977, LB 201, § 1; Laws 1981, LB 204, § 13; Laws 1988, LB 975, § 1; Laws 1994, LB 76, § 461; Laws 2013, LB87, § 1; Laws 2020, LB1003, § 1.

This section gives an airport authority full jurisdiction over all aspects of getting an aircraft and its occupants safely into and out of an airport. Professional Firefighters of Omaha v. City of Omaha, 243 Neb. 166, 498 N.W.2d 325 (1993).

The word airport herein means an airport qualified and licensed for public use. Elliott v. City of Plattsmouth, 187 Neb. 165, 188 N.W.2d 684 (1971).

Under former law the word airport in this section means an airport qualified and licensed for public use. Bruns v. City of Seward, 186 Neb. 658, 185 N.W.2d 853 (1971).

Airport authority's existence dependent upon city which created it and is an agency of that city, existence of airport authority does not prevent parent city from being annexed. Airport Authority of City of Millard v. City of Omaha, 185 Neb. 623, 177 N.W.2d 603 (1970).

3-502.01 Repealed. Laws 1969, c. 25, § 3.

3-502.02 Repealed. Laws 1969, c. 25, § 3.

3-503 Airport authority; acquisition of property; terms; eminent domain; relinquishment; insurance.

(1) Any city creating an authority shall by resolution convey or transfer to it any existing airport or any other property of the city for use in connection with a project, including real and personal property owned or leased by the city and used or useful in connection therewith. In case of real property so conveyed, the title thereto shall remain in the city, but the authority shall have the use and occupancy of such real property for so long as its corporate existence shall continue. In the case of personal property so conveyed, the title shall pass to the authority. Any conveyance of an existing airport shall be subject to any leases or agreements duly and validly made by the city affecting such airports or the property so conveyed, except that any such lease or agreement which is inconsistent with the ability of the authority to issue negotiable bonds may be renegotiated by the authority.

(2) Such city may acquire by purchase or condemnation real property in the name of the city for the projects or for the widening of existing roads, streets, parkways, avenues, or highways, or for new roads, streets, parkways, avenues, or highways to a project, or partly for such purposes and partly for other city purposes, by purchase or condemnation in the manner provided by law for the acquisition of real property by such city, except that if property is to be acquired outside the zoning jurisdiction of the city creating the authority when such city is of the metropolitan class, approval shall be obtained from the county board of the county where the property is located before the right of eminent domain may be exercised. Such city may also close any roads, streets, parkways, avenues, or highways as may be necessary or convenient to facilitate the construction or operation of a project.

(3) Contracts may be entered into between the city and an authority, or between other political subdivisions of the State of Nebraska and such city or authority, or between each and any of them, providing for the conveyance of property to such city or authority for use in connection with a project, and for the closing of streets, roads, parkways, avenues, or highways. The amounts, terms, and conditions of payment if any shall be made by such city or authority in connection with the conveyances. The contracts may also contain covenants by such city or such political subdivision, as to the road, street, parkway, avenue, or highway improvements to be made by such city or such political subdivision. Any city council may authorize such contracts between the city and the authority by resolution, and no other authorization on the part of the city for such contracts shall be necessary. All obligations of the city for the payment of money to an authority incurred in carrying out the Cities Airport Authorities Act shall be included in and provided for by each annual or biennial budget of

such city thereafter made until fully discharged. In the case of other political subdivisions of the state, such contracts shall be authorized as provided by law.

(4) An authority operating under the act may acquire real property for a project in the name of the city in which it was established at the cost and expense of the authority by purchase or condemnation pursuant to the laws relating to the condemnation of land by cities and subdivision (4) of section 3-504, except that if property is to be acquired outside the zoning jurisdiction of the city creating the authority when such city is of the metropolitan class, approval shall be obtained from the county board of the county where the property is located before the right of eminent domain may be exercised. The authority shall have the use and occupancy of such real property so long as its corporate existence shall continue.

(5) In case an authority shall have the use and occupancy of any real property which it shall determine is no longer required for a project then, if such real property was acquired at the cost and expense of the city, the authority shall have the power to surrender its use and occupancy thereof to the city. If such real property was acquired at the cost and expense of the authority, then the authority shall have power to sell, lease, or otherwise dispose of the real property. The authority shall retain the proceeds of sale, rentals, or other money derived from the disposition of such real property for its corporate purposes.

(6) If the authority does not provide insurance coverage for the real property improvements to real property and the real property of which it has the use and occupancy and the city provides insurance coverage for such improvements and property and names the authority as the named insured, the authority shall reimburse the city for purchasing the insurance coverage if reimbursement is requested by the city.

Source: Laws 1957, c. 9, § 3, p. 113; Laws 1973, LB 22, § 1; Laws 1981, LB 354, § 2; Laws 1989, LB 123, § 1; Laws 2000, LB 1116, § 3.

An airport authority acquiring real property must bring an action in the name of the city in which it was established for and on behalf, of the airport authority. Airport Auth. of Village of Greeley v. Dugan, 259 Neb. 860, 612 N.W.2d 913 (2000).

Municipal airport authorities are authorized to acquire property by condemnation for establishing airports. Seward County Board of Commissioners v. City of Seward, 196 Neb. 266, 242 N.W.2d 849 (1976).

3-504 Airport authority; powers.

Any authority established under the Cities Airport Authorities Act shall have power:

(1) To sue and be sued;

(2) To have a seal and alter the same at pleasure;

(3) To acquire, hold, and dispose of personal property for its corporate purposes;

(4) To acquire in the name of the city, by purchase or condemnation, real property or rights or easements therein necessary or convenient for its corporate purposes and, except (a) as may otherwise be provided in the act and (b) that if property is to be acquired outside the zoning jurisdiction of the city when such city is a city of the metropolitan class, approval must be obtained from the county board of the county where the property is located before the right of eminent domain may be exercised, to use the same so long as its corporate existence continues. Such power shall not be exercised by authorities of cities of the primary, first, and second classes and of villages created after September

2, 1973, without further approval until such time as at least three members of the authority have been elected. If the exercise of such power is necessary while three or more appointed members remain on the authority of cities of the primary, first, and second classes and of villages, the appointing body shall approve all proceedings under this subdivision;

(5) To make bylaws for the management and regulation of its affairs and, subject to agreements with bondholders, to make rules and regulations for the use of projects and the establishment and collection of rentals, fees, and all other charges for services or commodities sold, furnished, or supplied by such authority. Any person violating such rules shall be guilty of a Class III misdemeanor;

(6) With the consent of the city, to use the services of agents, employees, and facilities of the city, for which the authority may reimburse the city a proper proportion of the compensation or cost thereof, and also to use the services of the city attorney as legal advisor to the authority;

(7) To appoint officers, agents, and employees and fix their compensation;

(8) To make contracts, leases, and all other instruments necessary or convenient to the corporate purposes of the authority;

(9) To design, construct, maintain, operate, improve, and reconstruct, so long as its corporate existence continues, such projects as are necessary and convenient to the maintenance and development of aviation services to and for the city in which such authority is established, including landing fields, heliports, hangars, shops, passenger and freight terminals, control towers, and all facilities necessary or convenient in connection with any such project, to contract for the construction, operation, or maintenance of any parts thereof or for services to be performed thereon, and to rent parts thereof and grant concessions thereon, all on such terms and conditions as the authority may determine. This subdivision shall not be construed to affect the obligation of a lessee to pay taxes if taxes are due under sections 77-202, 77-202.11, and 77-202.12;

(10) To include in such project, subject to zoning restrictions, space and facilities for any or all of the following: Public recreation; business, trade, or other exhibitions; sporting or athletic events; public meetings; conventions; and all other kinds of assemblages and, in order to obtain additional revenue, space and facilities for business and commercial purposes. Whenever the authority deems it to be in the public interest, the authority may lease any such project or any part or parts thereof or contract for the management and operation thereof or any part or parts thereof. Any such lease or contract may be for such period of years as the authority shall determine. This subdivision shall not be construed to affect the obligation of a lessee to pay taxes if taxes are due under sections 77-202, 77-202.11, and 77-202.12;

(11) To charge fees, rentals, and other charges for the use of projects under the jurisdiction of such authority subject to and in accordance with such agreement with bondholders as may be made as hereinafter provided. Subject to contracts with bondholders, all fees, rentals, charges, and other revenue derived from any project shall be applied to the payment of operating, administration, and other necessary expenses of the authority properly chargeable to such project and to the payment of the interest on and principal of bonds or for making sinking-fund payments therefor. Subject to contracts with bondholders, the authority may treat one or more projects as a single enterprise with respect

to revenue, expenses, the issuance of bonds, maintenance, operation, or other purposes;

(12) To certify annually to the governing body of the city the amount of tax to be levied for airport purposes which the authority requires under its adopted budget statement to be received from taxation, not to exceed three and five-tenths cents on each one hundred dollars of taxable valuation of all the taxable property in such city subject to section 77-3443. The governing body may levy and collect the taxes so certified at the same time and in the same manner as other taxes are levied and collected, and the proceeds of such taxes when due and as collected shall be set aside and deposited in the special account or accounts in which other revenue of the authority is deposited. An authority in a city of the first or second class or a village shall have power to certify annually to the governing body of such a city or village an additional amount of tax to be levied for airport purposes, not to exceed three and five-tenths cents on each one hundred dollars of taxable value, to be levied, collected, set aside, and deposited as specified in this subdivision, and if negotiable bonds of the authority are thereafter issued, this power shall continue until such bonds are paid in full. When such additional amount of tax is first certified, the governing body may then require, but not thereafter, approval of the same by a majority vote of the governing body or by a majority vote of the electors voting on the same at a general or special election. The additional levy shall be subject to section 77-3443. The provisions of this subdivision shall not apply to cities of the metropolitan class;

(13) To construct and maintain under, along, over, or across a project, telephone, telegraph, or electric wires and cables, fuel lines, gas mains, water mains, and other mechanical equipment not inconsistent with the appropriate use of such project, to contract for such construction and to lease the right to construct and use the same, or to use the same on such terms for such periods of time and for such consideration as the authority shall determine;

(14) To accept grants, loans, or contributions from the United States, the State of Nebraska, any agency or instrumentality of either of them, or the city in which such authority is established and to expend the proceeds thereof for any corporate purposes;

(15) To incur debt and issue negotiable bonds and to provide for the rights of the holders thereof;

(16) To enter on any lands, waters, and premises for the purposes of making surveys, soundings, and examinations; and

(17) To do all things necessary or convenient to carry out the powers expressly conferred on such authorities by the act.

Source: Laws 1957, c. 9, § 4, p. 115; Laws 1959, c. 12, § 2, p. 122; Laws 1969, c. 26, § 1, p. 225; Laws 1969, c. 145, § 14, p. 677; Laws 1973, LB 22, § 2; Laws 1974, LB 796, § 1; Laws 1977, LB 40, § 32; Laws 1979, LB 187, § 12; Laws 1981, LB 354, § 3; Laws 1992, LB 719A, § 11; Laws 1996, LB 1114, § 18; Laws 1997, LB 269, § 4; Laws 1998, LB 306, § 1; Laws 2001, LB 173, § 5.

An airport authority acquiring real property must bring an action in the name of the city in which it was established for and on behalf of the airport authority. Airport Auth. of Village of Greeley v. Dugan, 259 Neb. 860, 612 N.W.2d 913 (2000).

Municipal airport authorities are authorized to acquire property by condemnation for establishing airports. Seward County Board of Commissioners v. City of Seward, 196 Neb. 266, 242 N.W.2d 849 (1976).

Inclusion of an airport authority budget in general city budget hearing did not meet requirement of public budget hearing,

after notice, by airport authority. Willms v. Nebraska City Airport Authority, 193 Neb. 567, 228 N.W.2d 276 (1975).

An airport authority has broad powers to include all facilities necessary or convenient in constructing an airport project. Stones v. Plattsmouth Airport Authority, 193 Neb. 552, 228 N.W.2d 129 (1975).

3-504.01 Airport authority; authority for creation; election not required; supremacy over city charter; validation of proceedings.

Sections 3-501 to 3-514 shall be full authority for the creation of airport authorities by cities, and for the exercise of the powers therein granted to cities and to such authorities, and no action, proceeding or election shall be required prior to the creation of airport authorities hereunder or to authorize the exercise of any of the powers herein granted, any provision of law or of any city charter to the contrary notwithstanding, and the proceedings of the mayor and council of any city heretofore taken for the creation and establishment of an airport authority are hereby ratified, validated and confirmed.

Source: Laws 1959, c. 12, § 4, p. 126.

3-504.02 Airport authority; cities of primary class; development of commercial aviation; representation in commercial air service hearings; additional tax levy.

An airport authority may, and in cities of the primary class shall, in addition to the powers enumerated in section 3-504, encourage, foster, and promote the development of commercial and general aviation for the city which it serves, and advance the interests of such city in aeronautics and in commercial air transportation and its scheduling. An airport authority in cities of the primary class, under direction of the mayor, shall represent the interests of such city in commercial air service hearings, except that representation in the name of the city shall be only by the consent of such city. In cities of the primary class the city council may establish a fund for the purposes of this section by an annual levy of not to exceed three-tenths of one cent on each one hundred dollars which shall be levied and collected upon the same property and in addition to the levy provided in subdivision (12) of section 3-504. The levy in this section shall be subject to section 77-3443.

Source: Laws 1963, c. 16, § 1, p. 95; Laws 1979, LB 187, § 13; Laws 1997, LB 269, § 5.

3-505 Airport authority; city officers and employees; transfer; retention of privileges; social security and pension plans; continuance of coverage.

Officers and employees of any board or department in or of a city may be transferred to the authority established in the city, and shall be eligible for such transfer and appointment without examination to offices and positions under the authority. Officers or employees of such city, who shall have accepted such transfer and who are at the time of such transfer members or beneficiaries of any existing pension or retirement system, shall continue to have the rights, privileges, obligations, and status with respect to such system or systems as are now prescribed by law. In a city of the metropolitan or of the primary class, the authority may enter into an agreement with the city to provide for the continued coverage of officers and employees of the authority, and for the coverage of such officers and employees not formerly employed by the city, under the city's social security system, pension plan, or retirement plan, and

shall pay its proportionate cost of such pension or retirement plan and expense of social security coverage.

Source: Laws 1957, c. 9, § 5, p. 118; Laws 1959, c. 12, § 3, p. 125; Laws 1963, c. 18, § 1, p. 97.

3-506 Airport authority; finances; how handled.

All income, revenue, receipts, profits, and money of an authority from whatever source derived shall be paid either to the treasurer of the city in which such authority is established as ex officio treasurer of the authority who shall not commingle such money with any other money under his or her control or to the person appointed as treasurer of the airport authority in accordance with section 3-506.01. Such money shall be deposited in a separate bank, capital stock financial institution, or qualifying mutual financial institution account or accounts. Such money shall be withdrawn only by check, draft, or order signed by the treasurer on requisition of the chairperson of the authority or of such other person or persons as the authority may authorize to make such requisitions, approved by the board. The chief auditing officer of the city and his or her legally authorized representatives are hereby authorized and empowered from time to time to examine the accounts and books of such authority, including its receipts, disbursements, contracts, leases, sinking funds, and investments and any other matters relating to its financial standing. Notwithstanding the provisions of this section, such authority may contract with the holders of any of its bonds as to collection, custody, securing, investment, and payment of any money of the authority or any money held in trust or otherwise for the payment of bonds or in any way to secure bonds. The authority may carry out any such contract notwithstanding that such contract may be inconsistent with the previous provisions of this section. All banks, capital stock financial institutions, qualifying mutual financial institutions, and trust companies are hereby authorized to give security for such deposits of money of authorities pursuant to the Public Funds Deposit Security Act. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1957, c. 9, § 6, p. 118; Laws 1978, LB 868, § 1; Laws 1989, LB 33, § 3; Laws 1999, LB 396, § 1; Laws 2001, LB 362, § 4.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

3-506.01 Airport authority; treasurer; appointed; bond.

(1) An airport authority may appoint a treasurer.

(2) If a treasurer is appointed by the authority, the treasurer of the city in which such authority is established shall no longer serve as ex officio treasurer of the authority.

(3) If a treasurer is appointed, such treasurer shall furnish bond, in an amount to be determined by the authority, running to the authority conditioned upon the faithful performance of such treasurer's duties.

Source: Laws 1978, LB 868, § 2.

3-507 Airport authority; bonds; general; limited purposes; bond anticipation notes; issuance; powers conferred; personal liability.

(1) An authority shall have the power and is hereby authorized from time to time to issue its negotiable bonds for any corporate purpose in such amounts as may be required to carry out and fully perform the purposes for which such authority is established. Such authorities shall have power, from time to time and whenever refunding is deemed expedient, to issue bonds in amounts sufficient to refund any bonds, including any premiums payable upon the redemption of the bonds to be refunded, by the issuance of new bonds, whether the bonds to be refunded have or have not matured. It may issue bonds partly to refund bonds then outstanding and partly for any other corporate purpose. The refunding bonds may be exchanged for the bonds to be refunded with such cash adjustments as may be agreed or may be sold and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded. All bonds shall be general obligations of the authority issuing the same and shall be payable out of any revenue, income, receipts, profits, or other money of the authority unless the authority expressly provides otherwise in the resolution authorizing issuance in which event the bonds shall be limited obligations of the authority and shall be payable only out of that part of the revenue, income, receipts, profits, or other money of the authority as is specified in such resolution. All bonds issued pursuant to the Cities Airport Authorities Act shall be and are hereby made negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code subject only to any provisions contained in such bonds for the registration of the principal thereof.

(2) All such bonds shall be authorized by a resolution or resolutions of the board and shall bear such date or dates, mature at such time or times, bear interest at such rate or 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 and at such place or places within or without the State of Nebraska, and be subject to such terms of redemption and at such redemption premiums as such resolution or resolutions may provide. The bonds may be sold at public or private sale for such price or prices as the authority shall determine. No proceedings for the issuance of bonds of an authority shall be required other than those required by 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 authorities pursuant to the act.

(3) Any resolution or resolutions authorizing any bonds or any issue of bonds of an authority may contain covenants and agreements on the part of the authority to protect and safeguard the security and payment of such bonds, which covenants and agreements shall be a part of the contract with the holders of the bonds thereby authorized, as to:

(a) Pledging all or any part of the revenue, income, receipts, profits, and other money derived by the authority issuing such bonds from the operation, management, or sale of property of any or all such projects of the authority to secure the payment of the bonds or of any issue of the bonds;

(b) The rates, rentals, tolls, charges, license fees, and other fees to be charged by the authority, the amounts to be raised in each year for the services and commodities sold, furnished, or supplied by the authority, and the use and disposition of the revenue of the authority received therefrom;

(c) The setting aside of reserves or sinking funds and the regulation, investment, and disposition thereof;

(d) Limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter issued may be applied and pledging such proceeds to secure the payment of bonds or of any issue of bonds;

(e) Limitations on the issuance of additional bonds of the authority, the terms and conditions upon which such additional bonds may be issued and secured, and the refunding of outstanding or other bonds;

(f) 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;

(g) Limitations on the amount of money derived from any project to be expended for operating, administrative, or other expenses of the authority; and

(h) Any other matters of like or different character which in any way affect the security or protection of bonds of the authority.

(4) An authority shall have power from time to time to issue bond anticipation notes, referred to as notes in the act, and from time to time to issue renewal notes, such notes in any case to mature not later than thirty months from the date of incurring the indebtedness represented thereby in an amount not exceeding the total estimated cost of the project for which the notes are to be issued including issuance expenses. Payment of such notes shall be made from any money or revenue which the authority may have available for such purpose or from the proceeds of the sale of bonds of the authority, or such notes may be exchanged for a like amount of such bonds. The authority may pledge such money or revenue of the authority, subject to prior pledges thereof, if any, for the payment of such notes and may in addition secure the notes in the same manner as provided for bonds in this section. All notes shall be issued and sold in the same manner as bonds, and any authority shall have power to make contracts for the future sale from time to time of notes on terms and conditions stated in such contracts. The authority shall have power to pay such consideration as it shall deem proper for any commitments to purchase notes in the future. Such notes may 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 authority sufficient to provide for the payment of the notes in full at the maturity thereof. The authority issuing such notes 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. The notes may be sold at public or private sale for such price or prices as the authority shall determine.

(5) It is the intention hereof that any pledge of revenue, income, receipts, profits, charges, fees, or other money made by an authority for the payment of bonds shall be valid and binding from the time such pledge is made, that the revenue, income, receipts, profits, charges, fees, and other money so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without the physical delivery thereof or further act, and that 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 irrespec-

tive of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(6) Neither the members of a board nor any person executing bonds or notes shall be liable personally thereon or be subject to any personal liability or accountability by reason of the issuance thereof.

(7) An authority shall have power out of any funds available therefor to purchase bonds or notes of such authority. Any bonds so purchased may be held, canceled, or resold by the authority subject to and in accordance with any agreements with bondholders.

Source: Laws 1957, c. 9, § 7, p. 119; Laws 1963, c. 19, § 1, p. 98; Laws 1967, c. 16, § 1, p. 109; Laws 1969, c. 25, § 2, p. 220; Laws 1970, Spec. Sess., c. 5, § 1, p. 17; Laws 1985, LB 307, § 1; Laws 1991, LB 15, § 4.

3-508 Airport authority; bondholders; no impairment of rights or remedies.

The State of Nebraska does covenant and agree with the holders of bonds issued by an authority that the state will not limit or alter the rights hereby vested in an authority to acquire, maintain, construct, reconstruct, and operate projects, to establish and collect such rates, rentals, tolls, charges, license fees, and other fees as may be convenient or necessary to produce sufficient revenue to meet the expense of maintenance and operation of such projects and to fulfill the terms of any agreements made with holders of bonds of the authority. The state will also not in any way impair the rights and remedies of the bondholders until the bonds together with interest thereon and with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully met and discharged. The provisions of section 3-239 and the Cities Airport Authorities Act and of the proceedings authorizing bonds thereby shall constitute a contract with the holders of the bonds.

Source: Laws 1957, c. 9, § 8, p. 123; Laws 2002, LB 446, § 6; Laws 2003, LB 5, § 3.

Sole purpose of this section to protect sources of income of authority and insure eventual payment of outstanding bonds, purpose served when debts of authority become debts of annexing city. Airport Authority of City of Millard v. City of Omaha, 185 Neb. 623, 177 N.W.2d 603 (1970).

3-509 Airport authority; obligations of authority; limited liability.

The bonds, notes, and other obligations of an authority shall not be a debt of the State of Nebraska or of the city in which such authority is established, and neither the state nor the city shall be liable thereon, nor shall such bonds be payable out of any funds other than funds of the authority issuing same.

Source: Laws 1957, c. 9, § 9, p. 123.

City is not liable for debts or other obligations of airport authority which it creates. Lock v. City of Imperial, 182 Neb. 526, 155 N.W.2d 924 (1968).

Issuance of bonds was not unlawful because of this section. Obitz v. Airport Authority of City of Red Cloud, 181 Neb. 410, 149 N.W.2d 105 (1967).

3-510 Airport authority; bonds; eligibility for investment; use as security.

Bonds of authorities are hereby made securities in which all public officers and bodies of this state, all municipalities and municipal subdivisions, and all other political subdivisions of this state, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers,

trust companies, savings banks, and savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business, all administrators, guardians, executors, trustees, and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. Such bonds are also hereby made securities which may be deposited with and shall be received by all public officers and bodies of this state, all municipalities and municipal subdivisions, and other political subdivisions of this state for any purpose for which the deposit of bonds or other obligations of this state is now or may hereafter be authorized.

Source: Laws 1957, c. 9, § 10, p. 123.

3-511 Airport authority; declaration of public purpose; exemption of property from taxation.

It is hereby found, determined, and declared that the creation of an authority and the carrying out of its corporate purposes is for the benefit of the people of the State of Nebraska, for the improvement of their welfare and prosperity, and for the promotion of their transportation, and is a public purpose and a matter of statewide concern, and that aviation projects operated by authorities are essential parts of the public transportation system. The State of Nebraska covenants with the holders of such bonds that authorities shall be required to pay no taxes or assessments upon any of the property acquired by them or under their respective jurisdictions, control, possession, or supervision, or upon the activities of authorities in the operation and maintenance of projects, or upon any charges, fees, revenue, or other income received by authorities except motor vehicle fuel and aviation fuel taxes, and that the bonds and notes of authorities and the income therefrom shall at all times be exempt from taxation, except for transfer and estate taxes. This section shall constitute a covenant and agreement with the holders of all bonds and notes issued by authorities. This section shall not be construed to affect the obligation of a lessee to pay taxes if taxes are due under sections 77-202, 77-202.11, and 77-202.12.

Source: Laws 1957, c. 9, § 11, p. 124; Laws 2001, LB 173, § 6.

3-512 Repealed. Laws 1969, c. 138, § 28.

3-513 Airport authority; applicability of sections.

Insofar as the provisions of section 3-239 and the Cities Airport Authorities Act are inconsistent with the provisions of any other act or of any city charter, if any, the provisions of section 3-239 and the Cities Airport Authorities Act shall be controlling.

Source: Laws 1957, c. 9, § 14, p. 126; Laws 2002, LB 446, § 7; Laws 2003, LB 5, § 4.

This section is to be read as a type of supremacy clause, nullifying any inconsistent statutory or municipal charter provisions. Professional Firefighters of Omaha v. City of Omaha, 243 Neb. 166, 498 N.W.2d 325 (1993).

3-514 Act, how cited.

Sections 3-501 to 3-514 shall be known and may be cited as the Cities Airport Authorities Act.

Source: Laws 1957, c. 9, § 17, p. 126; Laws 2002, LB 446, § 8.

ARTICLE 6

COUNTY AIRPORT AUTHORITY

Section

3-601. Real property; acquire; improvements; schedule of charges.
3-602. Bonds; issuance; terms; election.
3-603. Tax; limitation; use; election.
3-604. Real property; acquisition by lease; election unnecessary.
3-605. Construction; leasing; improvement; maintenance; management; labor; tax; levy.
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3-607. Airport, landing field, airdrome; location and specifications; approval.
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3-609. County board; lease; disposal; powers.
3-610. Project, defined.
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3-619. Bonds, notes, obligations of authority; not debts of State of Nebraska or any county.
3-620. Bonds; who may purchase.
3-621. Authorities; public purpose; property; bonds; tax exempt.
3-622. Airport authority; applicability of sections.

3-601 Real property; acquire; improvements; schedule of charges.

Any county may acquire by lease, for a term not to exceed thirty years, purchase, condemnation, or otherwise, the necessary land within or without such county for the purpose of establishing an aviation field and to erect thereon such buildings and make such improvements as may be necessary for the purpose of adapting the field to the use of aerial traffic, and may, from time to time, fix and establish a schedule of charges for the use thereof, which charges shall be used in connection with the maintenance and operation of any such field and the activities thereof. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1969, c. 141, § 1, p. 648.

3-602 Bonds; issuance; terms; election.

For the purpose of acquiring and improving an aviation field, any such county may issue and sell bonds of such county to be designated aviation field bonds, to provide the necessary funds therefor. Such bonds shall become due in not to exceed twenty years from the date of issuance, and shall draw interest, payable semiannually or annually. Such bonds may not be sold for less than par, and in no case without the proposition of issuing the same having first been submitted to the legal electors of such county at a general or special election held therein, and a majority of the votes cast upon the question of issuing such bonds being in favor thereof. The authority to sell such bonds shall not be limited by any other or special provision of law.

Source: Laws 1969, c. 141, § 2, p. 648; Laws 1970, Spec. Sess., c. 5, § 3, p. 79.

3-603 Tax; limitation; use; election.

For the purpose of acquiring and improving such aviation field, such county may, in lieu of issuing and selling bonds, levy an annual tax of not to exceed seven cents on each one hundred dollars of taxable value of all the taxable property within such county subject to section 77-3443. The tax shall not be levied or collected until the proposition of levying the same has first been submitted to the legal electors of such county at a general or special election held therein and received a majority of the votes cast upon the question of levying such tax. Such levy shall be authorized for a term not exceeding ten years, and the proposition submitted to the electors shall specify the number of years for which it is proposed to levy such tax. If funds for such purposes are raised by the levy of tax, no part of the funds so accruing shall be used for any other purpose.

Source: Laws 1969, c. 141, § 3, p. 649; Laws 1979, LB 187, § 14; Laws 1992, LB 719A, § 12; Laws 1996, LB 1114, § 19.

3-604 Real property; acquisition by lease; election unnecessary.

It shall not be necessary, in order to acquire the necessary land for an aviation field by lease, to submit the proposition of such acquisition by lease to the legal voters of such county.

Source: Laws 1969, c. 141, § 4, p. 649.

3-605 Construction; leasing; improvement; maintenance; management; labor; tax; levy.

For the purpose of the construction, leasing, improvement, maintenance, and management of an aviation field and for the payment of persons employed in the performance of labor in connection therewith, any county may, without a vote of the legal electors, levy an annual tax of not to exceed three and five-tenths cents on each one hundred dollars of taxable value of all the taxable property in such county subject to section 77-3443. No part of the funds so levied and collected shall be used for any other purpose.

Source: Laws 1969, c. 141, § 5, p. 649; Laws 1979, LB 187, § 15; Laws 1992, LB 719A, § 13; Laws 1996, LB 1114, § 20.

3-606 Repealed. Laws 2001, LB 173, § 22.

3-607 Airport, landing field, airdrome; location and specifications; approval.

No airport, landing field, or airdrome shall be acquired by any county through the issue and sale of bonds, or the levy of taxes, until the location and specifications thereof shall have been approved by the appropriate department or agency of the United States Government.

Source: Laws 1969, c. 141, § 7, p. 650.

3-608 County board; powers.

The governing body of any county shall have power to make and enforce such resolutions, rules, and regulations as shall lawfully be made for the control and supervision of any airport, landing field, or airdrome acquired, established, or operated by it, and for the control of aircraft and airmen, but such resolutions, rules, and regulations shall not conflict with the rules and regulations for the

navigation of aircraft promulgated by the United States Government. This power shall extend to the space above the lands and waters included within the limits of such county, and to the space above any airport, landing field, or airdrome outside its limits.

Source: Laws 1969, c. 141, § 8, p. 650.

3-609 County board; lease; disposal; powers.

The governing body of any county authorized by section 3-601 to acquire an aviation field shall have power to lease or dispose of the same or any portion thereof when the public need will not thereby be injured.

Source: Laws 1969, c. 141, § 9, p. 650.

3-610 Project, defined.

As used in sections 3-611 to 3-621, project shall mean any airport operated by the authority, including all real and personal property, structures, machinery, equipment, and appurtenances or facilities which are part of such airport or used or useful in connection therewith either as ground facilities for the convenience of handling aviation equipment, passengers, and freight, or as part of aviation, air navigation, and air safety operation.

Source: Laws 1969, c. 141, § 10, p. 650.

3-611 Airport authority; creation; authorized; board; powers and duties; members; election; vacancy; removal; expenses; quorum.

In addition to the powers granted by sections 3-601 to 3-609, any county may create an airport authority. Such authority shall be managed and controlled by a board which shall have full and exclusive jurisdiction and control over all facilities owned or thereafter acquired by such county for airport purposes. Each such board shall be a body corporate and politic, constituting a public corporation and an agency of the county for which such board is established. Each board shall consist of five members. The county board creating the authority shall appoint board members to serve until their successors elected pursuant to section 32-548 take office. Members of the board must be residents of the county for which the authority is created. Any vacancy on a board shall be filled by temporary appointment by the county board until a successor can be elected at the next general election. A member of such board may be removed from office for incompetence, neglect of duty, or malfeasance in office. An action for removal of such member may be brought, upon resolution by the county board, in the district court of the county in which the authority is located.

The members of the board shall not be entitled to compensation for their services but shall be entitled to reimbursement of expenses paid or incurred in the performance of the duties imposed upon them by the provisions of sections 3-601 to 3-622 with reimbursement for mileage to be made at the rate provided in section 81-1176. A majority of the members of the board then in office shall constitute a quorum. The board may delegate to one or more of the members, or to its officers, agents, and employees, such powers and duties as it may deem proper. The board and its corporate existence shall continue only for a period of twenty years from the date of appointment of the members thereof and thereafter until all its liabilities have been met and its bonds have been paid in full or such liabilities and bonds have otherwise been discharged. When all

liabilities incurred by the authority of every kind and character have been met and all its bonds have been paid in full or such liabilities and bonds have otherwise been discharged, all rights and properties of the authority shall pass to and be vested in the county. The authority shall have and retain full and exclusive jurisdiction and control over all projects under its jurisdiction, with the right and duty to charge and collect revenue therefrom, for the benefit of the holders of any of its bonds or other liabilities. Upon the authority's ceasing to exist, all its remaining rights and properties shall pass to and vest in the county.

The board may enter into leases for nonaviation purposes for periods longer than the corporate existence of the board for a maximum period of twenty years. Such leases shall be subject to the approval of the county at the time the leases are entered into. At the conclusion of the corporate existence of the board, such leases shall pass to the control of the county.

The board may enter into leases for nonaviation purposes with the State of Nebraska or any political subdivision for land and land improvements. Such leases may be entered into for a maximum of forty years. At the conclusion of the corporate existence of the board, such leases shall pass to the control of the county.

Source: Laws 1969, c. 141, § 11, p. 650; Laws 1976, LB 671, § 1; Laws 1981, LB 204, § 14; Laws 1994, LB 76, § 462; Laws 1996, LB 1011, § 3.

An airport authority has no duty by statute nor common law to provide fire protection for property it leases to another. The Geer Co. v. Hall County Airport Authority, 193 Neb. 17, 225 N.W.2d 32 (1975).

3-612 Property; county; authority; powers and duties.

(1) Any county creating an authority shall by resolution or resolutions, convey or transfer to it any existing airport or any other property of the county for use in connection with a project, including real and personal property owned or leased by the county and used or useful in connection therewith. In case of real property so conveyed, the title thereto shall remain in the county, but the authority shall have the use and occupancy thereof for so long as its corporate existence shall continue. In the case of personal property so conveyed, the title shall pass to the authority. Any conveyance of an existing airport shall be subject to any leases or agreements duly and validly made by the county affecting such airport or the property so conveyed; *Provided,* that any such lease or agreement which is inconsistent with the ability of the authority to issue negotiable bonds may be renegotiated by the authority.

(2) Such county may acquire by purchase or condemnation real property in the name of the county for the projects or for the widening of existing roads, streets, parkways, avenues, or highways, or for new roads, streets, parkways, avenues, or highways to a project, or partly for such purposes and partly for other county purposes, by purchase or condemnation in the manner provided by law for the acquisition of real property by such county. Such county may also close any roads, streets, parkways, avenues, or highways as may be necessary or convenient to facilitate the construction or operation of a project.

(3) Contracts may be entered into between the county and an authority, or between other political subdivisions of the State of Nebraska and such county or authority, or between each and any of them, providing for the conveyance of property to such county or authority for use in connection with a project, and

for the closing of streets, roads, parkways, avenues, or highways. The amounts, terms, and conditions of payment if any shall be made by such county or authority in connection with such conveyances. Such contracts may also contain covenants by such county, or such political subdivision, as to the road, street, parkway, avenue, or highway improvements to be made by such county or such political subdivision. Any county board may authorize such contracts between the county and the authority by resolution, and no other authorization on the part of such county for such contracts shall be necessary. All obligations of such county for the payment of money to an authority incurred in carrying out the provisions of sections 3-601 to 3-622 shall be included in and provided for by each annual budget of such county thereafter made until fully discharged. In the case of other political subdivisions of the state, such contracts shall be authorized as provided by law.

(4) An authority operating under the provisions of sections 3-601 to 3-622 may acquire real property for a project in the name of the county in which it was established at the cost and expense of the authority by purchase or condemnation pursuant to the laws relating to the condemnation of land by counties and subdivision (4) of section 3-613. The authority shall have the use and occupancy of such real property so long as its corporate existence shall continue.

(5) In case an authority shall have the use and occupancy of any real property which it shall determine is no longer required for a project then, if such real property was acquired at the cost and expense of the county, the authority shall have the power to surrender its use and occupancy thereof to the county. If such real property was acquired at the cost and expense of the authority, then the authority shall have power to sell, lease, or otherwise dispose of such real property. Such authority shall retain the proceeds of sale, rentals, or other money derived from the disposition thereof for its corporate purposes.

Source: Laws 1969, c. 141, § 12, p. 652; Laws 1973, LB 22, § 3.

3-613 Authority; powers.

Any authority established under sections 3-601 to 3-622 shall have power:

(1) To sue and be sued;

(2) To have a seal and alter the same at pleasure;

(3) To acquire, hold, and dispose of personal property for its corporate purposes;

(4) To acquire in the name of the county, by purchase or condemnation, real property or rights or easements therein necessary or convenient for its corporate purposes and, except as may otherwise be provided in such sections, to use the same so long as its corporate existence continues. Such power shall not be exercised by authorities created after September 2, 1973, without further approval until such time as three or more members of the authority have been elected. If the exercise of such power is necessary while three or more appointed members remain on the authority, the appointing body shall approve all proceedings under this subdivision;

(5) To make bylaws for the management and regulation of its affairs and, subject to agreements with bondholders, to make rules and regulations for the use of projects and the establishment and collection of rentals, fees, and all other charges for services or commodities sold, furnished, or supplied by such

authority. Any person violating such rules shall be guilty of a Class III misdemeanor;

(6) With the consent of the county, to use the services of agents, employees, and facilities of the county, for which the authority may reimburse the county a proper proportion of the compensation or cost thereof, and also to use the services of the county attorney as legal advisor to the authority;

(7) To appoint officers, agents, and employees and fix their compensation;

(8) To make contracts, leases, and all other instruments necessary or convenient to the corporate purposes of the authority;

(9) To design, construct, maintain, operate, improve, and reconstruct, so long as its corporate existence continues, such projects as are necessary and convenient to the maintenance and development of aviation services to and for the county in which such authority is established, including landing fields, heliports, hangars, shops, passenger and freight terminals, control towers, and all facilities necessary or convenient in connection with any such project, to contract for the construction, operation, or maintenance of any parts thereof or for services to be performed thereon, and to rent parts thereof and grant concessions thereon, all on such terms and conditions as the authority may determine. This subdivision shall not be construed to affect the obligation of a lessee to pay taxes if taxes are due under sections 77-202, 77-202.11, and 77-202.12;

(10) To include in such project, subject to zoning restrictions, space and facilities for any or all of the following: Public recreation; business, trade, or other exhibitions; sporting or athletic events; public meetings; conventions; and all other kinds of assemblages and, in order to obtain additional revenue, space and facilities for business and commercial purposes. Whenever the authority deems it to be in the public interest, the authority may lease any such project or any part or parts thereof or contract for the management and operation thereof or any part or parts thereof. Any such lease or contract may be for such period of years as the authority shall determine. This subdivision shall not be construed to affect the obligation of a lessee to pay taxes if taxes are due under sections 77-202, 77-202.11, and 77-202.12;

(11) To charge fees, rentals, and other charges for the use of projects under the jurisdiction of such authority subject to and in accordance with such agreement with bondholders as may be made as hereinafter provided. Subject to contracts with bondholders, all fees, rentals, charges, and other revenue derived from any project shall be applied to the payment of operating, administration, and other necessary expenses of the authority properly chargeable to such project and to the payment of the interest on and principal of bonds or for making sinking-fund payments therefor. Subject to contracts with bondholders, the authority may treat one or more projects as a single enterprise with respect to revenue, expenses, the issuance of bonds, maintenance, operation, or other purposes;

(12) To annually request of the county board the amount of tax to be levied for airport purposes subject to section 77-3443, not to exceed three and five-tenths cents on each one hundred dollars of taxable valuation of all the taxable property in such county. Property tax levies for bonds issued by the authority pursuant to section 3-617 are not included in the levy limits established by this subdivision. The governing body shall levy and collect the taxes so requested at the same time and in the same manner as other taxes are levied and collected,

and the proceeds of such taxes when due and as collected shall be set aside and deposited in the special account or accounts in which other revenue of the authority is deposited;

(13) To construct and maintain under, along, over, or across a project, telephone, telegraph, or electric wires and cables, fuel lines, gas mains, water mains, and other mechanical equipment not inconsistent with the appropriate use of such project, to contract for such construction and to lease the right to construct and use the same, or to use the same on such terms for such period of time and for such consideration as the authority shall determine;

(14) To accept grants, loans, or contributions from the United States, the State of Nebraska, any agency or instrumentality of either of them, or the county in which such authority is established and to expend the proceeds thereof for any corporate purposes;

(15) To incur debt and issue negotiable bonds and to provide for the rights of the holders thereof;

(16) To enter on any lands, waters, and premises for the purposes of making surveys, soundings, and examinations; and

(17) To do all things necessary or convenient to carry out the powers expressly conferred on such authorities by sections 3-601 to 3-622.

Source: Laws 1969, c. 141, § 13, p. 653; Laws 1973, LB 22, § 4; Laws 1977, LB 40, § 33; Laws 1979, LB 187, § 16; Laws 1992, LB 719A, § 14; Laws 1996, LB 1114, § 21; Laws 1997, LB 269, § 6; Laws 2001, LB 173, § 7; Laws 2016, LB774, § 1.

An airport authority has no duty by statute nor common law to provide fire protection for property it leases to another. The Geer Co. v. Hall County Airport Authority, 193 Neb. 17, 225 N.W.2d 32 (1975).

3-614 Authority; promote commercial and general aviation.

An airport authority may in addition to the powers enumerated in section 3-613, encourage, foster, and promote the development of commercial and general aviation for the county which it serves, and advance the interests of such county in aeronautics and in commercial air transportation and its scheduling.

Source: Laws 1969, c. 141, § 14, p. 656.

3-615 Officers and employees of county; transfer to authority; effect.

Officers and employees of any board or department in or of a county may be transferred to the authority established in the county, and shall be eligible for such transfer and appointment without examination to offices and positions under the authority. Officers or employees of such county, who shall have accepted such transfer and who are at the time of such transfer members or beneficiaries of any existing pension or retirement system, shall continue to have the rights, privileges, obligations, and status with respect to such system or systems as are now prescribed by law.

Source: Laws 1969, c. 141, § 15, p. 656.

3-616 Funds; deposit; withdrawal; audits; effect on bonds and contracts.

All income, revenue, receipts, profits, and money of an authority from whatever source derived shall be paid to the treasurer of the authority who shall not commingle such money with any other money under his or her

control. Such money shall be deposited in a separate bank, capital stock financial institution, or qualifying mutual financial institution account or accounts. Such money shall be withdrawn only by check, draft, or order signed by such treasurer on requisition of the chairperson of the authority or of such other person or persons as the authority may authorize to make such requisitions, approved by the board. The chief auditing officer of the county and his or her legally authorized representatives are hereby authorized and empowered from time to time to examine the accounts and books of such authority, including its receipts, disbursements, contracts, leases, sinking funds, and investments and any other matters relating to its financial standing. Notwithstanding the provisions of this section, such authority may contract with the holders of any of its bonds as to collection, custody, securing, investment, and payment of any money of the authority or any money held in trust or otherwise for the payment of bonds or in any way to secure bonds. The authority may carry out any such contract notwithstanding that such contract may be inconsistent with the previous provisions of this section. All banks, capital stock financial institutions, qualifying mutual financial institutions, and trust companies are hereby authorized to give security for such deposits of money of authorities pursuant to the Public Funds Deposit Security Act. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1969, c. 141, § 16, p. 657; Laws 1988, LB 975, § 2; Laws 1989, LB 33, § 4; Laws 1999, LB 396, § 2; Laws 2001, LB 362, § 5.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

3-617 Authority; bonds; notes; issuance; requirements; terms; effects of pledge; personal liability; repurchase.

(1) An authority shall have the power and is hereby authorized from time to time to issue its negotiable bonds for any corporate purpose in such amounts as may be required to carry out and fully perform the purposes for which such authority is established. Such authorities shall have power, from time to time and whenever refunding is deemed expedient, to issue bonds in amounts sufficient to refund any bonds, including any premiums payable upon the redemption of the bonds to be refunded, by the issuance of new bonds, whether the bonds to be refunded have or have not matured. It may issue bonds partly to refund bonds then outstanding and partly for any other corporate purpose. The refunding bonds may be exchanged for the bonds to be refunded with such cash adjustments as may be agreed, or may be sold and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded. All bonds shall be general obligations of the authority issuing the same and shall be payable out of any revenue, income, receipts, profits, or other money of the authority, unless the authority shall expressly provide otherwise in the resolution authorizing their issuance, in which event the bonds shall be limited obligations of the authority issuing the same and shall be payable only out of that part of the revenue, income, receipts, profits, or other money of the authority as shall be specified by the authority in such resolution. All bonds issued pursuant to the provisions of sections 3-601 to 3-622 shall be and are hereby made negotiable instruments within the meaning of and for all the

purposes of the Uniform Commercial Code, subject only to any provisions contained in such bonds for the registration of the principal thereof.

(2) All such bonds shall be authorized by a resolution or resolutions of the board and shall bear such date or dates, mature at such time or times, bear interest at such rate or 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 within or without the State of Nebraska, and be subject to such terms of redemption and at such redemption premiums as such resolution or resolutions may provide. The bonds may be sold at public or private sale for such price or prices as the authority shall determine. No proceedings for the issuance of bonds of an authority shall be required other than those required by the provisions of sections 3-601 to 3-622, and the provisions of all other laws, 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 authorities pursuant to sections 3-601 to 3-622.

(3) Any resolution or resolutions authorizing any bonds or any issue of bonds of an authority may contain covenants and agreements on the part of the authority to protect and safeguard the security and payment of such bonds, which shall be a part of the contract with the holders of the bonds thereby authorized, as to:

(a) Pledging all or any part of the revenue, income, receipts, profits, and other money derived by the authority issuing such bonds from the operation, management, or sale of property of any or all such projects of the authority to secure the payment of the bonds or of any issue of the bonds;

(b) The rates, rentals, tolls, charges, license fees, and other fees to be charged by the authority and the amounts to be raised in each year for the services and commodities sold, furnished, or supplied by the authority, and the use and disposition of the revenue of the authority received therefrom;

(c) The setting aside of reserves or sinking funds and the regulation, investment, and disposition thereof;

(d) Limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter issued may be applied, and pledging such proceeds to secure the payment of bonds, or of any issue of bonds;

(e) Limitations on the issuance of additional bonds of the authority, the terms and conditions upon which such additional bonds may be issued and secured, and the refunding of outstanding or other bonds;

(f) 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;

(g) Limitations on the amount of money derived from any project to be expended for operating, administrative, or other expenses of the authority; and

(h) Any other matters, of like or different character, which in any way affect the security or protection of bonds of the authority.

(4) An authority shall have power from time to time to issue bond anticipation notes, referred to as notes herein, and from time to time to issue renewal notes, such notes in any case to mature not later than thirty months from the date of incurring the indebtedness represented thereby in an amount not

exceeding the total estimated cost of the project for which the notes are to be issued including issuance expenses. Payment of such notes shall be made from any money or revenue which the authority may have available for such purpose or from the proceeds of the sale of bonds of the authority, or such notes may be exchanged for a like amount of such bonds. The authority may pledge such money or revenue of the authority, subject to prior pledges thereof, if any, for the payment of such notes, and may in addition secure the notes in the same manner as herein provided for bonds. All notes shall be issued and sold in the same manner as bonds, and any authority shall have power to make contracts for the future sale from time to time of notes on terms and conditions stated in such contracts, and the authority shall have power to pay such consideration as it shall deem proper for any commitments to purchase notes in the future. Such notes may 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 authority sufficient to provide for the payment of the notes in full at the maturity thereof. The authority issuing such notes 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. The notes may be sold at public or private sale for such price or prices as the authority shall determine.

(5) It is the intention hereof that any pledge of revenue, income, receipts, profits, charges, fees, or other money made by an authority for the payment of bonds shall be valid and binding from the time such pledge is made, that the revenue, income, receipts, profits, charges, fees, and other money so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without the physical delivery thereof or further act, and that 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 such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(6) Neither the members of a board nor any person executing bonds or notes shall be liable personally thereon or be subject to any personal liability or accountability by reason of the issuance thereof.

(7) An authority shall have power out of any funds available therefor to purchase bonds or notes of such authority. Any bonds so purchased may be held, canceled, or resold by the authority subject to and in accordance with any agreements with bondholders.

Source: Laws 1969, c. 141, § 17, p. 657; Laws 1971, LB 1, § 1; Laws 1985, LB 307, § 2.

3-618 Bonds; state; not to impair obligations.

The State of Nebraska does covenant and agree with the holders of bonds issued by an authority that the state will not limit or alter the rights hereby vested in an authority to acquire, maintain, construct, reconstruct, and operate projects, to establish and collect such rates, rentals, tolls, charges, license fees, and other fees as may be convenient or necessary to produce sufficient revenue to meet the expense of maintenance and operation of such projects and to fulfill the terms of any agreements made with holders of bonds of the authority. The

state will also not in any way impair the rights and remedies of the bondholders until the bonds together with interest thereon and with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully met and discharged. The provisions of sections 3-601 to 3-622 and of the proceedings authorizing bonds thereby shall constitute a contract with the holders of such bonds.

Source: Laws 1969, c. 141, § 18, p. 661.

3-619 Bonds, notes, obligations of authority; not debts of State of Nebraska or any county.

The bonds, notes, and other obligations of an authority shall not be a debt of the State of Nebraska or of the county in which such authority is established, and neither the state nor the county shall be liable thereon, nor shall such bonds be payable out of any funds other than funds of the authority issuing the same.

Source: Laws 1969, c. 141, § 19, p. 662.

3-620 Bonds; who may purchase.

Bonds of authorities are hereby made securities in which all public officers and bodies of this state, all municipalities and municipal subdivisions, and all other political subdivisions of this state, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks, and savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business, all administrators, guardians, executors, trustees, and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. Such bonds are also hereby made securities which may be deposited with and shall be received by all public officers and bodies of this state, all municipalities and municipal subdivisions, and other political subdivisions of this state for any purpose for which the deposit of bonds or other obligations of this state is now or may hereafter be authorized.

Source: Laws 1969, c. 141, § 20, p. 662.

3-621 Authorities; public purpose; property; bonds; tax exempt.

It is hereby found, determined, and declared that the creation of an authority and the carrying out of its corporate purposes is for the benefit of the people of the State of Nebraska, for the improvement of their welfare and prosperity, and for the promotion of their transportation, and is a public purpose and a matter of statewide concern, and that projects operated by authorities are essential parts of the public transportation system. The State of Nebraska covenants with the holders of bonds, issued under the provisions of sections 3-610 to 3-621, that authorities shall be required to pay no taxes or assessments upon any of the property acquired by them or under their respective jurisdictions, control, possession, or supervision, or upon the activities of authorities in the operation and maintenance of projects, or upon any charges, fees, revenue, or other income received by authorities except motor vehicle fuel and aviation fuel taxes, and that the bonds and notes of authorities and the income therefrom

shall at all times be exempt from taxation, except for transfer and estate taxes. This section shall constitute a covenant and agreement with the holders of all bonds and notes issued by authorities. This section shall not be construed to affect the obligation of a lessee to pay taxes if taxes are due under sections 77-202, 77-202.11, and 77-202.12.

Source: Laws 1969, c. 141, § 21, p. 662; Laws 2001, LB 173, § 8.

3-622 Airport authority; applicability of sections.

Sections 3-610 to 3-621 shall be full authority for the creation of airport authorities by counties, and for the exercise of powers therein granted to counties and to such authorities, and no action, proceeding or election shall be required prior to the creation of such airport authorities other than those provided for in sections 3-610 to 3-621.

Source: Laws 1969, c. 141, § 22, p. 663.

ARTICLE 7

JOINT AIRPORT AUTHORITY

Section

3-701. Terms, defined.
3-702. Joint airport authority; agreement; governed by a board.
3-703. Joint airport authority; agreement; contents; board; members; election; qualifications; vacancies; how filled.
3-704. Repealed. Laws 1994, LB 76, § 615.
3-705. Board; members; expenses; quorum; delegation; term of existence; disposition of rights and properties; jurisdiction.
3-706. Joint authority; property; control; convey; transfer; title; acquire.
3-707. Joint authority; powers.
3-708. Joint authority; foster, promote, and develop commercial and general aviation.
3-709. Funds; deposit; withdrawals; security; contracts authorized.
3-710. Bonds; notes; issuance; requirements; terms; effects of pledge; personal liability; repurchase.
3-711. Bonds; state; not to impair obligations.
3-712. Bonds; not debt of State of Nebraska or political subdivision.
3-713. Bonds; who may purchase.
3-714. Joint authority; public purpose; property; bonds; tax exempt.
3-715. Sections, how construed.
3-716. Act, how cited.

3-701 Terms, defined.

For purposes of the Joint Airport Authorities Act, unless the context otherwise requires:

(1) Authority shall mean a joint airport authority which shall be a body politic and corporate organized pursuant to the act and shall be deemed to embrace the geographical area included within each municipality joining in its organization or thereafter becoming associated therewith as provided in the act;

(2) Political subdivision shall mean any county, city, or village of this state, any airport authority created by any county, city, or village pursuant to law, or any joint airport authority;

(3) Governing body, in the case of a county, shall mean the chairperson and board of commissioners or supervisors thereof, as the case may be, in the case of a city, shall mean the mayor and council thereof, in the case of a village, shall mean the chairperson and board of trustees thereof, and, in the case of an

airport authority or a joint airport authority, shall mean the governing board thereof;

(4) Agreement shall mean an agreement entered into pursuant to section 3-702;

(5) Bonds shall mean bonds issued by the joint authority pursuant to the act;

(6) Board shall mean the governing body of the joint authority;

(7) Real property shall mean lands, structures, and interests in land, including lands under water and riparian rights, and any and all things and rights usually included within the term real property, including not only fee simple absolute but also any and all lesser interests, such as easements, rights-of-way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property;

(8) Project shall mean any airport leased, constructed, owned, and operated by the joint authority, including all real and personal property, structures, machinery, equipment, and appurtenances or facilities which are part of such airport or used or useful in connection therewith either as ground facilities for the convenience of handling aviation equipment, passengers, and freight or as part of aviation operation, air navigation, and air safety operation;

(9) General election shall mean the statewide general election specified in section 32-403; and

(10) Primary election shall mean the statewide primary election specified in section 32-401.

Source: Laws 1969, c. 24, § 1, p. 202; Laws 1994, LB 76, § 463.

3-702 Joint airport authority; agreement; governed by a board.

Any political subdivision otherwise authorized by law to own or operate an airport is hereby authorized to enter into an agreement with any other municipality or combination of municipalities pursuant to the provisions of the Interlocal Cooperation Act, with respect to the creation of a joint airport authority of the political subdivisions concerned. Such joint authority shall be governed by a five-member board having full and exclusive jurisdiction and control over all facilities specified in such agreement, whether then in existence or to be thereafter acquired, and having to do with aviation, air navigation, and air safety.

Source: Laws 1969, c. 24, § 2, p. 203.

Cross References

Interlocal Cooperation Act, see section 13-801.

3-703 Joint airport authority; agreement; contents; board; members; election; qualifications; vacancies; how filled.

The agreement shall specify, in addition to those things required by section 13-804, (1) the date upon which the initial board is to organize, (2) the geographic boundaries or limits of the districts into which the joint authority shall be divided, of which there may be no more than five, from which the members of the initial board shall be appointed and from which their successors shall be elected, (3) the number of board members to be initially appointed, and thereafter elected, from each district designated pursuant to subdivision (2) of this section, and (4) the method by which the five members of the initial

board shall be appointed and the duration of their respective terms of office. The limits of each district may be changed only upon the affirmative vote of a majority of the whole membership of the board. Each member of the board shall be a registered voter and reside within the district from which he or she is appointed or elected. The terms of office of the members of the initial board shall expire at such time as their successors shall have been elected and qualified pursuant to section 32-549. Vacancies on the board, other than those resulting from expiration of a term of office, may be filled by a majority vote of the remaining members of the board. Any member so appointed shall serve until a successor is elected at the next general election to serve the unexpired portion of the term if any.

Source: Laws 1969, c. 24, § 3, p. 203; Laws 1994, LB 76, § 464.

3-704 Repealed. Laws 1994, LB 76, § 615.

3-705 Board; members; expenses; quorum; delegation; term of existence; disposition of rights and properties; jurisdiction.

The members of the board shall not be entitled to compensation for their services, but shall be entitled to reimbursement for expenses paid or incurred in the performance of the duties imposed upon them by the provisions of sections 3-701 to 3-716 with reimbursement to be made in the same manner as provided in section 23-1112 for county officers and employees. A majority of the members of the board then in office shall constitute a quorum. The board may delegate to one or more of its members, or to its officers, agents, and employees, such powers and duties as it may deem proper. The joint authority and its corporate existence shall continue only for a period of thirty years from the date of its initial organization and thereafter until all its liabilities have been met and its bonds have been paid in full or such liabilities and bonds have otherwise been discharged or arrangements for such payment or discharge duly made and provided for. When all liabilities incurred by the joint authority of every kind and character have been met and all its bonds have been paid in full, or such liabilities and bonds have otherwise been discharged or arrangements for such payment or discharge duly made and provided for, all rights and properties of the joint authority shall pass to and be vested in such public body as the board may deem advisable and in the best public interest, and the board may make such agreements and take such actions as it shall determine upon with respect thereto. Provision for ultimate disposition of the rights and properties of the joint authority may also be set forth in the agreement pursuant to which the joint authority is organized, and any such provisions shall be controlling. The joint authority shall have and retain full and exclusive jurisdiction and control over all projects under its jurisdiction, with the right and duty to charge and collect revenue therefrom, for the benefit of the holders of any of its bonds or other liabilities.

Source: Laws 1969, c. 24, § 5, p. 205; Laws 1981, LB 204, § 15.

3-706 Joint authority; property; control; convey; transfer; title; acquire.

(1) Any political subdivision participating in the creation of a joint authority may, by resolution or resolutions, convey or transfer to it in accordance with the provisions of the agreement, any existing airport or any other property of such political subdivision for use in connection with a project, including real and personal property owned or leased by such political subdivision and used

or useful in connection therewith. The title to any such property shall pass to the joint authority. Any conveyance of an existing airport shall be subject to any leases or agreements duly and validly made by the political subdivision affecting such airports or the property so conveyed, but any such lease or agreement which is inconsistent with the ability of the joint authority to issue negotiable bonds may be renegotiated by the authority.

(2) Any county, city, or village participating in the creation of a joint authority may acquire by purchase or condemnation real property in its name for the project or for the widening of existing roads, streets, parkways, avenues, or highways, or for new roads, streets, parkways, avenues, or highways to a project, or partly for such purposes, by purchase or condemnation in the manner provided in sections 76-704 to 76-724. Such county, city, or village may also close any roads, streets, parkways, avenues, or highways as may be necessary or convenient to facilitate the construction or operation of a project.

(3) Contracts may be entered into between any political subdivision and a joint authority, or between other public bodies of the State of Nebraska and such political subdivision or joint authority, or between each and any of them, providing for the conveyance of property to such political subdivision or joint authority for use in connection with a project, and for the closing of streets, roads, parkways, avenues, or highways. The amounts, terms, and conditions of payment, if any, shall be prescribed by such political subdivision or joint authority in connection with such conveyances. Such contracts may also contain covenants by such political subdivision or such public body as to the road, street, parkway, avenue, or highway improvements to be made by such political subdivision or such public body. The governing body of any political subdivision may authorize such contracts between such political subdivision and the joint authority by resolution, and no other authorization on the part of such political subdivision for such contracts shall be necessary. All obligations of any county, city, or village for the payment of money to a joint authority incurred in carrying out the provisions of the Joint Airport Authorities Act shall be included in and provided for by each annual or biennial budget of any county, city, or village thereafter made until fully discharged. In the case of other public bodies of the state, such contracts shall be authorized as provided by law.

(4) A joint authority operating under the provisions of the Joint Airport Authorities Act may acquire real property for a project in its own name at the cost and expense of the joint authority by purchase or condemnation pursuant to the provisions of sections 76-704 to 76-724 and subdivision (4) of section 3-707. The joint authority shall have the use and occupancy of such real property for so long as its corporate existence shall continue.

(5) If a joint authority shall have the use and occupancy of any real property which it shall determine is no longer required for a project the joint authority shall have power to sell, lease, or otherwise dispose thereof. Such joint authority shall retain the proceeds of sale, rentals, or other money derived from the disposition thereof for its corporate purposes.

Source: Laws 1969, c. 24, § 6, p. 205; Laws 1973, LB 22, § 5; Laws 2000, LB 1116, § 4.

3-707 Joint authority; powers.

Any joint authority established under the Joint Airport Authorities Act shall have power:

(1) To sue and be sued;

(2) To have a seal and alter the same at pleasure;

(3) To acquire, hold, and dispose of personal property for its corporate purposes;

(4) To acquire, by purchase or condemnation, real property or rights or easements therein necessary or convenient for its corporate purposes and, except as may otherwise be provided in the act, to use the same so long as its corporate existence continues. Such power shall not be exercised by authorities created after September 2, 1973, without further approval until such time as three or more members of the authority have been elected. If the exercise of such power is necessary while three or more appointed members remain on the authority, the appointing body shall approve all proceedings under this subdivision;

(5) To make bylaws for the management and regulation of its affairs and, subject to agreements with bondholders, to make rules and regulations for the use of projects and the establishment and collection of rentals, fees, and all other charges for services or commodities sold, furnished, or supplied by such joint authority;

(6) To appoint officers, agents, and employees and fix their compensation;

(7) To make contracts, leases, and all other instruments necessary or convenient to the corporate purposes of the joint authority;

(8) To design, construct, maintain, operate, improve, and reconstruct, so long as its corporate existence continues, such projects as are necessary and convenient to the maintenance and development of aviation services to and for the political subdivisions by which such joint authority was established, including landing fields, heliports, hangars, shops, passenger and freight terminals, control towers, and all facilities necessary or convenient in connection with any such project, to contract for the construction, operation, or maintenance of any parts thereof or for services to be performed thereon, and to rent parts thereof and grant concessions thereon, all on such terms and conditions as the joint authority may determine. This subdivision shall not be construed to affect the obligation of a lessee to pay taxes if taxes are due under sections 77-202, 77-202.11, and 77-202.12;

(9) To include in such project, subject to zoning restrictions, space and facilities for any or all of the following: Public recreation; business, trade, or other exhibitions; sporting or athletic events; public meetings; conventions; and all other kinds of assemblages and, in order to obtain additional revenue, space and facilities for business and commercial purposes. Whenever the joint authority deems it to be in the public interest, it may lease any such project or any part or parts thereof or contract for the management and operation thereof or any part or parts thereof. Any such lease or contract may be for such period of years as the joint authority shall determine. This subdivision shall not be construed to affect the obligation of a lessee to pay taxes if taxes are due under sections 77-202, 77-202.11, and 77-202.12;

(10) To charge fees, rentals, and other charges for the use of projects under its jurisdiction subject to and in accordance with such agreements with bondholders as may be made as provided in the act. Subject to contracts with

bondholders, all fees, rentals, charges, and other revenue derived from any project shall be applied to the payment of operating, administration, and other necessary expenses of the joint authority properly chargeable to such project and to the payment of the interest on and principal of bonds or for making sinking-fund payments therefor. Subject to contracts with bondholders, the joint authority may treat one or more projects as a single enterprise with respect to revenue, expenses, the issuance of bonds, maintenance, operation, or other purposes;

(11) To certify annually to each tax-levying body the amount of tax to be levied for airport purposes subject to section 77-3443, not to exceed three and five-tenths cents on each one hundred dollars of taxable valuation of all of the taxable property therein, to insure that all of the taxable property within each county, city, and village which has become interested in a joint airport authority, directly or indirectly, as set forth in section 3-702, whether at the time of the authority's initial organization or thereafter, becomes subject to taxation for the purposes of such authority. Whenever a city or village so interested in a joint authority is situated within a county which is likewise interested in the same joint authority, the joint authority shall, in order to avoid the possibility of double taxation, certify the tax only to the tax-levying body of the county and shall not certify any tax to the tax-levying body of such city or village. Such tax-levying bodies shall request the county board to levy and collect the taxes so certified at the same time and in the same manner as other taxes of such county, city, or village, as the case may be, are levied and collected, and the proceeds of such taxes as collected shall be set aside and deposited in the special account or accounts in which other revenue of the joint authority is deposited;

(12) To covenant in any resolution or other instrument pursuant to which it issues any of its bonds or other obligations that the joint authority will, for so long as any such bonds or obligations and the interest thereon remain outstanding and unpaid, annually certify to each tax-levying body referred to in subdivision (11) of this section the maximum tax which the joint authority is, at the time of issuing such bonds or other obligations, authorized to so certify and that it will, in the event of any change in the method of assessment, so certify such tax as will raise the same amount in dollars as such maximum tax would have raised at the time such bonds or other obligations were issued;

(13) To pledge for the security of the principal of any bonds or other obligations issued by the joint authority and the interest thereon any revenue derived by the joint authority from taxation;

(14) To construct and maintain under, along, over, or across a project, telephone, telegraph, or electric wires and cables, fuel lines, gas mains, water mains, and other mechanical equipment not inconsistent with the appropriate use of such project, to contract for such construction and to lease the right to construct and use the same, or to use the same on such terms, for such periods of time, and for such consideration as the joint authority shall determine;

(15) To accept grants, loans, or contributions from the United States, the State of Nebraska, or any agency or instrumentality of either of them and to expend the proceeds thereof for any corporate purposes;

(16) To incur debt and issue negotiable bonds and to provide for the rights of the holders thereof;

(17) To enter on any lands, waters, and premises for the purposes of making surveys, soundings, and examinations; and

(18) To do all things necessary or convenient to carry out the powers expressly conferred by the act.

Source: Laws 1969, c. 24, § 7, p. 207; Laws 1973, LB 22, § 6; Laws 1979, LB 187, § 17; Laws 1992, LB 719A, § 15; Laws 1996, LB 1114, § 22; Laws 2001, LB 173, § 9.

3-708 Joint authority; foster, promote, and develop commercial and general aviation.

A joint airport authority shall, in addition to the powers enumerated in section 3-707, encourage, foster, and promote the development of commercial and general aviation for the area which it serves, and advance the interest of such area in aeronautics and in commercial air transportation and its scheduling. A joint airport authority may represent the interest of such area in commercial air service hearings.

Source: Laws 1969, c. 24, § 8, p. 210.

3-709 Funds; deposit; withdrawals; security; contracts authorized.

All income, revenue, receipts, profits, and money of a joint authority, from whatever source derived, shall be paid to the treasurer of the joint authority who shall not commingle such money with any other money under his or her control. Such money shall be deposited in a separate bank, capital stock financial institution, or qualifying mutual financial institution account or accounts. Such money shall be withdrawn only by check, draft, or order signed by the treasurer on requisition of the chairperson of the joint authority or of such other person or persons as the joint authority may authorize to make such requisitions, approved by the board. Notwithstanding the provisions of this section, such joint authority may contract with the holders of any of its bonds as to collection, custody, securing, investment, and payment of any money of the joint authority or any money held in trust or otherwise for the payment of bonds or in any way to secure bonds. The joint authority may carry out any such contract notwithstanding that such contract may be inconsistent with the previous provisions of this section. All banks, capital stock financial institutions, qualifying mutual financial institutions, and trust companies are hereby authorized to give security for such deposits of money of joint authorities pursuant to the Public Funds Deposit Security Act. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1969, c. 24, § 9, p. 211; Laws 1989, LB 33, § 5; Laws 1999, LB 396, § 3; Laws 2001, LB 362, § 6.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

3-710 Bonds; notes; issuance; requirements; terms; effects of pledge; personal liability; repurchase.

(1) A joint authority may from time to time issue its negotiable bonds for any corporate purpose in such amounts as may be required to carry out and fully perform the purposes for which such joint authority is established. Such

authority may, from time to time and whenever refunding is deemed expedient, issue bonds in amounts sufficient to refund any bonds, including any premiums payable upon the redemption of the bonds to be refunded, by the issuance of new bonds, whether the bonds to be refunded have or have not matured. It may issue bonds partly to refund bonds then outstanding and partly for any other corporate purpose. The refunding bonds may be exchanged for the bonds to be refunded with such cash adjustments as may be agreed, or may be sold and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded. All bonds shall be general obligations of the joint authority issuing the same and shall be payable out of any revenue, income, receipts, profits, or other money of the joint authority, unless the joint authority shall expressly provide otherwise in the resolution authorizing their issuance, in which event the bonds shall be limited obligations of the joint authority issuing the same and shall be payable only out of that part of the revenue, income, receipts, profits, or other money of the joint authority as shall be specified by the joint authority in such resolution. All bonds and appurtenant interest coupons, if any, issued pursuant to the provisions of sections 3-701 to 3-716 shall be and are hereby made negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code, subject only to any provisions contained in such bonds for the registration of the principal and interest thereof.

(2) All such bonds shall be authorized by resolution or resolutions of the board and shall bear such date or dates, mature at such time or times, bear interest at such rate or 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 within or without this state, and be subject to such terms of redemption and at such redemption premiums as such resolution or resolutions may provide. The bonds may be sold at public or private sale for such price or prices as the joint authority shall determine. No proceedings for the issuance of bonds of a joint authority shall be required other than those required by the provisions of sections 3-701 to 3-716, 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 joint airport authorities pursuant to sections 3-701 to 3-716.

(3) Any resolution or resolutions authorizing any bonds or any issue of bonds of a joint authority may contain covenants and agreements on the part of the joint authority to protect and safeguard the security and payment of such bonds, which shall be a part of the contract with the holders of the bonds thereby authorized, as to:

(a) Pledging all or any part of the revenue, income, receipts, profits, and other money derived by the joint authority issuing such bonds from the operation, management, or sale of property of any or all such projects of the joint authority to secure the payment of the bonds or of any issue of the bonds;

(b) The rates, rentals, tolls, charges, license fees, and other fees to be charged by the joint authority and the amounts to be raised in each year for the services and commodities sold, furnished, or supplied by the joint authority, and the use and disposition of the revenue of the joint authority received therefrom;

(c) The setting aside of reserves or sinking funds and the regulation, investment, and disposition thereof;

(d) Limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter issued may be applied, and pledging such proceeds to secure the payment of bonds or of any issue of bonds;

(e) Limitations on the issuance of additional bonds of the joint authority, the terms and conditions upon which such additional bonds may be issued and secured, and the refunding of outstanding or other bonds;

(f) 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;

(g) Limitations on the amount of money derived from any project to be expended for operating, administrative, or other expenses of the joint authority; and

(h) Any other matters, of like or different character, which in any way affect the security or protection of bonds of the joint authority.

(4) A joint authority may from time to time issue bond anticipation notes, referred to in this subsection as notes, and from time to time issue renewal notes, such notes in any case to mature not later than thirty months from the date of incurring the indebtedness represented thereby in an amount not exceeding the total estimated cost of the project for which the notes are to be issued including issuance expenses. Payment of such notes shall be made from any money or revenue which the joint authority may have available for such purpose or from the proceeds of the sale of bonds of the joint authority, or such notes may be exchanged for a like amount of such bonds. The authority may pledge such money or revenue of the joint authority, subject to prior pledges thereof, 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 joint authority may make contracts for the future sale from time to time of notes on terms and conditions stated in such contracts, and pay such consideration as it shall deem proper for any commitments to purchase notes in the future. Such notes may 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 joint authority sufficient to provide for the payment of the notes in full at the maturity thereof. The joint authority issuing such notes 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. The notes may be sold at public or private sale for such price or prices as the authority shall determine.

(5) It is the intention of sections 3-701 to 3-716 that any pledge of revenue, income, receipts, profits, charges, fees, or other money made by a joint authority for the payment of bonds shall be valid and binding from the time such pledge is made, that the revenue, income, receipts, profits, charges, fees, and other money so pledged and thereafter received by the joint authority shall immediately be subject to the lien of such pledge without the physical delivery thereof or further act, and that the lien of any such pledge shall be valid and binding as against all parties having subsequently arising claims of any kind in

tort, contract, or otherwise against the joint authority irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(6) Neither the members of a board nor any person executing bonds or notes shall be liable personally thereon or be subject to any personal liability or accountability by reason of the issuance thereof.

(7) A joint authority may, out of any funds available therefor, purchase bonds or notes of such joint authority. Any bonds so purchased may be held, canceled, or resold by the joint authority subject to and in accordance with any agreements with bondholders.

Source: Laws 1969, c. 24, § 10, p. 211; Laws 1970, Spec. Sess., c. 5, § 2, p. 75; Laws 1985, LB 307, § 3.

3-711 Bonds; state; not to impair obligations.

The State of Nebraska does hereby covenant and agree with the holders of bonds issued by a joint authority that the state will not limit or alter the rights hereby vested in a joint authority to acquire, maintain, construct, reconstruct, and operate projects, to establish and collect such rates, rentals, tolls, charges, license fees, and other fees as may be convenient or necessary to produce sufficient revenue to meet the expense of maintenance and operation of such projects and to fulfill the terms of any agreements made with the holders of bonds of the joint authority. The state will also not in any way impair the rights and remedies of the bondholders until the bonds together with interest thereon and with interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders are fully met and discharged. The provisions of sections 3-701 to 3-716 and of the proceedings authorizing bonds thereby shall constitute a contract with the holders of such bonds.

Source: Laws 1969, c. 24, § 11, p. 215.

3-712 Bonds; not debt of State of Nebraska or political subdivision.

The bonds, notes, and other obligations of a joint authority shall not be a debt of the State of Nebraska or of the political subdivisions creating or otherwise interested in such joint authority, and neither the state nor any such political subdivision shall be liable thereon, nor shall such bonds be payable out of any funds other than funds of the joint authority issuing the same.

Source: Laws 1969, c. 24, § 12, p. 216.

3-713 Bonds; who may purchase.

Bonds of joint airport authorities are hereby made securities in which all public officers and bodies of this state, all municipal subdivisions and all other political subdivisions of this state, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business, all administrators, guardians, executors, trustees, and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their

control or belonging to them. Such bonds are also hereby made securities which may be deposited with and shall be received by all public officers and bodies of this state, all municipalities and municipal subdivisions, and other political subdivisions of this state for any purpose for which the deposit of bonds or other obligations of this state is now or may hereafter be authorized.

Source: Laws 1969, c. 24, § 13, p. 216.

3-714 Joint authority; public purpose; property; bonds; tax exempt.

It is hereby found, determined, and declared that the creation of a joint authority and the carrying out of its corporate purposes is for the benefit of the people of the State of Nebraska, for the improvement of their welfare and prosperity, and for the promotion of their transportation, and is a public purpose and a matter of statewide concern, that aviation projects operated by joint authorities are essential parts of the public transportation system. The State of Nebraska covenants with the holders of such bonds that joint authorities shall be required to pay no taxes or assessments upon any of the property acquired by them or under their respective jurisdictions, control, possession, or supervision to the extent such property is used for a public purpose, or upon the activities of joint authorities in the operation and maintenance of projects, or upon any charges, fees, revenue, or other income received by authorities except motor vehicle fuel and aviation fuel taxes, and that the bonds and notes of joint authorities and the income therefrom shall at all times be exempt from taxation, except for transfer and estate taxes. This section shall constitute a covenant and agreement with the holders of all bonds and notes issued by authorities.

Source: Laws 1969, c. 24, § 14, p. 216; Laws 2001, LB 173, § 10.

3-715 Sections, how construed.

Insofar as the provisions of sections 3-701 to 3-716 are inconsistent with the provisions of any other act or of any city charter, if any, the provisions of sections 3-701 to 3-716 shall be controlling.

Source: Laws 1969, c. 24, § 15, p. 217.

3-716 Act, how cited.

Sections 3-701 to 3-716 may be cited as the Joint Airport Authorities Act.

Source: Laws 1969, c. 24, § 16, p. 217.

ARTICLE 8

NEBRASKA STATE AIRLINE AUTHORITY

Section
3-801. Repealed. Laws 2013, LB 78, § 23.
3-802. Repealed. Laws 2013, LB 78, § 23.
3-803. Repealed. Laws 2013, LB 78, § 23.
3-804. Repealed. Laws 2013, LB 78, § 23.
3-805. Repealed. Laws 2013, LB 78, § 23.
3-806. Repealed. Laws 2012, LB 782, § 253.

3-801 Repealed. Laws 2013, LB 78, § 23.

3-802 Repealed. Laws 2013, LB 78, § 23.

3-803 Repealed. Laws 2013, LB 78, § 23.

3-804 Repealed. Laws 2013, LB 78, § 23.

3-805 Repealed. Laws 2013, LB 78, § 23.

3-806 Repealed. Laws 2012, LB 782, § 253.

CHAPTER 4
ALIENS

Section
4-101. Repealed. Laws 1974, LB 811, § 21.
4-102. Repealed. Laws 1974, LB 811, § 21.
4-103. Repealed. Laws 1974, LB 811, § 21.
4-104. Repealed. Laws 1974, LB 811, § 21.
4-105. Repealed. Laws 1974, LB 811, § 21.
4-106. Aliens; labor or educational organization; appointment or election to office; unlawful; penalty.
4-107. Nonresident alien; property by succession or testamentary disposition; taking of property in this state; conditions; escheat; disposition of escheated property.
4-108. Public benefits; state agency or political subdivision; verification of lawful presence; employee; participation in retirement system; restriction.
4-109. Public benefits, defined.
4-110. Public benefits; verification of lawful presence; exemptions; legislative findings.
4-111. Public benefits; verification of lawful presence; attestation required; professional or commercial license; requirements.
4-112. Public benefits; applicant; eligibility; verification; presumption.
4-113. Public benefits; state agency; annual report.
4-114. Public employer and public contractor; register with and use federal immigration verification system; Department of Labor; duties.

Cross References

Constitutional provisions:
Property rights may be regulated by law, see Article I, section 25, Constitution of Nebraska.
Accountant, certificate, temporary privilege, see sections 1-124 and 1-125.02.
Adoption, see section 43-104.07.
Adult education, see sections 79-11,133 to 79-11,135.
Aircraft, see section 3-130.
Employee, death of, report to Nebraska Workers' Compensation Court and notice to consul, see section 48-144.
Estate or guardianship, court must notify consul before hearing, see section 30-333.
Explosive materials permits, prohibition of, see section 28-1229.
Militia, subject to service in, when, see section 55-106.
Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, see section 30-3901.
Plants, shipment, see sections 2-1091 and 2-10,113.
Protection of minors, see sections 43-1226 to 43-1266 and 43-3801 to 43-3812.
Real property, rights and disabilities, see Chapter 76, article 4.
Uniform Conflict of Laws Limitations Act, see section 25-3201.
Uniform Credentialing Act, issuance of credential, when, see section 38-129.
Voter, challenge of, see section 32-928.
Voting, penalty for, see section 32-1530.
Workers' compensation, dependents compensated under, see sections 48-122 and 48-123.

4-101 Repealed. Laws 1974, LB 811, § 21.

4-102 Repealed. Laws 1974, LB 811, § 21.

4-103 Repealed. Laws 1974, LB 811, § 21.

4-104 Repealed. Laws 1974, LB 811, § 21.

4-105 Repealed. Laws 1974, LB 811, § 21.

4-106 Aliens; labor or educational organization; appointment or election to office; unlawful; penalty.

It shall be unlawful for any alien to be elected to or hold any office in a labor or educational organization in the State of Nebraska. Any person, officer, or

any member of any labor organization knowingly or willfully violating the provisions of this section shall be guilty of a Class III misdemeanor.

Source: Laws 1963, c. 20, § 1, p. 103; Laws 1977, LB 40, § 34.

4-107 Nonresident alien; property by succession or testamentary disposition; taking of property in this state; conditions; escheat; disposition of escheated property.

(1) The right of an alien not residing within the United States or its territories to take either real or personal property or the proceeds thereof in this state by succession or testamentary disposition, upon the same terms and conditions as inhabitants and citizens of the United States, is dependent in each case:

(a) Upon the existence of a reciprocal right upon the part of citizens of the United States to take real and personal property and the proceeds thereof upon the same terms and conditions as inhabitants and citizens of the country of which such alien is an inhabitant;

(b) Upon the rights of citizens of the United States to receive by payment to them within the United States or its territories money originating from the estates of persons dying within such foreign country; and

(c) Upon proof that such nonresident alien heirs, distributees, devisees, or legatees may receive the benefit, use, or control of property or proceeds from estates of persons dying in this state without confiscation in whole or in part, by the governments of such foreign countries.

(2) The burden is upon such nonresident alien to establish the fact of existence of the reciprocal rights set forth in subsection (1) of this section.

(3) If such reciprocal rights are not found to exist, the property shall be delivered to the State Treasurer to be held for a period of five years from date of death during which time such nonresident alien may show that he has become eligible to receive such property. If at the end of such period of five years no showing of eligibility is made by such nonresident alien, his rights to such property or proceeds shall be barred.

(4) At any time within the one year following the date the rights of such nonresident alien have been barred, any other person other than an ineligible nonresident alien who, in the case of succession or testamentary disposition, would have been entitled to the property or proceeds by virtue of the laws of Nebraska governing intestate descent and distribution had the nonresident alien predeceased the decedent, may petition the district court of Lancaster County for payment or delivery of such property or proceeds to those entitled thereto.

(5) If no person has petitioned the district court of Lancaster County for payment or delivery of such property or proceeds within six years from the date of death of decedent, such property or proceeds shall be disposed of as escheated property.

(6) All property other than money delivered to the State Treasurer under this section may within one year after delivery be sold by him to the highest bidder at public sale in whatever city in the state affords in his judgment the most favorable market for the property involved. The State Treasurer may decline the highest bid and reoffer the property for sale if he considers the price bid insufficient. He need not offer any property for sale if, in his opinion, the probable cost of sale exceeds the value of the property. Any sale held under this

section shall be preceded by a single publication of notice thereof at least three weeks in advance of sale in an English language newspaper of general circulation in the county where the property is to be sold and the cost of such publication and other expenses of sale paid out of the proceeds of such sale. The purchaser at any sale conducted by the State Treasurer pursuant to this section shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The State Treasurer shall execute all documents necessary to complete the transfer of title.

Source: Laws 1963, c. 21, § 1, p. 104.

Prior to 1963, when the method by which nonresident aliens may take land by inheritance was provided, nonresident aliens could not inherit lands in Nebraska but were to be paid the full value therefor by the state. Shames v. State, 192 Neb. 614, 223 N.W.2d 481 (1974).

4-108 Public benefits; state agency or political subdivision; verification of lawful presence; employee; participation in retirement system; restriction.

(1) Notwithstanding any other provisions of law, unless exempted from verification under section 4-110 or pursuant to federal law, no state agency or political subdivision of the State of Nebraska shall provide public benefits to a person not lawfully present in the United States.

(2) Except as provided in section 4-110 or if exempted by federal law, every agency or political subdivision of the State of Nebraska shall verify the lawful presence in the United States of any person who has applied for public benefits administered by an agency or a political subdivision of the State of Nebraska. This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(3) On and after October 1, 2009, no employee of a state agency or political subdivision of the State of Nebraska shall be authorized to participate in any retirement system, including, but not limited to, the systems provided for in the Class V School Employees Retirement Act, the County Employees Retirement Act, the Judges Retirement Act, the Nebraska State Patrol Retirement Act, the School Employees Retirement Act, and the State Employees Retirement Act, unless the employee (a) is a United States citizen or (b) is a qualified alien under the federal Immigration and Nationality Act, 8 U.S.C. 1101 et seq., as such act existed on January 1, 2009, and is lawfully present in the United States.

Source: Laws 2009, LB403, § 1; Laws 2011, LB509, § 1.

Cross References

Class V School Employees Retirement Act, see section 79-978.01.
County Employees Retirement Act, see section 23-2331.
Judges Retirement Act, see section 24-701.01.
Nebraska State Patrol Retirement Act, see section 81-2014.01.
School Employees Retirement Act, see section 79-901.
State Employees Retirement Act, see section 84-1331.

4-109 Public benefits, defined.

For purposes of sections 4-108 to 4-113, public benefits means any grant, contract, loan, professional license, commercial license, welfare benefit, health payment or financial assistance benefit, disability benefit, public or assisted housing benefit, postsecondary education benefit involving direct payment of financial assistance, food assistance benefit, or unemployment benefit or any other similar benefit provided by or for which payments or assistance are

provided to an individual, a household, or a family eligibility unit by an agency of the United States, the State of Nebraska, or a political subdivision of the State of Nebraska.

Source: Laws 2009, LB403, § 2.

4-110 Public benefits; verification of lawful presence; exemptions; legislative findings.

Verification of lawful presence in the United States pursuant to section 4-108 is not required for:

(1) Any purpose for which lawful presence in the United States is not restricted by law, ordinance, or regulation;

(2) Assistance for health care services and products, not related to an organ transplant procedure, that are necessary for the treatment of an emergency medical condition, including emergency labor and delivery, manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in (a) placing the patient's health in serious jeopardy, (b) serious impairment to bodily functions, or (c) serious dysfunction of any bodily organ or part;

(3) Short-term, noncash, in-kind emergency disaster relief;

(4) Public health assistance for immunizations with respect to diseases and for testing and treatment of symptoms of communicable diseases, whether or not such symptoms are caused by a communicable disease; or

(5) Programs, services, or assistance necessary for the protection of life or safety, such as soup kitchens, crisis counseling and intervention, and short-term shelter, which (a) deliver in-kind services at the community level, including those which deliver such services through public or private, nonprofit agencies and (b) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the income or resources of the recipient.

The Legislature finds that unborn children do not have immigration status and therefor are not within the scope of section 4-108. Prenatal care services available pursuant to sections 68-915 and 68-972 to unborn children, whose eligibility is independent of the mother's eligibility status, shall not be deemed to be tied to the immigration status of the mother and therefor are not included in the restrictions imposed by section 4-108.

Source: Laws 2009, LB403, § 3; Laws 2012, LB599, § 1.

4-111 Public benefits; verification of lawful presence; attestation required; professional or commercial license; requirements.

(1) Verification of lawful presence in the United States pursuant to section 4-108 requires that the applicant for public benefits attest in a format prescribed by the Department of Administrative Services that:

(a) He or she is a United States citizen; or

(b) He or she is a qualified alien under the federal Immigration and Nationality Act, 8 U.S.C. 1101 et seq., as such act existed on January 1, 2009, and is lawfully present in the United States.

(2) A state agency or political subdivision of the State of Nebraska may adopt and promulgate rules and regulations or procedures for the electronic filing of

the attestation required under subsection (1) of this section if such attestation is substantially similar to the format prescribed by the Department of Administrative Services.

(3)(a) The Legislature finds that it is in the best interest of the State of Nebraska to make full use of the skills and talents in the state by ensuring that a person who is work-authorized is able to obtain a professional or commercial license and practice his or her profession.

(b) For purposes of a professional or commercial license, the Legislature finds that a person not described in subdivision (1)(a) or (1)(b) of this section who submits (i) an unexpired employment authorization document issued by the United States Department of Homeland Security, Form I-766, and (ii) documentation issued by the United States Department of Homeland Security, the United States Citizenship and Immigration Services, or any other federal agency, such as one of the types of Form I-797 used by the United States Citizenship and Immigration Services, demonstrating that such person is described in section 202(c)(2)(B)(i) through (x) of the federal REAL ID Act of 2005, Public Law 109-13, has demonstrated lawful presence pursuant to section 4-108 and is eligible to obtain such license. Such license shall be valid only for the period of time during which such person's employment authorization document is valid. Nothing in this subsection shall affect the requirements to obtain a professional or commercial license that are unrelated to the lawful presence requirements demonstrated pursuant to this subsection.

(c) Nothing in this subsection shall be construed to grant eligibility for any public benefits other than obtaining a professional or commercial license.

(d) Any person who has complied with the requirements of this subsection shall have his or her employment authorization document verified through the Systematic Alien Verification for Entitlements Program operated by the United States Department of Homeland Security or an equivalent program designated by the United States Department of Homeland Security.

(e) The Legislature enacts this subsection pursuant to the authority provided in 8 U.S.C. 1621(d), as such section existed on January 1, 2016.

Source: Laws 2009, LB403, § 4; Laws 2016, LB947, § 1; Laws 2020, LB944, § 1.

For the purposes of state or local public benefits eligibility, "lawfully present" means the alien classifications under 8 U.S.C. 1621(a)(1), (2), or (3). E.M. v. Nebraska Dept. of Health & Human Servs., 306 Neb. 1, 944 N.W.2d 252 (2020).

4-112 Public benefits; applicant; eligibility; verification; presumption.

For any applicant who has executed a document described in subdivision (1)(b) of section 4-111, eligibility for public benefits shall be verified through the Systematic Alien Verification for Entitlements Program operated by the United States Department of Homeland Security or an equivalent program designated by the United States Department of Homeland Security. Until such verification of eligibility is made, such attestation may be presumed to be proof of lawful presence for purposes of sections 4-108 to 4-113 unless such verification is required before providing the public benefit under another provision of state or federal law.

Source: Laws 2009, LB403, § 5; Laws 2016, LB947, § 2.

4-113 Public benefits; state agency; annual report.

Each state agency which administers any program of public benefits shall provide an annual report not later than January 31 for the prior year to the Governor and the Clerk of the Legislature with respect to compliance with sections 4-108 to 4-113. The report submitted to the Clerk of the Legislature shall be submitted electronically. The report shall include, but not be limited to, the total number of applicants for benefits and the number of applicants rejected pursuant to such sections.

Source: Laws 2009, LB403, § 6; Laws 2012, LB782, § 10.

4-114 Public employer and public contractor; register with and use federal immigration verification system; Department of Labor; duties.

(1) For purposes of this section:

(a) Federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986;

(b) Public contractor means any contractor or his or her subcontractor who is awarded a contract by a public employer for the physical performance of services within the State of Nebraska; and

(c) Public employer means any agency or political subdivision of the State of Nebraska.

(2) Every public employer and public contractor shall register with and use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. Every contract between a public employer and public contractor shall contain a provision requiring the public contractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

(3) For two years after October 1, 2009, the Department of Labor shall make available to all private employers information regarding the federal immigration verification system and encouraging the use of the federal immigration verification system. The department shall report to the Legislature no later than December 1, 2011, on the use of a federal immigration verification system by Nebraska employers.

(4) This section does not apply to contracts awarded by a public employer prior to October 1, 2009.

Source: Laws 2009, LB403, § 7.

CHAPTER 5
APPORTIONMENT

Article.
1. General Apportionment. Transferred or Repealed.
2. Legislative Districts. Transferred.

ARTICLE 1
GENERAL APPORTIONMENT

Section
5-101. Repealed. Laws 1968, Spec. Sess., c. 1, § 3.
5-101.01. Transferred to section 32-1501.
5-102. Transferred to section 32-1503.
5-103. Repealed. Laws 1965, c. 22, § 6.
5-103.01. Repealed. Laws 1988, LB 789, § 4.
5-104. Repealed. Laws 1963, c. 23, § 4.
5-104.01. Repealed. Laws 1965, c. 22, § 6.
5-104.02. Repealed. Laws 1965, c. 22, § 6.
5-104.03. Repealed. Laws 1971, LB 954, § 5.
5-104.04. Transferred to section 32-305.
5-104.05. Repealed. Laws 1971, LB 954, § 5.
5-104.06. Repealed. Laws 1971, LB 954, § 5.
5-104.07. Repealed. Laws 1981, LB 406, § 53.
5-104.08. Repealed. Laws 1981, LB 406, § 53.
5-104.09. Repealed. Laws 1981, LB 406, § 53.
5-104.10. Repealed. Laws 1981, LB 406, § 53.
5-105. Transferred to section 24-301.02.
5-105.01. Repealed. Laws 1984, LB 640, § 1.
5-105.02. Repealed. Laws 1963, c. 128, § 13.
5-105.03. Repealed. Laws 1984, LB 640, § 1.
5-105.04. Repealed. Laws 1984, LB 640, § 1.
5-105.05. Repealed. Laws 1984, LB 640, § 1.
5-106. Repealed. Laws 1972, LB 1032, § 287.
5-106.01. Repealed. Laws 1963, c. 340, § 1.
5-107. Transferred to section 75-101.01.
5-107.01. Transferred to section 75-101.02.
5-108. Transferred to section 32-1057.
5-108.01. Transferred to section 32-4,158.
5-108.02. Transferred to section 32-1059.
5-109. Transferred to section 24-201.02.
5-109.01. Repealed. Laws 1988, LB 789, § 4.
5-110. Repealed. Laws 1988, LB 789, § 4.

5-101 Repealed. Laws 1968, Spec. Sess., c. 1, § 3.

5-101.01 Transferred to section 32-1501.

5-102 Transferred to section 32-1503.

5-103 Repealed. Laws 1965, c. 22, § 6.

5-103.01 Repealed. Laws 1988, LB 789, § 4.

5-104 Repealed. Laws 1963, c. 23, § 4.

5-104.01 Repealed. Laws 1965, c. 22, § 6.

5-104.02 Repealed. Laws 1965, c. 22, § 6.

5-104.03 Repealed. Laws 1971, LB 954, § 5.

5-104.04 Transferred to section 32-305.

5-104.05 Repealed. Laws 1971, LB 954, § 5.

5-104.06 Repealed. Laws 1971, LB 954, § 5.

5-104.07 Repealed. Laws 1981, LB 406, § 53.

5-104.08 Repealed. Laws 1981, LB 406, § 53.

5-104.09 Repealed. Laws 1981, LB 406, § 53.

5-104.10 Repealed. Laws 1981, LB 406, § 53.

5-105 Transferred to section 24-301.02.

5-105.01 Repealed. Laws 1984, LB 640, § 1.

5-105.02 Repealed. Laws 1963, c. 128, § 13.

5-105.03 Repealed. Laws 1984, LB 640, § 1.

5-105.04 Repealed. Laws 1984, LB 640, § 1.

5-105.05 Repealed. Laws 1984, LB 640, § 1.

5-106 Repealed. Laws 1972, LB 1032, § 287.

5-106.01 Repealed. Laws 1963, c. 340, § 1.

5-107 Transferred to section 75-101.01.

5-107.01 Transferred to section 75-101.02.

5-108 Transferred to section 32-1057.

5-108.01 Transferred to section 32-4,158.

5-108.02 Transferred to section 32-1059.

5-109 Transferred to section 24-201.02.

5-109.01 Repealed. Laws 1988, LB 789, § 4.

5-110 Repealed. Laws 1988, LB 789, § 4.

ARTICLE 2
LEGISLATIVE DISTRICTS

Section
5-201. Transferred to section 50-1101.
5-202. Transferred to section 50-1102.
5-203. Transferred to section 50-1103.
5-204. Transferred to section 50-1104.
5-205. Transferred to section 50-1105.

Section
5-206. Transferred to section 50-1106.
5-207. Transferred to section 50-1107.
5-208. Transferred to section 50-1108.
5-209. Transferred to section 50-1109.
5-210. Transferred to section 50-1110.
5-211. Transferred to section 50-1111.
5-212. Transferred to section 50-1112.
5-213. Transferred to section 50-1113.
5-214. Transferred to section 50-1114.
5-215. Transferred to section 50-1115.
5-216. Transferred to section 50-1116.
5-217. Transferred to section 50-1117.
5-218. Transferred to section 50-1118.
5-219. Transferred to section 50-1119.
5-220. Transferred to section 50-1120.
5-221. Transferred to section 50-1121.
5-222. Transferred to section 50-1122.
5-223. Transferred to section 50-1123.
5-224. Transferred to section 50-1124.
5-225. Transferred to section 50-1125.
5-226. Transferred to section 50-1126.
5-227. Transferred to section 50-1127.
5-228. Transferred to section 50-1128.
5-229. Transferred to section 50-1129.
5-230. Transferred to section 50-1130.
5-231. Transferred to section 50-1131.
5-232. Transferred to section 50-1132.
5-233. Transferred to section 50-1133.
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5-245. Transferred to section 50-1145.
5-246. Transferred to section 50-1146.
5-247. Transferred to section 50-1147.
5-248. Transferred to section 50-1148.
5-249. Transferred to section 50-1149.
5-250. Transferred to section 50-1150.
5-251. Transferred to section 50-1151.
5-252. Transferred to section 50-1152.

5-201 Transferred to section 50-1101.

5-202 Transferred to section 50-1102.

5-203 Transferred to section 50-1103.

5-204 Transferred to section 50-1104.

5-205 Transferred to section 50-1105.

5-206 Transferred to section 50-1106.

5-207 Transferred to section 50-1107.

5-208 Transferred to section 50-1108.

5-209 Transferred to section 50-1109.

5-210 Transferred to section 50-1110.

5-211 Transferred to section 50-1111.

5-212 Transferred to section 50-1112.

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5-220 Transferred to section 50-1120.

5-221 Transferred to section 50-1121.

5-222 Transferred to section 50-1122.

5-223 Transferred to section 50-1123.

5-224 Transferred to section 50-1124.

5-225 Transferred to section 50-1125.

5-226 Transferred to section 50-1126.

5-227 Transferred to section 50-1127.

5-228 Transferred to section 50-1128.

5-229 Transferred to section 50-1129.

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5-250 Transferred to section 50-1150.

5-251 Transferred to section 50-1151.

5-252 Transferred to section 50-1152.

CHAPTER 6
ASSIGNMENT FOR CREDITORS

Section
6-101. Repealed. Laws 1945, c. 6, § 1.
6-102. Repealed. Laws 1945, c. 6, § 1.
6-103. Repealed. Laws 1945, c. 6, § 1.
6-104. Repealed. Laws 1945, c. 6, § 1.
6-105. Repealed. Laws 1945, c. 6, § 1.
6-106. Repealed. Laws 1945, c. 6, § 1.
6-107. Repealed. Laws 1945, c. 6, § 1.
6-108. Repealed. Laws 1945, c. 6, § 1.
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6-110. Repealed. Laws 1945, c. 6, § 1.
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6-112. Repealed. Laws 1945, c. 6, § 1.
6-113. Repealed. Laws 1945, c. 6, § 1.
6-114. Repealed. Laws 1945, c. 6, § 1.
6-115. Repealed. Laws 1945, c. 6, § 1.
6-116. Repealed. Laws 1945, c. 6, § 1.
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6-124. Repealed. Laws 1945, c. 6, § 1.
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6-133. Repealed. Laws 1945, c. 6, § 1.
6-134. Repealed. Laws 1945, c. 6, § 1.
6-135. Repealed. Laws 1945, c. 6, § 1.
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6-140. Repealed. Laws 1945, c. 6, § 1.
6-141. Repealed. Laws 1945, c. 6, § 1.
6-142. Repealed. Laws 1945, c. 6, § 1.
6-143. Repealed. Laws 1945, c. 6, § 1.
6-144. Repealed. Laws 1945, c. 6, § 1.
6-145. Repealed. Laws 1945, c. 6, § 1.

6-101 Repealed. Laws 1945, c. 6, § 1.

6-102 Repealed. Laws 1945, c. 6, § 1.

6-103 Repealed. Laws 1945, c. 6, § 1.

6-104 Repealed. Laws 1945, c. 6, § 1.

6-105 Repealed. Laws 1945, c. 6, § 1.

6-106 Repealed. Laws 1945, c. 6, § 1.

6-107 Repealed. Laws 1945, c. 6, § 1.

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6-110 Repealed. Laws 1945, c. 6, § 1.

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6-112 Repealed. Laws 1945, c. 6, § 1.

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6-126 Repealed. Laws 1945, c. 6, § 1.

6-127 Repealed. Laws 1945, c. 6, § 1.

6-128 Repealed. Laws 1945, c. 6, § 1.

6-129 Repealed. Laws 1945, c. 6, § 1.

6-130 Repealed. Laws 1945, c. 6, § 1.

6-131 Repealed. Laws 1945, c. 6, § 1.

6-132 Repealed. Laws 1945, c. 6, § 1.

6-133 Repealed. Laws 1945, c. 6, § 1.

6-134 Repealed. Laws 1945, c. 6, § 1.

6-135 Repealed. Laws 1945, c. 6, § 1.

6-136 Repealed. Laws 1945, c. 6, § 1.

6-137 Repealed. Laws 1945, c. 6, § 1.

6-138 Repealed. Laws 1945, c. 6, § 1.

6-139 Repealed. Laws 1945, c. 6, § 1.

6-140 Repealed. Laws 1945, c. 6, § 1.

6-141 Repealed. Laws 1945, c. 6, § 1.

6-142 Repealed. Laws 1945, c. 6, § 1.

6-143 Repealed. Laws 1945, c. 6, § 1.

6-144 Repealed. Laws 1945, c. 6, § 1.

6-145 Repealed. Laws 1945, c. 6, § 1.

CHAPTER 7
ATTORNEYS AT LAW

Article.
1. General Provisions. 7-101 to 7-116.
2. Legal Education for Public Service and Rural Practice Loan Repayment Assistance Act. 7-201 to 7-210.

Cross References

Constitutional provisions:
Restrictions on practice by a judge, see Article V, section 14, Constitution of Nebraska.
Attorney General, see Chapter 84, article 2.
Attorney-client privilege, see sections 25-21,263, 25-3306, 27-503, 29-1921, 43-3715, and 48-146.02.
Confessions of judgment, on warrant of attorney, see sections 25-1309 to 25-1312.
County attorney, see Chapter 23, article 12.
County court, nonattorney not to represent party, see section 25-2702.
Duty of fidelity, violations, see section 28-613.
Jails and correctional facilities, consultation with prisoners, see sections 28-936, 29-3907, and 47-201.
Judges:
Disqualification, see section 24-739.
Selection, see Chapter 24, article 8.
Legal expense insurance, see section 44-3301 et seq.
Public defenders and Commission on Public Advocacy, see Chapter 23, article 34, and Chapter 29, article 39.
Surety on official bond, attorney not to be, see section 11-114.

ARTICLE 1
GENERAL PROVISIONS

Section
7-101. Unauthorized practice of law; penalty.
7-101.01. Practice of law; students; Supreme Court; rule or order.
7-102. Admission to bar; requirements; examinations; bar commission.
7-103. Practice by nonresident attorneys; requirements; reciprocity.
7-104. Admission to bar; oath; form.
7-105. Duties of attorneys and counselors.
7-106. Deceit or collusion; penalty.
7-107. Powers of attorneys.
7-108. Attorney's liens.
7-109. Admission of attorneys from other states without examination.
7-110. Parties acting in their own behalf.
7-111. Practice of law by judge and certain officials; prohibited; exceptions; penalty.
7-112. Endorsement of original papers.
7-113. Attorneys as guardians; duties.
7-114. Disbarment and contempt cases; costs.
7-115. Disbarment and contempt cases; court costs, defined.
7-116. Disbarment and contempt cases; judgment for costs; transcript to district court; lien; effect.

7-101 Unauthorized practice of law; penalty.

Except as provided in section 7-101.01, no person shall practice as an attorney or counselor at law, or commence, conduct or defend any action or proceeding to which he is not a party, either by using or subscribing his own name, or the name of any other person, or by drawing pleadings or other papers to be signed and filed by a party, in any court of record of this state, unless he has been previously admitted to the bar by order of the Supreme

Court of this state. No such paper shall be received or filed in any action or proceeding unless the same bears the endorsement of some admitted attorney, or is drawn, signed, and presented by a party to the action or proceeding. It is hereby made the duty of the judges of such courts to enforce this prohibition. Any person who shall violate any of the provisions of this section shall be guilty of a Class III misdemeanor, but this section shall not apply to persons admitted to the bar under preexisting laws.

Source: R.S.1866, c. 3, § 1, p. 14; Laws 1893, c. 1, § 1, p. 63; Laws 1895, c. 6, § 1, p. 72; Laws 1905, c. 6, § 1, p. 58; R.S.1913, § 265; C.S.1922, § 260; C.S.1929, § 7-101; R.S.1943, § 7-101; Laws 1967, c. 17, § 1, p. 114; Laws 1977, LB 40, § 35.

1. Practice of law
2. Admission and disbarment

1. Practice of law

A licensed member of the Nebraska bar must represent a limited liability company in the courts of this state. Steinhausen v. HomeServices of Neb., 289 Neb. 927, 857 N.W.2d 816 (2015).

In the narrow context of child custody proceedings pursuant to the Indian Child Welfare Act, the Indian tribe's representative does not have to be a Nebraska licensed attorney. In re Interest of Elias L., 277 Neb. 1023, 767 N.W.2d 98 (2009).

A trustee's duties in connection with his or her office do not include the right to present argument pro se in courts of the state because in this capacity such trustee would be representing interests of others and would therefore be engaged in the unauthorized practice of law. Back Acres Pure Trust v. Fahnlander, 233 Neb. 28, 443 N.W.2d 604 (1989).

Only a person who has been admitted to the practice of law may participate in a trial by the examination of witnesses unless he appears in his own behalf. State v. Warford, 223 Neb. 368, 389 N.W.2d 575 (1986).

To be convicted under this statute, the statute requires only that a pleading be drafted with the intent that it will be filed in court, not that it is actually filed. State v. Thierstein, 220 Neb. 766, 371 N.W.2d 746 (1985).

The conducting of a hearing before the State Railway Commission constitutes the practice of law where it requires the exercise of legal training, knowledge and skill. State ex rel. Johnson v. Childe, 147 Neb. 527, 23 N.W.2d 720 (1946).

Person engaging in ''ambulance chasing'' is guilty of illegal practice of law. State ex rel. Wright v. Hinckle, 137 Neb. 735, 291 N.W. 68 (1940).

Practice of law includes preparing and filing of pleadings in justice court, trial of cases, examination of witnesses, argument, and giving advice to persons as to their legal rights. State ex rel. Hunter v. Kirk, 133 Neb. 625, 276 N.W. 380 (1937).

One may be guilty of practice of law without a license notwithstanding he receives no fee for services performed. State ex rel. Wright v. Barlow, 131 Neb. 294, 268 N.W. 95 (1936).

The prohibition on representation by a layperson does not apply to a sole proprietorship where the owner of that entity is representing his or her own interests. Schmunk v. Aquatic Solutions, 29 Neb. App. 940, 962 N.W.2d 581 (2021).

A responsive letter filed by the registered agent on behalf of the defendant corporation was a nullity and did not constitute an answer, because the registered agent is not a party to the lawsuit and is not authorized to practice law. Turbines Ltd. v. Transupport, Inc., 19 Neb. App. 485, 808 N.W.2d 643 (2012).

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

Where nonattorney signed and filed responsive letter on behalf of corporation, responsive letter did not constitute an answer so as to avoid default judgment. Galaxy Telecom v. SRS, Inc., 13 Neb. App. 178, 689 N.W.2d 866 (2004).

A nonattorney personal representative is engaged in the unauthorized practice of law if he personally brings a wrongful death action for medical negligence on behalf of the deceased's estate. Waite v. Carpenter, 1 Neb. App. 321, 496 N.W.2d 1 (1992).

2. Admission and disbarment

One who is suspended from the practice of law is no longer an admitted attorney within the meaning of this section. State ex rel. NSBA v. Frank, 219 Neb. 271, 363 N.W.2d 139 (1985).

Disbarred attorney could not conduct representative suit. Niklaus v. Abel Construction Co., 164 Neb. 842, 83 N.W.2d 904 (1957).

Court which has the power to license attorneys to practice law has inherent power to disbar them from further practice by judicial act. State ex rel. Sorensen v. Goldman, 127 Neb. 340, 255 N.W. 32 (1934).

Section is declarative of the common law as far as it goes, but does not circumscribe the powers of the court. In re Dunn, 85 Neb. 606, 124 N.W. 120 (1909).

Nonresident cannot be admitted to practice generally. In re Robinson, 82 Neb. 172, 117 N.W. 352 (1908).

Supreme Court has sole power to pass upon the qualifications of applicants for admission to the bar, and has sole power to annul admission. In re Disbarment Proceedings of Newby, 76 Neb. 482, 107 N.W. 850 (1906).

Applicant for admission generally must be citizen of United States and resident of state. In re Admission to the Bar, 61 Neb. 58, 84 N.W. 611 (1900).

7-101.01 Practice of law; students; Supreme Court; rule or order.

The Supreme Court may by rule or order authorize students pursuing a course in instruction in a law school in the State of Nebraska and who have successfully completed their junior year of instruction which students when graduated are eligible to take the examination for admission to the bar of this state to practice as attorneys or counselors at law upon such terms and conditions, and with such supervision, as the Supreme Court may prescribe.

Source: Laws 1967, c. 17, § 2, p. 115.

Except as provided in this section, relating to certified law students, no person shall practice as an attorney or counselor at law, or commence, conduct, or defend any action or proceeding to which he or she is not a party, by using or subscribing his or her own name. Anderzhon/Architects v. 57 Oxbow II Partnership, 250 Neb. 768, 553 N.W.2d 157 (1996).

7-102 Admission to bar; requirements; examinations; bar commission.

(1) Admission to the Nebraska bar shall be governed by admission standards and procedures established by rules adopted by the Supreme Court. Such standards may include, without limitation, educational requirements, character and fitness standards, and satisfactory performance on a bar examination testing the applicant's knowledge of such legal principles as the court may determine. No person shall be admitted to the Nebraska bar, nor permitted to retain such admittance, unless it is shown to the satisfaction of the Supreme Court that such person is of good moral character. The Supreme Court may appoint a bar commission, designated as the Nebraska State Bar Commission, composed of not less than six persons learned in the law to assist in or conduct any bar examination and, by rule of court, to assist the Supreme Court in matters pertaining to bar admission.

(2) The application for admission to the bar shall include the applicant's social security number. Each applicant shall submit to the bar commission with the application for admission a complete set of his or her legible fingerprints along with written permission authorizing the set of fingerprints to be forwarded to the Identification Division of the Federal Bureau of Investigation, through the Nebraska State Patrol. Upon request by the bar commission, the Nebraska State Patrol shall undertake a search for criminal history record information relating to the applicant, including transmittal of the applicant's fingerprints to the Identification Division of 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 bar commission and to the applicant which includes the criminal history record information concerning the applicant. The fingerprint record check provided for in this subsection shall be solely for the purpose of evaluating and confirming information provided by the applicant for admission, except that if the applicant appeals a denial of admission to the bar or a refusal of permission to take the bar examination, the filing of such an appeal with the Supreme Court shall constitute a release of the information obtained from such a fingerprint record check for purposes of the appeal.

Source: R.S.1866, c. 3, § 2, p. 14; Laws 1895, c. 6, § 2, p. 72; Laws 1903, c. 5, § 1, p. 54; Laws 1907, c. 2, § 1, p. 50; R.S.1913, § 266; Laws 1917, c. 4, § 1, p. 57; C.S.1922, § 261; C.S.1929, § 7-102; R.S. 1943, § 7-102; Laws 1997, LB 752, § 59; Laws 2002, LB 848, § 1.

The Supreme Court has delegated administrative responsibility for bar admissions solely to the Nebraska State Bar Commission. In re Application of Ybarra, 279 Neb. 758, 781 N.W.2d 446 (2010).

The Nebraska Supreme Court is vested with the sole power to admit persons to the practice of law in this state and to fix qualifications for admission to the Nebraska bar. In re Application of Roseberry, 270 Neb. 508, 704 N.W.2d 229 (2005).

Misconduct of an attorney indicative of moral unfitness to practice law, although not committed in a professional relationship, justifies disbarment. State ex rel. Hunter v. Marconnit, 134 Neb. 898, 280 N.W. 216 (1938).

The Supreme Court has exclusive power to determine qualifications of persons who may be permitted to practice law. State ex rel. Hunter v. Kirk, 133 Neb. 625, 276 N.W. 380 (1937).

Supreme Court is vested with sole power to fix qualifications for admission to bar. State ex rel. Wright v. Barlow, 131 Neb. 294, 268 N.W. 95 (1936).

Good moral character is a requirement for admission to bar and to retention of license to practice. State ex rel. Sorensen v. Scoville, 123 Neb. 457, 243 N.W. 269 (1932).

Applicant must be of age when examined. Under former law study in office must have been in this state. Admission without

examination applied only to graduates of designated colleges. In re Admission to the Bar, 61 Neb. 58, 84 N.W. 611 (1900).

In granting a license to practice law, it is implied in license that attorney will properly conduct himself. State ex rel. Attorney General v. Burr, 19 Neb. 593, 28 N.W. 261 (1886).

7-103 Practice by nonresident attorneys; requirements; reciprocity.

Any regularly admitted practicing attorney in the courts of record of another state or territory, having professional business in the courts of record of this state may, on motion, be admitted to practice for the purpose of said business only in any of said courts upon taking the oath as required by section 7-104, and upon it being made to appear to the court by a written showing filed therein that he has associated and appearing with him in the action an attorney who is a resident of Nebraska duly and regularly admitted to practice in the courts of record of this state upon whom service may be had in all matters connected with said action with the same effect as if personally made on such foreign attorney within this state; *Provided*, regularly licensed practicing attorneys of other states, the laws of which states permit the practice in its courts of attorneys from this state without a local attorney being associated with such attorney, shall not be required to comply with the provisions of this section.

Source: R.S.1866, c. 3, § 3, p. 14; Laws 1903, c. 5, § 2, p. 55; R.S.1913, § 267; C.S.1922, § 262; Laws 1927, c. 60, § 1, p. 222; C.S.1929, § 7-103; R.S.1943, § 7-103.

The courts of this state look primarily to members of its bar for the conduct of litigation in which they appear. That is one of the reasons for the requirement of this section that the attorneys admitted to practice in other states first associate with members of the Nebraska bar when appearing in this state. State ex rel. Douglas v. Bigelow, 214 Neb. 464, 334 N.W.2d 444 (1983).

Nonresident, assisting county attorney in prosecution of a felony, must qualify. Goldsberry v. State, 92 Neb. 211, 137 N.W. 1116 (1912).

Nonresident may not be admitted to practice generally. In re Robinson, 82 Neb. 172, 117 N.W. 352 (1908).

Court may admit nonresident attorney interested in case for purpose of that business only. In re Admission to the Bar, 61 Neb. 58, 84 N.W. 611 (1900).

7-104 Admission to bar; oath; form.

Every attorney upon being admitted to practice in the Supreme Court or district courts of this state, shall take and subscribe an oath substantially in the following form: You do solemnly swear that you will support the Constitution of the United States, and the Constitution of this state, and that you will faithfully discharge the duties of an attorney and counselor, according to the best of your ability.

Source: R.S.1866, c. 3, § 4, p. 14; Laws 1899, c. 5, § 1, p. 55; R.S.1913, § 268; C.S.1922, § 263; C.S.1929, § 7-104; R.S.1943, § 7-104.

1. Requirements of oath
2. Violation of oath
3. Administration of oath

1. Requirements of oath

Conduct of an attorney in a courtroom must at all times conform to his oath. State ex rel. Nebraska State Bar Assn. v. Rhodes, 177 Neb. 650, 131 N.W.2d 118 (1964).

Oath taken by an attorney requires him to faithfully discharge his duties. State ex rel. Nebraska State Bar Assn. v. Jensen, 171 Neb. 1, 105 N.W.2d 459 (1960).

Oath requires lawyers to observe canons of professional ethics. State ex rel. Nebraska State Bar Assn. v. Fitzgerald, 165 Neb. 212, 85 N.W.2d 323 (1957).

Oath requires attorney to observe established codes of professional ethics. State ex rel. Nebraska State Bar Assn. v. Richards, 165 Neb. 80, 84 N.W.2d 136 (1957).

Oath requires attorney to refrain from impeding or obstructing the administration of justice. State ex rel. Nebraska State Bar Assn. v. Palmer, 160 Neb. 786, 71 N.W.2d 491 (1955).

Oath of attorney requires him to observe standards and codes of professional ethics and honor. State ex rel. Nebraska State Bar Assn. v. Wiebusch, 153 Neb. 583, 45 N.W.2d 583 (1951).

Oath administered to attorney requires him faithfully to discharge his duties, one of which is to abstain from all offensive practices. State ex rel. Sorensen v. Goldman, 127 Neb. 340, 255 N.W. 32 (1934).

2. Violation of oath

A lawyer who was convicted of public indecency had violated his oath of office as an attorney under this section. State ex rel.

Counsel for Dis. v. Cording, 285 Neb. 146, 825 N.W.2d 792 (2013).

An attorney who misappropriates client trust funds to cover deficits in business account violates his oath of office under this section, as well as the Code of Professional Responsibility. State ex rel. NSBA v. Veith, 238 Neb. 239, 470 N.W.2d 549 (1991).

To determine whether and to what extent discipline should be imposed in a disciplinary proceeding against an attorney, it is necessary that the Supreme Court consider the nature of the offense, the need for deterring others, the maintenance of the reputation of the bar as a whole, the protection of the public, the attitude of the offender generally, and his present or future fitness to continue in the practice of law. State ex rel. NSBA v. Miller, 225 Neb. 261, 404 N.W.2d 40 (1987).

Attorney who secured forged endorsement of his client's bond receipt and then cashed the receipt violated his oath to faithfully discharge his duties as an attorney to the best of his abilities. State ex rel. NSBA v. Kelly, 221 Neb. 8, 374 N.W.2d 833 (1985).

Cumulative acts of deception upon a client are distinguishable from isolated incidents of neglect and therefor justify more serious sanctions. State ex rel. NSBA v. Frank, 214 Neb. 825, 336 N.W.2d 557 (1983).

A party has failed to faithfully discharge his duties as an attorney and counselor when he conceals material facts from a court and presents a report known by him to be less than a true, accurate, and full account. State ex rel. Nebraska State Bar Assn. v. McArthur, 212 Neb. 815, 326 N.W.2d 173 (1982).

Attorney's violation of a disciplinary rule and failure to act competently by neglecting a matter entrusted to him is conduct violative of an attorney's oath as a member of the bar. State ex rel. Nebraska State Bar Assn. v. Divis, 212 Neb. 699, 325 N.W.2d 652 (1982).

An attorney who fails to use a trust account for client's funds, and who fails to properly transmit client's funds to the client, is guilty of unprofessional conduct and violates the Canons of Ethics and his oath as a member of the bar of this court. State ex rel. Nebraska State Bar Assn. v. Conley, 209 Neb. 717, 310 N.W.2d 520 (1981).

Failure to use a trust account for client's funds and to promptly transmit client's funds to the client is a violation of the Canons of Ethics and oath as a member of the bar. State ex rel. Nebraska State Bar Assn. v. James, 209 Neb. 306, 307 N.W.2d 524 (1981).

An attorney who fails to fully explain to a client the nature of the client's claim and to adequately represent the client has violated his oath of office under this section as well as the Code of Professional Responsibility. State ex rel. Nebraska State Bar Association v. Walsh, 206 Neb. 737, 294 N.W.2d 873 (1980).

An attorney who performs an illegal act, such as knowingly writing an insufficient funds check, may be in violation of his oath under this section as well as the Code of Professional Responsibility even if he isn't prosecuted. State ex rel. Nebraska State Bar Association v. Walsh, 206 Neb. 737, 294 N.W.2d 873 (1980).

Where conduct of attorneys violates the Code of Professional Responsibility and their oath as attorneys, but does not involve moral turpitude, a judgment of reprimand and censure is appropriate. State ex rel. Nebraska State Bar Assn. v. Addison & Levy, 198 Neb. 61, 251 N.W.2d 717 (1977).

Misconduct of a lawyer acting as a judge may justify disbarment. State ex rel. Nebraska State Bar Assn. v. Conover, 166 Neb. 132, 88 N.W.2d 135 (1958).

3. Administration of oath

Under former act, for purpose of admission, either district court or Supreme Court had authority to administer the required oath. In re Robinson, 82 Neb. 172, 117 N.W. 352 (1908).

7-105 Duties of attorneys and counselors.

It is the duty of an attorney and counselor: (1) To maintain the respect due to the courts of justice and to judicial officers; (2) to counsel or maintain no other actions, proceedings or defenses than those which appear to him legal and just, except the defense of a person charged with a public offense; (3) to employ, for the purpose of maintaining the cause confided to him, such means only as are consistent with the truth; (4) to maintain inviolate the confidence, and, at any peril to himself, to preserve the secrets of his clients; (5) to abstain from all offensive practices and to advise no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged; (6) not to encourage the commencement or continuance of an action or proceeding from any motive of passion or interest.

Source: R.S.1866, c. 3, § 5, p. 14; R.S.1913, § 269; C.S.1922, § 264; C.S.1929, § 7-105; R.S.1943, § 7-105.

1. Contract of employment
2. Dealing with property
3. Misconduct
4. Negligence
5. Privileged communication
6. Miscellaneous

1. Contract of employment

The duty of an attorney is personal in its nature, and therefore a contract for legal services cannot be assigned by the attorney without the consent of the client. Corson v. Lewis, 77 Neb. 446, 109 N.W. 735 (1906); Hilton v. Crooker, 30 Neb. 707, 47 N.W. 3 (1890).

Where one member of a firm of attorneys is retained, the retainer is of the entire firm, and it is the duty of the member retained to inform his partners of all engagements he has undertaken on behalf of the firm, and impart to them all of the facts within his knowledge bearing on the case. Ganzer v. Schiffbauer, 40 Neb. 633, 59 N.W. 98 (1894).

Employment terminates with judgment and exhaustion of legal process thereon, and does not extend to subsequent proceedings to reach property of debtor or enforce liability against sureties. Lamb v. Wilson, 3 Neb. Unof. 505, 97 N.W. 325 (1903).

2. Dealing with property

Where attorneys purchase property from their client, there is a presumption against the validity of the transaction which can

only be overcome by clear evidence of good faith, of full knowledge and of independent consent and action. Hamilton v. Allen, 86 Neb. 401, 125 N.W. 610 (1910).

Purchase of subject matter of suit is voidable by client, unless attorney shows by clear and conclusive proof that no advantage was taken, that matter was explained to client, and price was fair and reasonable. Levara v. McNeny, 73 Neb. 414, 102 N.W. 1042 (1905).

An attorney may not purchase at judicial sale property in which his client is interested, and if he does so, the client at his election may treat the attorney as trustee. Olson v. Lamb, 56 Neb. 104, 76 N.W. 433 (1898).

3. Misconduct

A law firm should be disqualified from representing its client when it hires as temporary clerical help a disbarred attorney who previously worked as an attorney on the same case for another firm which represents the opposing party, because such action has the appearance of impropriety. State ex rel. Creighton Univ. v. Hickman, 245 Neb. 247, 512 N.W.2d 374 (1994).

Violation of the provisions of this section constituted grounds for disbarment of attorney. State ex rel. Nebraska State Bar Assn. v. Rhodes, 177 Neb. 650, 131 N.W.2d 118 (1964).

Enlarging size of bullet hole in belt received in evidence was misconduct. State ex rel. Nebraska State Bar Assn. v. Fisher, 170 Neb. 483, 103 N.W.2d 325 (1960).

Giving of false testimony by an attorney is an act of moral turpitude and justifies suspension or disbarment. State ex rel. Nebraska State Bar Assn. v. Butterfield, 169 Neb. 119, 98 N.W.2d 714 (1959).

Misappropriation by an attorney of money belonging to his client is such a disregard of duty as to warrant disbarment. State ex rel. Hunter v. Hatteroth, 134 Neb. 451, 279 N.W. 153 (1938).

An attorney's failure to account to his client for money received in a professional capacity constitutes a violation of his duty to client and to public, and warrants disbarment. State ex rel. Hunter v. Boe, 134 Neb. 162, 278 N.W. 144 (1938).

Attorneys upon admission assume duties as officers of the court, and in performance thereof they must conform to certain ethical standards generally recognized by the profession. State ex rel. Hunter v. Crocker, 132 Neb. 214, 271 N.W. 444 (1937).

''Ambulance chasing'' by attorney is violation of duty to abstain from all offensive practices. State ex rel. Sorensen v. Goldman, 127 Neb. 340, 255 N.W. 32 (1934).

Attorneys, in performance of duties assumed, must conform to certain standards in relation to clients, to courts, to profession, and to public. State ex rel. Sorensen v. Ireland, 125 Neb. 570, 251 N.W. 119 (1933).

Improper and offensive statements by attorneys are violation of requirement to maintain due respect to courts of justice. Flannigan v. State, 125 Neb. 519, 250 N.W. 908 (1933).

Delinquency in accounting for money received in professional capacity is ground for disbarment as violating duty to maintain respect due courts. State ex rel. Spillman v. Priest, 118 Neb. 47, 223 N.W. 635 (1929).

Drawing pleadings and preparing case for trial is violation of duty of an attorney who has been suspended from practice. State v. Fisher, 103 Neb. 736, 174 N.W. 320 (1919).

Court will disbar for professional misconduct in relations of attorney with court, but will not investigate charge of crime while matter pending on indictment. In re Disbarment Proceedings of Newby, 76 Neb. 482, 107 N.W. 850 (1906).

Contract to share fees with layman who procures third parties to employ attorney and who secures evidence is violation of duties of attorney and is void. Langdon v. Conlin, 67 Neb. 243, 93 N.W. 389 (1903).

Attorney cannot represent both sides without consent of the clients. Cox v. Barnes, 45 Neb. 172, 63 N.W. 394 (1895).

Propriety of methods of defense rests largely with attorney, but aiding escape of defendant is not ''defense''. State ex rel. Attorney General v. Burr, 19 Neb. 593, 28 N.W. 261 (1886).

4. Negligence

Expression of an opinion by an attorney as to the probabilities of realizing a certain sum upon the sale of real property does not render the attorney liable because of mistake in such estimate. Reumping v. Wharton, 56 Neb. 536, 76 N.W. 1076 (1898).

5. Privileged communication

A communication concerning the date, time, and place of a scheduled trial is not confidential in nature and is not protected from disclosure by subsection (4) of this section. State v. Hawes, 251 Neb. 305, 556 N.W.2d 634 (1996).

Obligation of secrecy is not violated where attorney is called upon to testify to facts showing a purpose of perpetrating a conscious intentional fraud upon the court. In re Watson, 83 Neb. 211, 119 N.W. 451 (1909).

6. Miscellaneous

Violation of this section authorized disbarment. State ex rel. Nebraska State Bar Assn. v. Palmer, 160 Neb. 786, 71 N.W.2d 491 (1955).

Obligation rests upon attorneys to maintain the respect due to the courts of justice and to judicial officers, and to abstain from all offensive practices. In re Dunn, 85 Neb. 606, 124 N.W. 120 (1909).

Damages for unauthorized appearance in action not concerning collections are not recoverable in suit against attorney for failure to account for collections. Scott v. Kirschbaum, 47 Neb. 331, 66 N.W. 443 (1896).

An attorney has the right to refuse a retainer which would require his appearance before a particular judge. Hawes v. State, 46 Neb. 149, 64 N.W. 699 (1895).

7-106 Deceit or collusion; penalty.

An attorney and counselor who is guilty of deceit or collusion, or consents thereto, with intent to deceive a court, or judge, or a party to an action or proceeding, is liable to be disbarred.

Source: R.S.1866, c. 3, § 6, p. 15; R.S.1913, § 270; C.S.1922, § 265; C.S.1929, § 7-106; R.S.1943, § 7-106; Laws 1963, c. 25, § 1, p. 128.

1. Disbarment
2. Suspension
3. Civil liability

1. Disbarment

Supreme Court reporter who was also attorney violated this section by demanding $2,500 from printer to guarantee renewal of contract to print Nebraska Reports; respondent disbarred. State ex rel. Nebraska State Bar Assn. v. Green, 210 Neb. 878, 317 N.W.2d 97 (1982).

Manipulation of transfer of judgment to mislead court into allowance of a wrongful set-off warrants disbarment. State ex rel. Nebraska State Bar Assn. v. Hendrickson, 138 Neb. 846, 295 N.W. 892 (1941), on rehearing, 139 Neb. 522, 298 N.W. 148 (1941).

Attorney who obtains loan from client by false representations respecting the mortgage security is guilty of such misconduct as to justify disbarment. State ex rel. Nebraska State Bar Assn. v. Basye, 138 Neb. 806, 295 N.W. 816 (1941).

Failure of attorney to account for, or the misappropriation of, money of his clients received in his professional capacity is ground for disbarment of attorney. State ex rel. Nebraska State Bar Assn. v. McGan, 138 Neb. 665, 294 N.W. 430 (1940).

Conversion of funds of client received from settlement of judgment and refusal to give client information as to status of judgment required disbarment of attorney. State ex rel. Nebraska State Bar Association v. Hyde, 138 Neb. 541, 293 N.W. 408 (1940).

Deceit practiced upon client in sale of stock sustains disbarment. State ex rel. Hunter v. Marconnit, 134 Neb. 898, 280 N.W. 216 (1938).

Misappropriation of money belonging to client warrants disbarment. State ex rel. Hunter v. Hatteroth, 134 Neb. 451, 279 N.W. 153 (1938).

Failure to account to client for money received in a professional capacity is sufficient to justify disbarment. State ex rel. Hunter v. Boe, 134 Neb. 162, 278 N.W. 144 (1938).

Conviction of attorney of embezzlement is conclusive evidence warranting disbarment. State ex rel. Wright v. Sowards, 134 Neb. 159, 278 N.W. 148 (1938).

An attorney, representing a defendant in a criminal prosecution, who procures or induces a material witness for the prosecution to absent himself from the trial and conceal his whereabouts is guilty of such conduct as to merit disbarment. State ex rel. Good v. Cooper, 131 Neb. 771, 270 N.W. 310 (1936).

Misappropriation of money belonging to client is such disregard of duty as to warrant disbarment of attorney. State ex rel. Sorensen v. Goldman, 127 Neb. 340, 255 N.W. 32 (1934).

Securing of money from clients for court costs in promised litigation where attorney knew, through lapse of time and other causes that claims were uncollectible, is equivalent to fraud and deceit and justifies disbarment. State ex rel. Sorensen v. Ireland, 125 Neb. 570, 251 N.W. 119 (1933).

Conversion of money of minors by attorney while acting as their guardian sustained disbarment. State ex rel. Good v. Black, 125 Neb. 382, 251 N.W. 109 (1933).

Restitution of money embezzled does not justify reinstatement of attorney disbarred for misappropriation of funds. State ex rel. Spillman v. Priest, 123 Neb. 241, 242 N.W. 433 (1932).

Attorney who fails to account for money collected by him for client and entrusted to him by client for purpose of investment is guilty of misconduct justifying disbarment. State ex rel. Spillman v. Priest, 118 Neb. 47, 223 N.W. 635 (1929).

An attorney who knowingly uses forgery of another to impose upon a court is guilty of such conduct as to warrant disbarment. State v. Fisher, 103 Neb. 736, 174 N.W. 320 (1919).

This section was not intended to limit the inherent powers of the court. In re Dunn, 85 Neb. 606, 124 N.W. 120 (1909).

Preparation of false affidavit where there is no attempt to make use of it in any way to deceive court is not ground for disbarment. In re Watson, 83 Neb. 211, 119 N.W. 451 (1909).

Evidence offered insufficient to establish by clear preponderance that attorney attempted to deceive court. In re Newby, 82 Neb. 235, 117 N.W. 691 (1908).

District court can disbar an attorney from practice before it for deceit practiced upon that court, but Supreme Court has sole power to disbar generally. In re Disbarment Proceedings of Newby, 76 Neb. 482, 107 N.W. 850 (1906).

Disbarment is a special proceeding. Morton v. Watson, 60 Neb. 672, 84 N.W. 91 (1900).

Conspiracy to bribe juror participated in by attorney warranted disbarment. Blodgett v. State, 50 Neb. 121, 69 N.W. 751 (1897).

Validity and effectiveness of judicial power to disbar attorneys is recognized. Niklaus v. Simmons, 196 F.Supp. 691 (D. Neb. 1961).

2. Suspension

Tampering with exhibit received in evidence was conduct justifying suspension from practice. State ex rel. Nebraska State Bar Assn. v. Fisher, 170 Neb. 483, 103 N.W.2d 325 (1960).

Presentation of claim to Legislature supported by an appraisement that attorney knew had been fraudulently altered was sufficient to justify suspension. State v. Fisher, 82 Neb. 361, 117 N.W. 882 (1908).

Attorney, who removed case to federal court by filing affidavit of local prejudice when his real reason was to secure allowance of attorney's fees not recoverable in state court, was subject to reprimand. In re Breckenridge, 31 Neb. 489, 48 N.W. 142 (1891).

Procuring release of prisoner under sentence of death through imposition on a United States Commissioner was such conduct as to justify suspension for two years. State ex rel. Attorney General v. Burr, 19 Neb. 593, 28 N.W. 261 (1886).

3. Civil liability

Recovery of treble the actual damages sustained is unconstitutional. Abel v. Conover, 170 Neb. 926, 104 N.W.2d 684 (1960).

In civil action to recover treble damages under this section, evidence did not disclose any fraud, deceit or any unprofessional conduct. Martin v. Reavis, 117 Neb. 219, 220 N.W. 238 (1928).

7-107 Powers of attorneys.

An attorney or counselor has power: (1) To execute, in the name of his client, a bond for an appeal, certiorari, writ of error, or any other paper necessary and proper for the prosecution of a suit already commenced; (2) to bind his client by his agreement in respect to any proceeding within the scope of his proper duties and powers; but no evidence of any such agreement is receivable except the statement of the attorney himself, his written agreement signed and filed with the clerk, or an entry thereof upon the records of the court; (3) to receive money claimed by his client, in an action or proceeding, during the pendency thereof or afterwards, unless he has been previously discharged by his client,

and upon payment thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment.

Source: R.S.1866, c. 3, § 7, p. 15; R.S.1913, § 271; C.S.1922, § 266; C.S.1929, § 7-107; R.S.1943, § 7-107.

1. Appearance
2. Powers
3. Agreements
4. Miscellaneous

1. Appearance

After discharge, an attorney may appear in case as amicus curiae and suggest facts necessary to the protection of minors whose rights have been disregarded. Jones v. Hudson, 93 Neb. 561, 141 N.W. 141 (1913), 44 L.R.A.N.S. 1182 (1913).

Where an attorney appears in an action, the presumption is that he was authorized to appear. Ebel v. Stringer, 73 Neb. 249, 102 N.W. 466 (1905).

The authority of an attorney to appear will be presumed even though appearance is upon behalf of plaintiff and one defendant. Union P. Ry. Co. v. Vincent, 58 Neb. 171, 78 N.W. 457 (1899).

The authority of an attorney who enters an appearance will be presumed to justify him in doing so. Missouri P. Ry. Co. v. Fox, 56 Neb. 746, 77 N.W. 130 (1898).

Where judgment is rendered against a party whose appearance is entered by an unauthorized attorney, the presumption of jurisdiction arising from the appearance of the attorney is not conclusive, and in a direct attack on the judgment, the fact that the appearance was unauthorized may be shown. Kaufmann v. Drexel, 56 Neb. 229, 76 N.W. 559 (1898).

When an attorney appears in a cause, the presumption is that he has authority and that presumption continues until the want of authority is shown. Vorce v. Page, 28 Neb. 294, 44 N.W. 452 (1889).

Unauthorized appearance of attorney may be ratified before judgment. Little v. Giles, 27 Neb. 179, 42 N.W. 1044 (1889).

The right of an attorney to enter an appearance for a party can be called in question only by the party himself. Baldwin v. Foss, 14 Neb. 455, 16 N.W. 480 (1883).

Although authority will be presumed when an attorney appears for a defendant not served with process, yet if the defendant proves attorney had no authority, his rights cannot be affected by the attorney's acts. Kepley v. Irwin, 14 Neb. 300, 15 N.W. 719 (1883).

Unauthorized bringing of action resulting in decree of foreclosure may be repudiated by client. McDowell v. Gregory, 14 Neb. 33, 14 N.W. 899 (1883).

Appearance of attorney, who had no authority to waive process or defend the suit, may be explained, and showing made that court pronouncing judgment did not have jurisdiction of the cause or person. Eaton v. Hasty, 6 Neb. 419, 29 Am. R. 365 (1877).

2. Powers

A lawyer's proper duties and powers, within the meaning of this section, do not include settling a lawsuit without a client's express authority. Luethke v. Suhr, 264 Neb. 505, 650 N.W.2d 220 (2002).

An attorney's power to bind his client extends to administrative hearings and proceedings. Brennan v. School Dist. No. 21, 235 Neb. 948, 458 N.W.2d 227 (1990).

The waiver of foundation for certain evidence is a matter of trial strategy within the scope of counsel's duty and such action is binding on a defendant who has voluntarily absented himself from the trial. State v. Sayers, 211 Neb. 555, 319 N.W.2d 438 (1982).

Attorneys employed by counties could receive money due county under court decree. State ex rel. Heintze v. County of Adams, 162 Neb. 127, 75 N.W.2d 539 (1956).

While the relationship of attorney and client exists, the attorney has authority to receive money due his client in an action or proceeding in which the attorney rightly appears, but that authority ceases with the severance of the relationship. Gordon v. Hennings, 89 Neb. 252, 131 N.W. 228 (1911).

An attorney may receive and receipt for money due his client in a case in which he is employed, and the act will bind his client, unless the party paying had notice of revocation of the attorney's authority to act. Gordon v. City of Omaha, 77 Neb. 556, 110 N.W. 313 (1906).

Attorney cannot bind client by acts in another action in his own behalf. Hamilton Brown Shoe Co. v. Milliken, 62 Neb. 116, 86 N.W. 913 (1901).

An attorney cannot, without actual authority, sell and assign his client's judgment. Henry & Coatsworth Co. v. Halter, 58 Neb. 685, 79 N.W. 616 (1899).

A debtor is bound to take notice of the authority of an attorney employed to collect a debt, and unless specially authorized by client, the attorney has no authority to accept in payment of debt anything but money, nor to release one of two joint debtors in consideration of the other giving security for the debt. Cram v. Sickel, 51 Neb. 828, 71 N.W. 724 (1897).

Attorney employed to collect debt has no power, without express authority, to compromise claim or release a debtor except upon payment of full amount of debt in money. Smith v. Jones, 47 Neb. 108, 66 N.W. 19 (1896).

Implied authority of an attorney to bind his client does not authorize him to execute indemnity bond to sheriff when client is readily available. Luce v. Foster, 42 Neb. 818, 60 N.W. 1027 (1894).

Attorney has authority to confess judgment for costs in order to have default judgment set aside. Stanton & Co. v. Spence, 22 Neb. 191, 34 N.W. 359 (1887).

Attorney cannot compromise judgment and accept payment in a debt owing by the attorney. Hamrick v. Combs, 14 Neb. 381, 15 N.W. 731 (1883).

Attorney having notes and mortgage in his possession for collection has authority to receive payment, surrender the notes, and agree to release the mortgage. Ward v. Beals, 14 Neb. 114, 15 N.W. 353 (1883).

An attorney, by virtue of his employment to make collections, has no authority to release a surety on a promissory note without payment. Stoll v. Sheldon, 13 Neb. 207, 13 N.W. 201 (1882).

Authority to give notice of termination of agency upon behalf of principal is not within the express or implied powers of an attorney, at least before the commencement of action. Tingley v. Parshall, 11 Neb. 443, 9 N.W. 571 (1881).

Attorney, by virtue of his general authority, cannot authorize an execution to issue against the property of his client while a supersedeas bond is on file. State Bank of Nebraska v. Green, 8 Neb. 297 (1879).

Joint employment of an attorney by principal and surety to defend suit does not give authority to sign a stay bond on behalf of the surety. Anderson v. Hendrickson, 1 Neb. Unof. 610, 95 N.W. 844 (1901).

An attorney employed to prosecute action has no authority to dismiss it contrary to the desire and over the objection of the client. Steinkamp v. Gaebel, 1 Neb. Unof. 480, 95 N.W. 684 (1901).

3. Agreements

Subsection (2) of this statute does not make an oral contract invalid, but only relates to the character of evidence by which it may be established. Heese Produce Co. v. Lueders, 233 Neb. 12, 443 N.W.2d 278 (1989).

Statements of attorney, made out of court, as to existence of oral agreement upon behalf of client, are not admissible in evidence. Oddo v. Fred F. Shields, 144 Neb. 111, 12 N.W.2d 659 (1944).

Oral agreements between attorneys, entered into out of court, will not be recognized or considered. Drake v. Ralston, 137 Neb. 72, 288 N.W. 377 (1939).

Second subdivision of this section does not make oral agreement invalid, but prescribes character of evidence to prove it and, if proved, without objection, by incompetent evidence, it may be enforced. Anderson v. Walsh, 109 Neb. 759, 192 N.W. 328 (1923).

Attorney has no authority to make agreement that purchaser at judicial sale shall pay amount of his bid to a third person instead of to the officer making the sale. Fire Assn. of Philadelphia v. Ruby, 58 Neb. 730, 79 N.W. 723 (1899).

Written stipulations of counsel in regard to trial of cause may be set aside in the discretion of the court when their enforcement would result in serious injury to one party and would not be prejudicial to the other party. Keens v. Robertson, 46 Neb. 837, 65 N.W. 897 (1896).

Oral agreement of attorney to arbitrate matters in litigation cannot be proved by testimony of person who heard the agreement made. German-American Ins. Co. v. Buckstaff, 38 Neb. 135, 56 N.W. 692 (1893).

Written agreements of attorneys, or oral agreements entered into by them in open court, in regard to the disposition of cases, will be enforced, but oral agreements entered into out of court will not be recognized. Rich v. State Nat. Bank of Lincoln, 7 Neb. 201, 29 Am. R. 382 (1878).

Agreement as to conduct of suit made in open court and entered on record, binds client. McCann v. McLennan, 3 Neb. 25 (1873).

A settlement agreement may be established by the testimony of the attorney of the party sought to be bound. Furstenfeld v. Pepin, 23 Neb. App. 155, 869 N.W.2d 353 (2015).

4. Miscellaneous

The State's comments during a juvenile court proceeding are not judicial admissions and do not bind the State to use the same theory in a criminal proceeding. State v. Canady, 263 Neb. 552, 641 N.W.2d 43 (2002).

Stipulation of attorneys in injunction suit for later determination of issue of damages was binding. Kuhlmann v. Platte Valley Irr. Dist., 166 Neb. 493, 89 N.W.2d 768 (1958).

Where money is paid to an attorney upon a claim of a third party, he cannot withhold the money from the third person upon the ground that he is also a creditor of the person paying the money. Wilder v. Millard, 93 Neb. 595, 141 N.W. 156 (1913).

Where attorney was authorized to collect judgment by a levy upon and sale of land, and client advises attorney it does not want to bid on land but desires its money, attorney may purchase at execution sale where full amount of judgment is bid. Washburn v. Osgood, 38 Neb. 804, 57 N.W. 529 (1894).

Attorney cannot be compelled by summary order to pay into court money in his hands collected as a fee and as to which there is a dispute between attorneys over division of fees. Baldwin v. Foss, 16 Neb. 80, 19 N.W. 496 (1884).

7-108 Attorney's liens.

An attorney has a lien for a general balance of compensation upon any papers of his client which have come into his possession in the course of his professional employment; and upon money in his hands belonging to his client, and in the hands of the adverse party in an action or proceeding in which the attorney was employed from the time of giving notice of the lien to that party.

Source: R.S.1866, c. 3, § 8, p. 15; R.S.1913, § 272; C.S.1922, § 267; C.S.1929, § 7-108; R.S.1943, § 7-108.

1. Attaches
2. Does not attach
3. Priority
4. Destruction
5. Intervention
6. Notice
7. Miscellaneous

1. Attaches

When an attorney has given appropriate notice of an attorney's lien under this section, the lien is perfected and attaches to funds in the hands of the adverse party and belonging to the attorney's client. Stover v. County of Lancaster, 271 Neb. 107, 710 N.W.2d 84 (2006).

To be entitled to an attorney's lien, it is necessary that an attorney-client relationship exists, either express or implied. Hammond v. Nebraska Nat. Gas Co., 209 Neb. 616, 309 N.W.2d 75 (1981).

An action to enforce an attorney's charging lien is equitable in nature and will not be tried before a jury. Barber v. Barber, 207 Neb. 101, 296 N.W.2d 463 (1980).

Attorney's lien extends to the whole indebtedness covering the general balances due. Anderson v. Lamme, 174 Neb. 398, 118 N.W.2d 339 (1962).

Charging lien may be enforced by action in equity. Neighbors & Danielson v. West Nebraska Methodist Hospital, 162 Neb. 816, 77 N.W.2d 667 (1956).

An attorney's charging lien is confined to fees and costs due for services rendered in the particular action in which it is sought to enforce the lien. Nicholson v. Albers, 144 Neb. 253, 13 N.W.2d 145 (1944).

To the extent of his reasonable charges and disbursements, an attorney is entitled to a lien upon money in his hands belonging to his client. State ex rel. Nebraska State Bar Assn. v. Bachelor, 139 Neb. 253, 297 N.W. 138 (1941).

Attorney's lien is confined to fees and costs due for services rendered in particular case in which lien is sought to be enforced. Reynolds v. Warner, 128 Neb. 304, 258 N.W. 462 (1935), 97 A.L.R. 1128 (1935).

Lien is valid on full amount of judgment where settlement made while appeal pending. Griggs v. Chicago, R. I. & P. Ry. Co., 104 Neb. 301, 177 N.W. 185 (1920).

An attorney has a charging lien upon money in the hands of an adverse party, but an attorney discharged by client before collection of money, although lien is not dissolved, cannot collect money over client's objection. Gordon v. Hennings, 89 Neb. 252, 131 N.W. 228 (1911).

An attorney's lien, when filed in a pending action, binds real estate previously attached, and client cannot prevent enforcement of lien by dismissal of action. Zentmire v. Brailey, 89 Neb. 158, 130 N.W. 1047 (1911).

Judgment in favor of a prosecutrix in a bastardy proceeding is subject to the lien of her attorney for services in obtaining the judgment, and an assignment of the judgment after filing of attorney's lien does not affect lien and assignee takes subject thereto. Taylor v. Stull, 79 Neb. 295, 112 N.W. 577 (1907).

An attorney has lien for his compensation and disbursements on money received in client's behalf, and the right of lien is not affected by the fact that the client is an executor or trustee and the services were rendered and money received on behalf of an estate. Burleigh v. Palmer, 74 Neb. 122, 103 N.W. 1068 (1905).

This section, declaratory of common law, gives attorney a retaining lien upon all papers, books, documents and money of client which come into his possession in the course of his professional employment, and a charging lien upon money in the hands of adverse party where notice of existence of claim of lien is given. Cones v. Brooks, 60 Neb. 698, 84 N.W. 85 (1900).

Attorney may recover property fraudulently conveyed upon which lien attached. Chamberlain v. Grimes, 42 Neb. 701, 60 N.W. 948 (1894).

An attorney has a lien for a general balance upon money in his hands belonging to his client, and until the lien is discharged he is not liable to a prosecution for embezzlement. Van Etten v. State, 24 Neb. 734, 40 N.W. 289 (1888), 1 L.R.A. 669 (1888).

Where a judgment debtor, with knowledge of an attorney's lien, pays the judgment direct to the creditor, he cannot evade the payment of amount due attorney for services. Griggs & Ashby v. White, 5 Neb. 467 (1877).

An attorney, prosecuting a claim before a county board, has a lien without filing a claim or giving notice thereof, and an assignee of the claim takes subject thereto. Maloney v. Douglas County, 2 Neb. Unof. 396, 89 N.W. 248 (1902).

2. Does not attach

To be valid against subsequent purchasers, agreement creating lien on real estate must meet requirements of section 76-211. Marechale v. Burr, 195 Neb. 306, 237 N.W.2d 860 (1976).

Property in the hands of a court-appointed receiver is not subject to attorney's lien. Lewis v. Gallemore, 175 Neb. 279, 121 N.W.2d 388 (1963).

An attorney has only such lien for services performed as provided by statute and is not entitled to a lien on real estate owned by client. Young v. Card, 145 Neb. 857, 18 N.W.2d 302 (1945).

This section does not give a right to a lien upon real estate involved in a foreclosure action. Marshall v. Casteel, 143 Neb. 68, 8 N.W.2d 690 (1943).

Attorney, prior to settlement of his claim for services, has a lien only upon the money of client which comes into his hands. State ex rel. Nebraska State Bar Association v. Rein, 141 Neb. 758, 4 N.W.2d 829 (1942).

Except as provided by statute, an attorney has no lien for services performed by him. Card v. George, 140 Neb. 426, 299 N.W. 487 (1941).

Assistant or associate counsel employed by attorney without client's knowledge or consent is not entitled to lien. Snyder v. Smith, 132 Neb. 504, 272 N.W. 401 (1937).

Lien does not attach where attorney fails to comply with statute. Vanderlip v. Barnes, 101 Neb. 573, 163 N.W. 856 (1917); Lavender v. Atkins, 20 Neb. 206, 29 N.W. 467 (1886).

Award paid into court in condemnation proceedings for present owners of land is not subject to lien of attorney for former owner. Clay County v. Howard, 95 Neb. 389, 145 N.W. 982 (1914).

Attorney for defendant has no lien upon funds in the hands of third party garnished by plaintiff. Phillips v. Hogue, 63 Neb. 192, 88 N.W. 180 (1901).

Attorney's lien cannot be enforced where there is nothing to which such lien can attach. Yeiser v. Lowe, 50 Neb. 310, 69 N.W. 847 (1897).

Filing of attorney's lien after settlement is completed does not confer any rights in favor of attorney against adverse party. Sheedy v. McMurtry, 44 Neb. 499, 63 N.W. 21 (1895).

Attorney's lien cannot be asserted against money appropriated to client by Legislature while money is in the custody of State Treasurer. State ex rel. Sayre v. Moore, 40 Neb. 854, 59 N.W. 755 (1894), 25 L.R.A. 774 (1894).

An attorney is not entitled to a lien before judgment upon a cause of action for tort which in case of the death of the parties would not survive. Abbott v. Abbott, 18 Neb. 503, 26 N.W. 361 (1886).

Federal court receiver is not ''adverse party'' within meaning of this section, and money in his hands is not subject to attorney's lien. Culhane v. Anderson, 17 F.2d 559 (8th Cir. 1927).

3. Priority

Where two judgments, arising out of the same transaction, have been obtained by each of two parties against the other, attorney's lien is subordinate to the right of setoff. Dalton State Bank v. Eckert, 135 Neb. 500, 282 N.W. 490 (1938).

Lien of attorney for services in procuring judgment will not be allowed to reduce the amount of a setoff if the judgment is sufficient to satisfy both the setoff and the attorney's lien. Stone v. Snell, 86 Neb. 581, 125 N.W. 1108 (1910).

Attorney's lien is subject to proper setoff or defense pleaded. Field v. Maxwell, 44 Neb. 900, 63 N.W. 62 (1895).

The assignee of a judgment takes it subject to the rights of an attorney who has properly filed a lien. Yates v. Kinney, 33 Neb. 853, 51 N.W. 230 (1892).

Lien of attorney upon judgment to the extent of his reasonable fees and disbursements is paramount to any rights of the parties in the suit or to setoff. Rice v. Day, 33 Neb. 204, 49 N.W. 1128 (1891).

Vendor's lien is superior to attorney's lien for services rendered vendee. Smith v. Mesarvey, 22 Neb. 756, 36 N.W. 137 (1888).

Lien of attorney, upon judgment obtained by him, to the extent of his reasonable fees and disbursements, is paramount to any rights of the parties in the suit or to any setoff. Boyer v. Clark & McCandless, 3 Neb. 161 (1873).

Lien of attorneys upon judgment is paramount to any setoff not pleaded. Finney v. Gallop, 2 Neb. Unof. 480, 89 N.W. 276 (1902).

Where a decree enjoining collection of judgment and allowing a setoff conditions the injunction on payment into court of a sum more than sufficient to satisfy lien, it is unnecessary to consider relative priorities of setoff and the attorney's lien. Commercial State Bank of Crawfordsville v. Ketchum, 1 Neb. Unof. 454, 96 N.W. 614 (1901).

4. Destruction

After an attorney's lien has attached, a party adverse to the attorney's client cannot, if he has notice thereof, destroy the lien by voluntary settlement made without the consent or knowledge of the attorney. Spethman v. Hofeldt, 141 Neb. 83, 2 N.W.2d 620 (1942).

An attorney may have a lien upon the claim of his client in action for personal injuries, and the lien, once attached, cannot be destroyed by voluntary settlement made without knowledge or consent of the attorney. Heinisch v. Travelers Mut. Casualty Co., 135 Neb. 13, 280 N.W. 234 (1938).

Attorneys have lien upon judgment for amount agreed which cannot be defeated by recovery of judgment against client by adverse party and attempted setoff thereof. Ward v. Watson, 27 Neb. 768, 44 N.W. 27 (1889).

5. Intervention

Where attorney claims lien on money belonging to a minor plaintiff which is subsequently, by agreement of the parties, paid into court, the proper practice is for attorney to file an intervening petition to have the amount and extent of his lien judicially determined. Myers v. Miller, 134 Neb. 824, 279 N.W. 778 (1938), 117 A.L.R. 977 (1938).

An attorney may have a lien upon the claim of his client in an action for personal injury prior to judgment, and after settlement has been made with notice of his lien, may intervene as a party plaintiff to establish his lien. Corson v. Lewis, 77 Neb. 449, 114 N.W. 281 (1907).

Where parties to divorce action become reconciled, court may dismiss suit and attorney is not entitled to intervene to enforce fees after dismissal. Petersen v. Petersen, 76 Neb. 282, 107 N.W. 391 (1906), 124 A.S.R. 812 (1906).

Attorney may appeal in client's name to enforce lien on fund. Counsman v. Modern Woodmen of America, 69 Neb. 710, 96 N.W. 672 (1903), reversed on rehearing, 69 Neb. 713, 98 N.W. 414 (1904).

When a judgment to which an attorney's lien has attached is compromised in fraud of the attorney's rights, proper method of procedure is for the attorney to intervene and have amount of his lien determined. Jones v. Duff Grain Co., 69 Neb. 91, 95 N.W. 1 (1903).

Attorney having a lien on a judgment may intervene to revive judgment, and filing of petition is sufficient notice of the lien to the judgment debtor. Greek v. McDaniel, 68 Neb. 569, 94 N.W. 518 (1903).

Dismissal of suit will not be set aside and cause reinstated to protect attorney's lien where charge of fraud to defeat lien was not established. Kretsinger v. Weber, 43 Neb. 468, 61 N.W. 718 (1895).

Attorney may set aside fraudulent dismissal or settlement with notice of lien. Aspinwall v. Sabin, 22 Neb. 73, 34 N.W. 72 (1887), 3 A.S.R. 258 (1887).

To entitle an attorney to become a party to an action for the purpose of protecting and enforcing his lien, it must appear that fees are due him for services in that case. Oliver v. Sheeley, 11 Neb. 521, 9 N.W. 689 (1881).

After settlement and dismissal of action by client, action may be continued for purpose of protecting and enforcing lien of attorney. Reynolds v. Reynolds, 10 Neb. 574, 7 N.W. 322 (1880).

Where attorney has obtained judgment for client and perfected lien, he may enforce it notwithstanding a compromise and settlement made by his client with other party, and court may permit him to intervene to protect his lien. Patrick v. Leach, 17 F. 476 (Cir. Ct., D. Neb. 1881).

6. Notice

That an attorney filed notice of an attorney's lien under this section after discharge by the client does not affect the lien's enforceability; the attorney need not file notice of the lien before discharge. Meister v. Meister, 274 Neb. 705, 742 N.W.2d 746 (2007).

The purpose of the notice requirement of this section is to protect innocent persons who have no notice or knowledge that an attorney claims a lien on the judgment. Stover v. County of Lancaster, 271 Neb. 107, 710 N.W.2d 84 (2006).

Although an attorney's lien on funds in the hands of an adverse party is not perfected until notice is given, such notice need not be express or in any specific form. Rather, it need be only understood by the parties that the attorney is entitled to the funds as compensation. Kleager v. Schaneman, 212 Neb. 333, 322 N.W.2d 659 (1982).

In order to perfect a lien against assets in the hands of an adverse party, an attorney must give to the adverse party notice of the existence of the claim and that it will be asserted. Such notice need not be in any specific form. Barber v. Barber, 207 Neb. 101, 296 N.W.2d 463 (1980).

Notice of attorney's lien is not required to be in any specific form or to be given in any particular manner. Tuttle v. Wyman, 149 Neb. 769, 32 N.W.2d 742 (1948).

Attorney has lien upon money in the hands of adverse party from time of giving notice of lien to that party. In re Estate of Linch, 139 Neb. 761, 298 N.W. 697 (1941).

An attorney is entitled to a lien upon money in the hands of an adverse party only from the time of giving notice to that party. In re Estate of Alexander, 133 Neb. 218, 274 N.W. 551 (1937).

Notice of lien filed with papers is good, and binds adverse party. Hoyt v. C., R. I. & P. Ry. Co., 88 Neb. 161, 129 N.W. 292 (1911).

Claim in suit on insurance policy to recover attorney's fees as part of the costs is not notice of claim of attorney's lien. Cobbey v. Dorland, 50 Neb. 373, 69 N.W. 951 (1897).

In order to render an adverse party liable to a lien for services of attorney, claim of lien must be filed with the papers or notice given, and mere knowledge of existence of contingent fee agreement is not notice. Elliott v. Atkins, 26 Neb. 403, 42 N.W. 403 (1889).

Actual notice to adverse party is sufficient. Sayre v. Thompson, 18 Neb. 33, 24 N.W. 383 (1885).

Attorney has no lien on judgment obtained by him in favor of his client which he can enforce against a third party, and to secure a lien he must give personal notice in writing. Patrick v. Leach, 12 F. 661 (Cir. Ct., D. Neb. 1881).

7. Miscellaneous

Under this section, money in the hands of a court-appointed receiver is not in the hands of an adverse party. Holste v. Burlington Northern R.R. Co., 256 Neb. 713, 592 N.W.2d 894 (1999).

7-109 Admission of attorneys from other states without examination.

Any person producing a license, or other satisfactory voucher, proving either that he has been regularly admitted an attorney at law in the courts of record of any state where the requirements for admission when he was admitted were equal to those prescribed in this state, or so proving that he has practiced law five full years in courts of record under license in any state, and proving also that he is a person of good moral character, may be admitted by the Supreme Court to the bar in this state without examination.

Source: R.S.1866, c. 3, § 9, p. 15; Laws 1903, c. 5, § 9, p. 55; R.S.1913, § 273; C.S.1922, § 268; C.S.1929, § 7-109; R.S.1943, § 7-109.

Section was not repealed as a whole by Chapter 6, Laws of 1895, but power of district court to admit was taken away by that act. In re Burton, 76 Neb. 752, 107 N.W. 1015 (1906).

District courts cannot admit, except in case pending. In re Admission to the Bar, 61 Neb. 58, 84 N.W. 611 (1900).

7-110 Parties acting in their own behalf.

Plaintiffs shall have the liberty of prosecuting, and defendants shall have the liberty of defending, in their proper persons.

Source: R.S.1866, c. 3, § 10, p. 16; R.S.1913, § 274; C.S.1922, § 269; C.S.1929, § 7-110; R.S.1943, § 7-110.

An individual assignee of a corporation's or other distinct legal entity's cause of action cannot bring such action pro se. Zapata v. McHugh, 296 Neb. 216, 893 N.W.2d 720 (2017).

In absence of unusual circumstances, defendant who is sui juris and mentally competent has right to conduct his defense in person without assistance of counsel. State v. Beasley, 183 Neb. 681, 163 N.W.2d 783 (1969).

Plaintiffs have the liberty of prosecuting, and defendants have the liberty of defending, in their own proper persons without the assistance of an attorney. Weiner v. Schrempp, 177 Neb. 583, 129 N.W.2d 518 (1964).

Disbarred attorney could not prosecute representative action in his own name. Niklaus v. Abel Construction Co., 164 Neb. 842, 83 N.W.2d 904 (1957).

Party to suit may act as his own attorney. Vielehr v. Malone, 158 Neb. 436, 63 N.W.2d 497 (1954).

The prohibition on representation by a layperson does not apply to a sole proprietorship where the owner of that entity is representing his or her own interests. Schmunk v. Aquatic Solutions, 29 Neb. App. 940, 962 N.W.2d 581 (2021).

7-111 Practice of law by judge and certain officials; prohibited; exceptions; penalty.

No person shall be permitted to practice as an attorney in any of the courts of this state while holding the office of judge of the Supreme Court, Clerk of the Supreme Court, judge of the Court of Appeals, judge of the district court, judge of the Nebraska Workers' Compensation Court, or judge of the county court. No sheriff, constable, county clerk, clerk of the district court, or jailer shall practice as an attorney in any court in the county where he or she holds office. Such prohibition shall not apply to acting judges of the Nebraska Workers' Compensation Court appointed under section 48-155.01. An attorney at law who holds the office of clerk magistrate shall not be permitted to practice as an attorney in any action, matter, or proceeding brought before himself or herself or appealed from his or her decision to a higher court, nor shall any county judge draw any paper or written instrument to be filed in his or her own court except such as he or she is required by law to draw. No clerk magistrate shall draw any paper or written instrument in any matter assigned to him or her except such as he or she is required by law to draw. Any person who violates any of the provisions of this section shall be guilty of a Class V misdemeanor.

Source: R.S.1866, c. 3, § 11, p. 16; Laws 1877, § 1, p. 39; Laws 1899, c. 5, § 2, p. 55; Laws 1903, c. 6, § 1, p. 56; R.S.1913, § 275; Laws 1917, c. 5, § 1, p. 58; C.S.1922, § 270; C.S.1929, § 7-111; R.S. 1943, § 7-111; Laws 1959, c. 13, § 1, p. 127; Laws 1969, c. 28, § 1, p. 232; Laws 1969, c. 29, § 1, p. 233; Laws 1971, LB 2, § 1; Laws 1972, LB 1032, § 92; Laws 1977, LB 40, § 36; Laws 1984, LB 13, § 1; Laws 1991, LB 732, § 11.

Cross References

Constitutional prohibition on practice of law, see Article V, section 14, Constitution of Nebraska.

Attorney holding office of county judge cannot practice in own court. State ex rel. Nebraska State Bar Assn. v. Conover, 166 Neb. 132, 88 N.W.2d 135 (1958).

County judge cannot practice in any proceeding brought in his own court. State ex rel. Nebraska Bar Assn. v. Wiebusch, 153 Neb. 583, 45 N.W.2d 583 (1951).

7-112 Endorsement of original papers.

Upon filing original papers in any case, it shall be the duty of an attorney to endorse thereon his name.

Source: R.S.1866, c. 3, § 13, p. 16; R.S.1913, § 276; C.S.1922, § 271; C.S.1929, § 7-112; R.S.1943, § 7-112.

7-113 Attorneys as guardians; duties.

It shall be the duty of every attorney to act as the guardian of a minor or incompetent defendant in any suit pending against him when appointed for that purpose by an order of the court. He shall prepare himself to make the proper defense, to guard the rights of such defendant, and shall be entitled to such compensation as the court shall deem reasonable.

Source: R.S.1866, c. 3, § 14, p. 16; R.S.1913, § 277; C.S.1922, § 272; C.S.1929, § 7-113; R.S.1943, § 7-113; Laws 1961, c. 13, § 1, p. 105.

1. Compensation
2. Miscellaneous

1. Compensation

Guardian for incompetent person in proceedings under Chapter 83, article 5, who carries out functions of guardian ad litem on appeal is entitled to reasonable compensation to be taxed as costs. State v. Cavitt, 182 Neb. 712, 157 N.W.2d 171 (1968).

Attorney acting as guardian ad litem is entitled to reasonable compensation for his services. White v. Ogier, 175 Neb. 883, 125 N.W.2d 68 (1963).

Guardian ad litem of an infant defendant is entitled to such compensation as the court shall deem reasonable taxed as costs. Omey v. Stauffer, 174 Neb. 247, 117 N.W.2d 481 (1962).

Guardian ad litem is entitled to such compensation as the court shall deem reasonable. Peterson v. Skiles, 173 Neb. 470, 113 N.W.2d 628 (1962).

Fee for guardian ad litem in divorce suit may be taxed as costs. Weesner v. Weesner, 168 Neb. 346, 95 N.W.2d 682 (1959).

Courts are authorized to tax as costs a reasonable fee for services of a guardian ad litem, the litigant to whom such fee is taxed depending on the circumstances of the case and discretion of the court. Ben B. Wood Realty Co. v. Wood, 132 Neb. 817, 273 N.W. 493 (1937).

Fees for guardian ad litem are properly allowed, though appeal in will contest is dismissed by district court. Shelby v. Meikle, 62 Neb. 10, 86 N.W. 939 (1901).

Services rendered by guardian ad litem do not furnish consideration for deed by the ward, since for performing the services the attorney must look only for the amount of his compensation to the court, which taxes the compensation allowed as part of the costs. Englebert v. Troxell, 40 Neb. 195, 58 N.W. 852 (1894), 26 L.R.A. 177 (1894), 42 A.S.R. 665 (1894).

2. Miscellaneous

In suit for specific performance of contract, guardian ad litem fee for representing minor defendants cannot be taxed to adult defendants, but are costs taxable to plaintiff. Hajek v. Hajek, 108 Neb. 503, 188 N.W. 181 (1922).

Guardian ad litem may take appeal. Hunter v. Buchanan, 87 Neb. 277, 127 N.W. 166 (1910), 29 L.R.A.N.S. 147 (1910), Ann. Cas. 1912A 1072 (1910).

It is the duty of an attorney acting as guardian ad litem to submit to court for its consideration every relevant fact involving the rights of his ward. In re Estate of Manning, 85 Neb. 60, 122 N.W. 711 (1909).

A guardian ad litem has no authority to make stipulations for allowances against estate of ward, and at every stage of proceedings it is his duty to insist upon strict proof of everything which affects the rights of the ward. Court has no authority to appoint guardian ad litem until ward is served with process. In re Estate of Manning, 83 Neb. 417, 119 N.W. 672 (1909).

7-114 Disbarment and contempt cases; costs.

In all proceedings instituted for the suspension, censure, or disbarment of attorneys at law, and in all contempt proceedings, the court costs shall be taxed as the court shall deem equitable.

Source: Laws 1911, c. 170, § 1, p. 547; R.S.1913, §§ 278, 279; C.S.1922, § 273; C.S.1929, § 7-114; R.S.1943, § 7-114; Laws 1955, c. 8, § 1, p. 72.

Informers acting in good faith are not liable for costs. Morton v. Watson, 60 Neb. 672, 84 N.W. 91 (1900).

Provision for taxation of costs applies to disbarment and contempt proceedings. Niklaus v. Simmons, 196 F.Supp. 691 (D. Neb. 1961).

7-115 Disbarment and contempt cases; court costs, defined.

As used in sections 7-114 to 7-116, unless the context otherwise requires, court costs shall be deemed to include, but not be limited to: (1) Costs and fees

otherwise authorized by statute; (2) all costs and expenses approved by the court which are incurred by reason of reference of the matter to a referee for the taking of testimony in accordance with the rules of the Supreme Court; and (3) all necessary costs and expenses incurred in investigation and preparation of charges leading to the institution of proceedings for suspension, censure, or disbarment, or all necessary costs and expenses incurred by the respondent in defending against such proceedings; *Provided,* the costs and expenses referred to in subdivision (3) shall be claimed by the successful party in the proceeding within thirty days after final disposition of the charges, after which the losing party shall have fifteen days in which to prepare and submit to the court objections to all or any part of such claim, whereupon the court without further hearing shall allow or disallow all or any part of such claim as costs, in its discretion.

Source: Laws 1955, c. 8, § 2, p. 72.

7-116 Disbarment and contempt cases; judgment for costs; transcript to district court; lien; effect.

Judgments for costs herein provided for may be filed in the district court of any county in this state, and shall thereupon become a lien and be enforceable in such county in the same manner as other money judgments.

Source: Laws 1955, c. 8, § 3, p. 73.

ARTICLE 2

LEGAL EDUCATION FOR PUBLIC SERVICE AND RURAL PRACTICE LOAN REPAYMENT ASSISTANCE ACT

Section

7-201. Act, how cited.
7-202. Legislative findings.
7-203. Terms, defined.
7-204. Legal Education for Public Service and Rural Practice Loan Repayment Assistance Board; created; members.
7-205. Board; chairperson; meetings; expenses.
7-206. Legal education for public legal service and rural practice loan repayment assistance program; rules and regulations; contents.
7-207. Commission on Public Advocacy; applications; board; recommendations; certification of recipients.
7-208. Commission on Public Advocacy; solicit and receive donations.
7-209. Legal Education for Public Service and Rural Practice Loan Repayment Assistance Fund; created; investment.
7-210. Commission on Public Advocacy; identify designated legal profession shortage areas; considerations.

7-201 Act, how cited.

Sections 7-201 to 7-210 shall be known and may be cited as the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Act.

Source: Laws 2008, LB1014, § 19; Laws 2014, LB907, § 1.

7-202 Legislative findings.

The Legislature finds that many attorneys graduate from law school with substantial educational debt that prohibits many from considering public legal service work or work in less-populated rural areas of Nebraska. A need exists

for public legal service entities and rural clients to hire competent attorneys. The public is better served by competent and qualified attorneys working in the area of public legal service and serving underserved rural areas. Programs providing educational loan repayment assistance will encourage law students and other attorneys to seek employment in the area of public legal service and in designated legal profession shortage areas in rural Nebraska and will enable public legal service entities and rural communities to attract and retain qualified attorneys.

Source: Laws 2008, LB1014, § 20; Laws 2014, LB907, § 2.

7-203 Terms, defined.

For purposes of the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Act:

(1) Board means the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Board;

(2) Designated legal profession shortage area means a rural area located within any county in Nebraska having a population of less than fifteen thousand inhabitants and not included within a metropolitan statistical area as defined by the United States Department of Commerce, Bureau of the Census, and determined by the board to be underserved by available legal representation;

(3) Educational loans means loans received as an educational benefit, scholarship, or stipend toward a juris doctorate degree and either (a) made, insured, or guaranteed by a governmental unit or (b) made under a program funded in whole or in part by a governmental unit or nonprofit institution; and

(4) Public legal service means providing legal service to indigent persons while employed by a tax-exempt charitable organization.

Source: Laws 2008, LB1014, § 21; Laws 2014, LB907, § 3.

7-204 Legal Education for Public Service and Rural Practice Loan Repayment Assistance Board; created; members.

The Legal Education for Public Service and Rural Practice Loan Repayment Assistance Board is created. The board shall consist of the director of Legal Aid of Nebraska, the deans of Creighton School of Law and the University of Nebraska College of Law, a student from each law school selected by the dean of the law school, at least one of whom intends to work for a tax-exempt charitable organization primarily doing public legal service and at least one of whom is from or intends to practice in a designated legal profession shortage area, a member of the Nebraska State Bar Association who practices in a designated legal profession shortage area selected by the president of the association, and the chief counsel of the Commission on Public Advocacy.

Source: Laws 2008, LB1014, § 22; Laws 2014, LB907, § 4.

7-205 Board; chairperson; meetings; expenses.

The board shall select one of its members to be chairperson. The board shall meet as necessary to carry out its duties, but shall meet at least annually. The members shall serve without compensation but shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 2008, LB1014, § 23; Laws 2020, LB381, § 14.

7-206 Legal education for public legal service and rural practice loan repayment assistance program; rules and regulations; contents.

The board shall develop and recommend to the Commission on Public Advocacy rules and regulations that will govern the legal education for public legal service and rural practice loan repayment assistance program. The rules and regulations shall include:

(1) Recipients shall be either: (a) Full-time, salaried attorneys working for a tax-exempt charitable organization and whose primary duties are public legal service or (b) full-time attorneys primarily serving in a designated legal profession shortage area;

(2) Loan applicants shall pay an application fee established by the rules and regulations at a level anticipated to cover all or most of the administrative costs of the program. All application fees shall be remitted to the State Treasurer for credit to the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Fund. Every effort shall be made to minimize administrative costs and the application fee;

(3) The maximum annual loan amount, which initially shall not exceed six thousand dollars per year per recipient, shall be an amount which is sufficient to fulfill the purposes of recruiting and retaining public legal service attorneys in occupations and areas with unmet needs, including public legal service attorneys with skills in languages other than English and attorneys committed to working in designated legal profession shortage areas. The board may recommend adjustments of the loan amount annually to the commission to account for inflation and other relevant factors;

(4) Loans shall be made only to refinance existing educational loans;

(5) Information on the potential tax consequences of income from discharge of indebtedness;

(6) Recipients shall agree to practice the equivalent of at least three years of full-time practice in public legal service or a designated legal profession shortage area; and

(7) Other criteria for loan eligibility, application, payment, and repayment assistance necessary to carry out the purposes of the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Act.

Source: Laws 2008, LB1014, § 24; Laws 2014, LB907, § 5.

7-207 Commission on Public Advocacy; applications; board; recommendations; certification of recipients.

The Commission on Public Advocacy shall accept applications for loan repayment assistance on an annual basis from qualified persons and shall present those applications to the board for its consideration. The board shall make recommendations for loans to the commission, and the commission shall certify the eligible recipients and the loan amount per recipient. The loans awarded to the recipients shall come from funds appropriated by the Legislature and any other funds that may be available from the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Fund.

Source: Laws 2008, LB1014, § 25; Laws 2014, LB907, § 7.

7-208 Commission on Public Advocacy; solicit and receive donations.

The Commission on Public Advocacy may solicit and receive donations from law schools, corporations, nonprofit organizations, bar associations, bar foundations, law firms, individuals, or other sources for purposes of the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Act. The donations shall be remitted to the State Treasurer for credit to the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Fund.

Source: Laws 2008, LB1014, § 26; Laws 2014, LB907, § 8.

7-209 Legal Education for Public Service and Rural Practice Loan Repayment Assistance Fund; created; investment.

The Legal Education for Public Service and Rural Practice Loan Repayment Assistance Fund is created. The fund shall consist of funds appropriated or transferred by the Legislature, funds donated to the legal education for public legal service and rural practice loan repayment assistance program pursuant to section 7-208, and application fees collected under the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Act. Any money in the Legal Education for Public Service Loan Repayment Fund on July 18, 2014, shall be transferred to the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

The unexpended, unobligated balance in the Legal Education for Public Service and Rural Practice Loan Repayment Assistance Fund existing on June 30, 2017, shall be transferred to the General Fund on or before July 30, 2017, as directed by the budget administrator of the budget division of the Department of Administrative Services.

Source: Laws 2008, LB1014, § 27; Laws 2014, LB907, § 9; Laws 2017, LB331, § 17.

Cross References

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

7-210 Commission on Public Advocacy; identify designated legal profession shortage areas; considerations.

The Commission on Public Advocacy shall periodically determine and identify designated legal profession shortage areas within Nebraska. The board shall develop and recommend to the commission legal profession shortage areas. In making such recommendations, the board shall consider, after consultation with other appropriate agencies concerned with legal and rural services and with appropriate professional organizations, factors including, but not limited to:

(1) The latest reliable statistical data available regarding the number of attorneys practicing in an area and the population served by such attorneys;

(2) Distances between client populations and attorney locations;

(3) Particular local needs for legal services;

(4) Capacity of local attorneys providing services and scope of practice being provided; and

(5) Past and future demographic trends in an area.

Source: Laws 2014, LB907, § 6.

CHAPTER 8
BANKS AND BANKING

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ARTICLE 1
GENERAL PROVISIONS

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8-101 Transferred to section 8-101.03.

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8-101.02 Act, how cited.

Sections 8-101.02 to 8-1,143 shall be known and may be cited as the Nebraska Banking Act.

Source: Laws 1998, LB 1321, § 32; Laws 1999, LB 396, § 4; Laws 2009, LB327, § 1; Laws 2010, LB891, § 1; R.S.1943, (2012), § 8-101.01; Laws 2017, LB140, § 1; Laws 2021, LB649, § 32.

8-101.03 Terms, defined.

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

(1) Access device means a code, a transaction card, or any other means of access to a customer's account, or any combination thereof, that may be used by a customer for the purpose of initiating an electronic funds transfer at an automatic teller machine or a point-of-sale terminal;

(2) Acquiring financial institution means any financial institution establishing a point-of-sale terminal;

(3) Automatic teller machine means a machine established and located in the State of Nebraska, whether attended or unattended, which utilizes electronic, sound, or mechanical signals or impulses, or any combination thereof, and from which electronic funds transfers may be initiated and at which banking transactions as defined in section 8-157.01 may be conducted. An unattended automatic teller machine shall not be deemed to be a branch operated by a financial institution;

(4) Automatic teller machine surcharge means a fee that an operator of an automatic teller machine imposes upon a consumer for an electronic funds transfer, if such operator is not the financial institution that holds an account of such consumer from which the electronic funds transfer is to be made;

(5) Bank or banking corporation means any incorporated banking institution which was incorporated under the laws of this state as they existed prior to May 9, 1933, and any corporation duly organized under the laws of this state for the purpose of conducting a bank within this state under the act. Bank means any such banking institution which is, in addition to the exercise of other powers, following the practice of repaying deposits upon check, draft, or order and of making loans. Bank or banking corporation includes a digital

asset depository institution as defined in section 8-3003. Notwithstanding the provisions of this subdivision, a digital asset depository institution is subject to the provisions of subdivision (2)(b) of section 8-3005;

(6)(a) Bank subsidiary means a corporation or limited liability company that:

(i) Has a bank as a shareholder, member, or investor; and

(ii) Is organized for purposes of engaging in activities which are part of the business of banking or incidental to such business except for the receipt of deposits.

(b) A bank subsidiary may include a corporation organized under the Nebraska Financial Innovation Act.

(c) A bank subsidiary is not to be considered a branch of its bank shareholder;

(7) Capital or capital stock means capital stock;

(8) Data processing center means a facility, wherever located, at which electronic impulses or other indicia of a transaction originating at an automatic teller machine are received and either authorized or routed to a switch or other data processing center in order to enable the automatic teller machine to perform any function for which it is designed;

(9) Department means the Department of Banking and Finance;

(10) Digital asset depository means a financial institution that securely holds liquid assets when such assets are in the form of controllable electronic records, either as a corporation organized, chartered, and operated pursuant to the Nebraska Financial Innovation Act as a digital asset depository institution, or a financial institution operating a digital asset depository business as a digital asset depository department under a grant of authority by the director;

(11) Director means the Director of Banking and Finance;

(12) Financial institution means a bank, savings bank, building and loan association, savings and loan association, or credit union, whether chartered by the United States, the department, or a foreign state agency; any other similar organization which is covered by federal deposit insurance; a trust company; or a digital asset depository that is not a digital asset depository institution;

(13) Financial institution employees includes parent holding company and affiliate employees;

(14) Foreign state agency means any duly constituted regulatory or supervisory agency which has authority over financial institutions and which is created under the laws of any other state, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands or which is operating under the code of law for the District of Columbia;

(15) Impulse means an electronic, sound, or mechanical impulse, or any combination thereof;

(16) Insolvent means a condition in which (a) the actual cash market value of the assets of a bank is insufficient to pay its liabilities to its depositors, (b) a bank is unable to meet the demands of its creditors in the usual and customary manner, (c) a bank, after demand in writing by the director, fails to make good any deficiency in its reserves as required by law, or (d) the stockholders of a bank, after written demand by the director, fail to make good an impairment of its capital or surplus;

(17) Making loans includes advances or credits that are initiated by means of credit card or other transaction card. Transaction card and other transactions, including transactions made pursuant to prior agreements, may be brought about and transmitted by means of an electronic impulse. Such loan transactions including transactions made pursuant to prior agreements shall be subject to sections 8-815 to 8-829 and shall be deemed loans made at the place of business of the financial institution;

(18) Order includes orders transmitted by electronic transmission;

(19) Point-of-sale terminal means an information processing terminal which utilizes electronic, sound, or mechanical signals or impulses, or any combination thereof, which are transmitted to a financial institution or which are recorded for later transmission to effectuate electronic funds transfer transactions for the purchase or payment of goods and services and which are initiated by an access device. A point-of-sale terminal is not a branch operated by a financial institution. Any terminal owned or operated by a seller of goods and services shall be connected directly or indirectly to an acquiring financial institution; and

(20) Switch means any facility where electronic impulses or other indicia of a transaction originating at an automatic teller machine are received and are routed and transmitted to a financial institution or data processing center, wherever located. A switch may also be a data processing center.

Source: Laws 1963, c. 29, § 1, p. 134; Laws 1965, c. 27, § 1, p. 198; Laws 1967, c. 19, § 1, p. 117; Laws 1975, LB 269, § 1; Laws 1976, LB 561, § 1; Laws 1987, LB 615, § 1; Laws 1988, LB 375, § 1; Laws 1993, LB 81, § 1; Laws 1994, LB 611, § 1; Laws 1995, LB 384, § 1; Laws 1997, LB 137, § 1; Laws 1998, LB 1321, § 1; Laws 2000, LB 932, § 1; Laws 2002, LB 1089, § 1; Laws 2003, LB 131, § 1; Laws 2003, LB 217, § 1; Laws 2015, LB348, § 1; R.S. Supp.,2016, § 8-101; Laws 2017, LB140, § 2; Laws 2021, LB649, § 33; Laws 2022, LB707, § 6.
Operative date July 21, 2022.

Cross References

Nebraska Financial Innovation Act, see section 8-3001.

When a corporation is conducting business as a bank, that corporation falls within the purview of Nebraska's banking statutes which regulate banks and banking in this state. In re Invol. Dissolution of Battle Creek State Bank, 254 Neb. 120, 575 N.W.2d. 356 (1998).

Notwithstanding interest rate limits under Nebraska statutes, national bank in Nebraska can legally charge, on credit card transactions, same rates allowed by section 45-114 et seq. Fisher v. First Nat. Bank of Omaha, 548 F.2d 255 (8th Cir. 1977).

8-102 Department of Banking and Finance; supervision and control of specified financial institutions; declaration of public purpose.

The department shall, under the laws of this state specifically made applicable to each, have general supervision and control over banks, trust companies, credit unions, building and loan associations, savings and loan associations, and digital asset depositories, all of which are hereby declared to be quasi-public in nature and subject to regulation and control by the state.

Source: Laws 1963, c. 29, § 2, p. 134; Laws 2002, LB 1094, § 1; Laws 2003, LB 131, § 2; Laws 2017, LB140, § 3; Laws 2021, LB649, § 34.

Supervision and control extends to branches. First Fed. Sav. & Loan Assn. v. Department of Banking, 187 Neb. 562, 192 N.W.2d 736 (1971).

8-103 Director; financial institutions; supervision and examination; director and certain department employees; prohibited borrowing; exception; penalty.

(1)(a) The director shall have charge of and full supervision over the examination of banks and the enforcement of compliance with the statutes by banks and their holding companies in their business and functions and shall constructively aid and assist banks in maintaining proper banking standards and efficiency.

(b) The director shall also have charge of and full supervision over the examination of and the enforcement of compliance with the statutes by trust companies, building and loan associations, savings and loan associations, and credit unions in their business and functions and shall constructively aid and assist trust companies, building and loan associations, savings and loan associations, and credit unions in maintaining proper standards and efficiency.

(2) If the director is financially interested directly or indirectly in any financial institution chartered by the department, the financial institution shall be under the direct supervision of the Governor, and as to such financial institution, the Governor shall exercise all the supervisory powers otherwise vested in the director by the laws of this state, and reports of examination by state bank examiners, foreign state bank examiners, examiners of the Federal Reserve Board, examiners of the Office of the Comptroller of the Currency, examiners of the Federal Deposit Insurance Corporation, and examiners of the Consumer Financial Protection Bureau shall be transmitted to the Governor.

(3)(a) Neither the director nor any person employed by the department as a deputy director, a counsel, an attorney, or a financial institution examiner shall borrow money from any financial institution chartered by the department, except that such person may borrow money in the normal course of business from the Nebraska State Employees Credit Union. If the credit union is acquired by, or merged into, a Nebraska state-chartered credit union, persons employed by the department may borrow money in the normal course of business from the successor credit union.

(b) In the event a loan to a person employed by the department as a deputy director, a counsel, an attorney, or a financial institution examiner is sold or otherwise transferred to a financial institution chartered by the department, no violation of this section occurs if (i) such person did not solicit the sale or transfer of the loan and (ii) such person gives notice to the director of such sale or transfer. The director, in his or her discretion, may require such person to make all reasonable efforts to seek another lender.

(4) Any person who intentionally violates this section or who aids, abets, or assists in a violation of this section is guilty of a Class IV felony.

Source: Laws 1933, c. 18, § 2, p. 135; C.S.Supp.,1941, § 8-1,123; R.S. 1943, § 8-102; Laws 1963, c. 29, § 3, p. 135; Laws 1967, c. 20, § 1, p. 122; Laws 1985, LB 653, § 1; Laws 1988, LB 375, § 2; Laws 1996, LB 1053, § 1; Laws 2002, LB 1094, § 2; Laws 2003, LB 131, § 3; Laws 2013, LB213, § 1; Laws 2017, LB140, § 4; Laws 2020, LB909, § 1.

8-103.01 Repealed. Laws 2002, LB 1094, § 19.

8-104 Director; oath; bond or insurance.

The director shall, before assuming the duties of office, take and subscribe to the constitutional oath of office, file the oath in the office of the Secretary of State, and be bonded or insured as required by section 11-201.

Source: Laws 1933, c. 18, § 1, p. 134; Laws 1935, c. 12, § 1, p. 81; C.S.Supp.,1941, § 8-1,122; R.S.1943, § 8-101; Laws 1947, c. 16, § 2, p. 96; Laws 1947, c. 11, § 1, p. 75; Laws 1951, c. 303, § 1, p. 994; Laws 1957, c. 367, § 2, p. 1289; Laws 1959, c. 425, § 1, p. 1427; Laws 1961, c. 14, § 1, p. 106; R.R.S.1943, § 8-101; Laws 1963, c. 29, § 4, p. 135; Laws 1967, c. 20, § 2, p. 122; Laws 1978, LB 653, § 4; Laws 2004, LB 884, § 3; Laws 2017, LB140, § 5.

Cross References

For provisions of premium on bond of receiver, see section 25-21,218.
For provisions relating to appointment of Director of Banking and Finance, see section 81-102.

Department of Banking is a legal entity, and as receiver and liquidating agent of bank, had authority, by proceeding in court, to prosecute action to collect stockholders' liability. Department of Banking v. Foe, 136 Neb. 422, 286 N.W. 264 (1939).

Under this section, the Department of Banking is a legal entity and has authority to sue. In re Estate of Hall, 136 Neb. 417, 286 N.W. 262 (1939); Department of Banking v. Hedges, 136 Neb. 382, 286 N.W. 277 (1939).

Under 1929 act, Department of Banking was ineligible to be appointed a judicial receiver because it was not a qualified legal entity. State ex rel. Sorensen v. Hoskins State Bank, 132 Neb. 878, 273 N.W. 834 (1937).

8-105 Deputies; counsels, examiners, and assistants; salaries; bond or insurance.

(1) The director may employ such deputies, counsels, examiners, and other assistants as he or she may need to discharge in a proper manner the duties imposed upon him or her by law. The deputies, counsels, examiners, and other assistants shall perform such duties as are assigned to them. The employment of any person in the work of the department is subject to section 49-1499.07.

(2) Deputies and financial institution examiners shall hold office at the will of the director and shall receive such salary as set by the director and approved by the Governor based upon the level of credentials for the positions.

(3) The deputies, counsels, examiners, and other assistants, before assuming the duties of office, shall be bonded or insured as required by section 11-201.

Source: Laws 1933, c. 18, § 3, p. 135; Laws 1933, c. 19, § 3, p. 186; C.S.Supp.,1941, § 8-1,124; Laws 1943, c. 13, § 1, p. 77; R.S. 1943, § 8-103; Laws 1945, c. 238, § 19, p. 712; Laws 1947, c. 16, § 3, p. 97; Laws 1951, c. 311, § 1, p. 1065; Laws 1955, c. 9, § 1, p. 74; R.R.S.1943, § 8-103; Laws 1963, c. 29, § 5, p. 135; Laws 1973, LB 164, § 1; Laws 1978, LB 653, § 5; Laws 1996, LB 1053, § 2; Laws 2003, LB 85, § 1; Laws 2004, LB 884, § 4; Laws 2017, LB140, § 6.

8-106 Director; rules and regulations; standards.

The director may adopt and promulgate rules and regulations for the governance of banks under his or her supervision as may in his or her judgment seem wise and expedient and which do not in any way conflict with any of the provisions of law. In adopting and promulgating such rules and regulations, the director shall consider generally recognized sound banking principles, the

financial soundness of banks, competitive conditions, and general economic conditions.

Source: Laws 1923, c. 191, § 34, p. 457; C.S.1929, § 8-104; Laws 1933, c. 18, § 7, p. 137; C.S.Supp.,1941, § 8-104; R.S.1943, § 8-107; Laws 1963, c. 29, § 6, p. 136; Laws 2017, LB140, § 7.

Cross References

For adoption and promulgation of administrative rules, see Administrative Procedure Act, section 84-920.

8-107 Banks; books and accounts; failure to keep; penalty.

The department has the authority to require the officers of any bank, or any of them, to open and keep such books or accounts as the department in its discretion may determine and prescribe for the purpose of keeping accurate and convenient records of the transactions and accounts of such bank. Any bank that refuses or neglects to open and keep such books or accounts as may be prescribed by the department shall be subject to a penalty of ten dollars for each day it neglects or fails to open and keep such books and accounts after receiving written notice from the department. Such penalty may be collected in the manner prescribed for the collection of fees for the examination of such bank.

Source: Laws 1923, c. 191, § 33, p. 456; C.S.1929, § 8-102; Laws 1933, c. 18, § 5, p. 136; C.S.Supp.,1941, § 8-102; R.S.1943, § 8-105; Laws 1963, c. 29, § 7, p. 136; Laws 2017, LB140, § 8.

Bank officer must enter up transaction at once. State ex rel. Sorensen v. Citizens State Bank of Wahoo, 124 Neb. 846, 248 N.W. 388 (1933).

8-108 Director; bank, financial institution, holding company, or bank subsidiary; examination; powers; procedure; charge.

(1)(a) The director, the director's deputy, or any duly appointed examiner has the authority to make a thorough examination into all the books, papers, and affairs of any bank or other financial institution chartered by the department or a holding company or bank subsidiary of such bank or financial institution, if any, and in so doing to administer oaths and affirmations, to examine on oath or affirmation the officers, agents, and clerks of such bank, financial institution, holding company, or bank subsidiary touching the matter which they may be authorized and directed to inquire into and examine, and to subpoena the attendance of any person or persons in this state to testify under oath or affirmation in relation to the affairs of such bank, financial institution, holding company, or bank subsidiary. The director, deputy, or examiner has the authority to examine and monitor by electronic means the books, papers, and affairs of any such bank, financial institution, holding company, or bank subsidiary. The director may provide any examination or report to the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, the Consumer Financial Protection Bureau, or a foreign state agency.

(b) The director may accept any examination or report from a foreign state agency and may accept any examination or report from the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, or the Consumer Financial Protection Bureau in lieu of an examination or report required under the Nebraska Banking Act. Any such examination

or report accepted by the director remains the property and confidential record of the foreign state agency or federal agency which provided the examination or report to the director. A request or subpoena for any such examination or report shall be directed to the foreign state agency or federal agency which provided the examination or report to the director.

(2) The department has the authority to examine the books, papers, and affairs of any electronic data processing center which has contracted with a bank or financial institution to conduct the bank's or financial institution's electronic data processing business. The department may charge the electronic data processing center for the time spent by examiners in such examination at the rate set forth in section 8-606 for examiners' time spent in examinations of banks or financial institutions.

Source: Laws 1909, c. 10, § 8, p. 69; R.S.1913, § 287; Laws 1919, c. 190, tit. V, art. XVI, § 6, p. 687; C.S.1922, § 7987; Laws 1923, c. 191, § 8, p. 441; C.S.1929, § 8-118; Laws 1933, c. 18, § 13, p. 142; C.S.Supp.,1941, § 8-118; R.S.1943, § 8-115; Laws 1963, c. 29, § 8, p. 137; Laws 1985, LB 653, § 2; Laws 1988, LB 375, § 3; Laws 1992, LB 757, § 2; Laws 2007, LB124, § 1; Laws 2013, LB213, § 2; Laws 2017, LB140, § 9; Laws 2022, LB707, § 7. Operative date July 21, 2022.

8-109 Financial institution examiner; failure to report unlawful conduct or unsafe condition; penalty.

If any financial institution examiner has knowledge of the insolvency or unsafe condition of any financial institution chartered by the department, that there are bad or doubtful assets in any such financial institution, that any such financial institution or any of its officers has violated any law governing the conduct of the financial institution, or that it is unsafe and inexpedient to permit any such financial institution to continue business, and the financial institution examiner fails to immediately report such fact in writing over his or her signature to the director, he or she is guilty of a Class II misdemeanor and shall forfeit his or her office.

Source: Laws 1923, c. 191, § 36, p. 457; Laws 1925, c. 30, § 8, p. 127; C.S.1929, § 8-110; Laws 1933, c. 18, § 9, p. 139; C.S.Supp.,1941, § 8-110; R.S.1943, § 8-108; Laws 1963, c. 29, § 9, p. 137; Laws 1977, LB 40, § 37; Laws 2017, LB140, § 10.

8-110 Banks; bonds; filing; approval; requirements; open to inspection.

The department shall require each bank to obtain a fidelity bond, naming the bank as obligee, in an amount to be fixed by the director. The bond shall be issued by an authorized insurer and shall be conditioned to protect and indemnify the bank from loss which it may sustain, of money or other personal property, including that for which the bank is responsible through or by reason of the fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction, misapplication, misappropriation, or any other dishonest or criminal act of or by any of its officers or employees. Such bond may contain a deductible clause in an amount to be approved by the director. An executed copy of the bond shall be filed with and approved by the director and shall remain a part of the records of the department. The director may provide for such copies to be filed electronically. If the premium of the bond is not paid, the bond shall not be

canceled or subject to cancellation unless at least ten days' advance notice, in writing, is filed with the department. No bond which is current with respect to premium payments shall be canceled or subject to cancellation unless at least forty-five days' advance notice, in writing, is filed with the department. The bond shall be open to public inspection during the office hours of the department. In the event a bond is canceled, the director may take whatever action he or she deems appropriate in connection with the continued operation of the bank involved.

Source: C.S.1929, § 8-103; Laws 1930, Spec. Sess., c. 6, § 13, p. 32; Laws 1933, c. 18, § 6, p. 137; C.S.Supp.,1941, § 8-103; R.S.1943, § 8-106; Laws 1963, c. 29, § 10, p. 138; Laws 1973, LB 164, § 2; Laws 1979, LB 220, § 1; Laws 1985, LB 653, § 3; Laws 2017, LB140, § 11.

Each executive officer of a state bank is required by this section to give a surety bond to protect it from pecuniary loss sustained by it through forbidden acts committed directly by him or by connivance with others. Luikart v. Flannigan, 130 Neb. 901, 267 N.W. 165 (1936).

8-111 Director; real estate; power to convey; execution of conveyance.

The director may convey any real estate title which is vested in the department by operation of law or otherwise. Such conveyance shall be signed by the director, sealed with the seal of the department, and acknowledged by the director.

Source: Laws 1925, c. 30, § 7, p. 127; Laws 1929, c. 38, § 20, p. 167; C.S.1929, § 8-112; Laws 1933, c. 18, § 10, p. 140; C.S.Supp.,1941, § 8-112; R.S.1943, § 8-109; Laws 1963, c. 29, § 11, p. 138; Laws 2017, LB140, § 12.

8-112 Director; records required; disclosures prohibited; confidential records.

(1) The director shall keep, as records of his or her office, proper books showing all acts, matters, and things done under the jurisdiction of the department. Neither the director nor anyone connected with the department shall in any instance disclose the name of any customer, including a depositor, debtor, beneficiary, member, or account holder of any financial institution or other entity regulated by the department or the amount of any deposit, debt, or account holdings of any of them, except insofar as may be necessary in the performance of his or her official duty, except that the department may maintain a record of debtors from the financial institutions and may give information concerning the total liabilities of any such debtor to any financial institution owning obligations of such debtor.

(2) Examination reports, investigation reports, and documents and information relating to such reports are confidential records of the department and may be released or disclosed only (a) insofar as is necessary in the performance of the official duty of the department or (b) pursuant to a properly issued subpoena to the department and upon entry of a protective order from a court of competent jurisdiction to protect and keep confidential the names of borrowers or depositors or to protect the public interest.

(3) Examination reports, investigation reports, and documents and information relating to such reports remain confidential records of the department, even if such examination reports, investigation reports, and documents and

information relating to such reports are transmitted to a financial institution or other entity regulated by the department which is the subject of such reports or documents and information, and may not be otherwise released or disclosed by any such financial institution or other entity regulated by the department.

(4) The restrictions listed in subsections (2) and (3) of this section shall also apply to any representative or agent of the financial institution or other entity regulated by the department.

(5) If examination reports, investigation reports, or documents and information relating to such reports are subpoenaed from the department, the party issuing the subpoena shall give notice of the issuance of such subpoena at least three business days in advance of the entry of a protective order to the financial institution or other entity regulated by the department which is the subject of such reports or documents and information, unless the financial institution or other entity regulated by the department is already a party to the underlying proceeding or unless such notice is otherwise prohibited by law or by court order.

Source: Laws 1923, c. 191, § 35, p. 457; Laws 1929, c. 38, § 18, p. 166; C.S.1929, § 8-119; Laws 1933, c. 18, § 14, p. 142; C.S.Supp.,1941, § 8-119; R.S.1943, § 8-116; Laws 1963, c. 29, § 12, p. 138; Laws 1987, LB 2, § 1; Laws 1996, LB 1053, § 3; Laws 1997, LB 137, § 2; Laws 1999, LB 396, § 6; Laws 2009, LB327, § 3; Laws 2017, LB140, § 13.

8-113 Unauthorized use of word bank or its derivatives; penalty.

(1) No individual, firm, company, corporation, or association doing business in the State of Nebraska, unless organized as a bank under the Nebraska Banking Act or the authority of the director or federal government, a digital asset depository that is not a digital asset depository institution, or as a building and loan association, savings and loan association, or savings bank under Chapter 8, article 3, or the authority of the federal government, shall use the word bank or any derivative thereof as any part of a title or description of any business activity.

(2) This section does not apply to:

(a) Banks, building and loan associations, savings and loan associations, or savings banks chartered and supervised by a foreign state agency;

(b) Bank holding companies registered pursuant to section 8-913 if the term holding company is also used as any part of the title or description of any business activity or if the derivative banc is used;

(c) Affiliates or subsidiaries of (i) a bank organized under the Nebraska Banking Act or the authority of the federal government or chartered and supervised by a foreign state agency, (ii) a building and loan association, savings and loan association, or savings bank organized under Chapter 8, article 3, or the authority of the federal government or chartered and supervised by a foreign state agency, or (iii) a bank holding company registered pursuant to section 8-913 if the term holding company is also used as any part of the title or description of any business activity or if the derivative banc is used;

(d) Organizations substantially owned by (i) a bank organized under the Nebraska Banking Act or the authority of the federal government or chartered

and supervised by a foreign state agency, (ii) a building and loan association, savings and loan association, or savings bank organized under Chapter 8, article 3, or the authority of the federal government or chartered and supervised by a foreign state agency, (iii) a bank holding company registered pursuant to section 8-913 if the term holding company is also used as any part of the title or description of any business activity or if the derivative banc is used, or (iv) any combination of entities listed in subdivisions (i) through (iii) of this subdivision;

(e) Mortgage bankers licensed or registered under the Residential Mortgage Licensing Act, if the word mortgage immediately precedes the word bank or its derivative;

(f) Digital asset depository institutions chartered under the Nebraska Financial Innovation Act, if the term digital asset is also used as any part of the title or description of any business activity or if any derivative of the word bank is used in such title or description of any such business activity;

(g) Organizations which are described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01, which are exempt from taxation under section 501(a) of the code, and which are not providing or arranging for financial services subject to the authority of the department, a foreign state agency, or the federal government;

(h) Trade associations which are exempt from taxation under section 501(c)(6) of the code and which represent a segment of the banking or savings and loan industries, and any affiliate or subsidiary thereof;

(i) Firms, companies, corporations, or associations which sponsor incentive-based solid waste recycling programs that issue reward points or credits to persons for their participation therein; and

(j) Such other firms, companies, corporations, or associations as have been in existence and doing business prior to December 1, 1975, under a name composed in part of the word bank or some derivative thereof.

(3) This section does not apply to an individual, firm, company, corporation, or association doing business in Nebraska which uses the word bank or any derivative thereof as any part of a title or description of any business activity if such use is unlikely to mislead or confuse the public or give the impression that such individual, firm, company, corporation, or association is lawfully organized and operating as a bank under the Nebraska Banking Act or the authority of the federal government, or as a building and loan association, savings and loan association, or savings bank under Chapter 8, article 3, or the authority of the federal government.

(4) Any violation of this section is a Class V misdemeanor.

Source: Laws 1921, c. 297, § 1, p. 949; Laws 1921, c. 313, § 1, p. 1000; C.S.1922, § 7985; Laws 1929, c. 37, § 1, p. 155; C.S.1929, § 8-116; Laws 1933, c. 18, § 12, p. 141; C.S.Supp.,1941, § 8-116; R.S.1943, § 8-113; Laws 1963, c. 29, § 13, p. 139; Laws 1977, LB 40, § 38; Laws 1987, LB 2, § 2; Laws 1998, LB 1321, § 2; Laws 2004, LB 999, § 1; Laws 2005, LB 533, § 1; Laws 2007, LB124, § 2; Laws 2009, LB32, § 1; Laws 2009, LB328, § 1; Laws 2010, LB762, § 1; Laws 2017, LB140, § 14; Laws 2021, LB649, § 35.

Cross References

Residential Mortgage Licensing Act, see section 45-701.

8-114 Banks; corporate status required; unlawful banking; penalty.

(1) It is unlawful for any person to conduct a bank within this state except by means of a corporation duly organized for such purpose under the laws of this state. It is unlawful for any corporation to receive money upon deposit or conduct a bank under the laws of this state until such corporation has complied with all the provisions and requirements of the Nebraska Banking Act.

(2) Any violation of this section is a Class V misdemeanor for each day of the continuation of such offense and is cause for the appointment of a receiver as provided in the act to wind up such banking business.

Source: Laws 1909, c. 10, § 2, p. 66; R.S.1913, § 281; Laws 1919, c. 190, tit. V, art. XVI, § 3, p. 686; C.S.1922, § 7984; C.S.1929, § 8-115; R.S.1943, § 8-111; Laws 1963, c. 29, § 14, p. 139; Laws 1977, LB 40, § 39; Laws 1987, LB 2, § 3; Laws 1998, LB 1321, § 3; Laws 2017, LB140, § 15.

Where a federal savings and loan association installs a computer in a store to facilitate electronic transfer of funds between the association and its depositors, the store operator, by manning the computer, is not engaging in a banking or savings and loan business. State ex rel. Meyer v. American Community Stores Corp., 193 Neb. 634, 228 N.W.2d 299 (1975).

It is unlawful to conduct a bank except by means of a corporation. First Nat. Bank & Trust Co. v. Ley, 182 Neb. 164, 153 N.W.2d 743 (1967).

8-115 Banks; digital asset depositories; charter or grant of authority required.

No corporation shall conduct a bank or digital asset depository in this state without having first obtained a charter or under a grant of authority in the case of a digital asset depository in the manner provided in the Nebraska Banking Act or the Nebraska Financial Innovation Act, respectively.

Source: Laws 1909, c. 10, § 11, p. 71; R.S.1913, § 290; Laws 1919, c. 190, tit. V, art. XVI, § 9, p. 689; C.S.1922, § 7990; C.S.1929, § 8-120; Laws 1933, c. 18, § 15, p. 143; C.S.Supp.,1941, § 8-120; R.S. 1943, § 8-117; Laws 1963, c. 29, § 15, p. 140; Laws 1987, LB 2, § 4; Laws 1998, LB 1321, § 4; Laws 2021, LB649, § 36.

Cross References

Nebraska Financial Innovation Act, see section 8-3001.

When application is made for charter, it is the duty of state officials to investigate and determine integrity and responsibility of applicants for charter. Shumway v. Warrick, 108 Neb. 652, 189 N.W. 301 (1922).

State Banking Board did not abuse discretion in refusing charter where evidence of unfitness and unfavorable financial ability was presented. In re Commercial State Bank, 105 Neb. 248, 179 N.W. 1021 (1920).

Refusal to grant charter is not justified where required capital paid in and proposed stockholders show requisite qualifications. State ex rel. Woolridge v. Morehead, 100 Neb. 864, 161 N.W. 569 (1917), L.R.A. 1917D 310 (1917).

Discretionary power given to state officials to refuse charter to savings bank to be conducted in same room and with same directors as national bank. State ex rel. Chamberlin v. Morehead, 99 Neb. 146, 155 N.W. 879 (1915).

Even though issued a charter under state law, state bank which becomes a member of Federal Deposit Insurance Corporation thereby becomes an instrumentality of United States, and federal statute forbidding embezzlement of funds of member bank applies to officer of such bank. United States v. Doherty, 18 F.Supp. 793 (D. Neb. 1937), affirmed 94 F.2d 495 (8th Cir. 1938).

8-115.01 Banks; new charter; transfer of charter; procedure.

When an application required by section 8-120 is made by a corporation, the following procedures shall be followed:

(1) Except as provided for in subdivision (2) of this section, when application is made for a new bank charter, a public hearing shall be held on each application. Notice of the filing of the application shall be published by the department for three weeks in a legal newspaper published in or of general

circulation in the county where the applicant proposes to operate the bank. The date for hearing the application shall be not less than thirty days after the last publication of notice of hearing and not more than ninety days after the application has been accepted for filing by the director as substantially complete unless the applicant agrees to a later date. Notice of the filing of the application shall be sent by the department to all financial institutions located in the county where the applicant proposes to operate;

(2) When application is made for a new bank charter and the director determines, in his or her discretion, that the conditions of subdivision (3) of this section are met, then the public hearing requirement of subdivision (1) of this section shall only be required if, (a) after publishing a notice of the proposed application in a newspaper of general circulation in the county where the main office of the applicant is to be located and (b) after giving notice to all financial institutions located within such county, the director receives a substantive objection to the application within fifteen days after the first day of publication;

(3) The director shall consider the following in each application before the public hearing requirement of subdivision (1) of this section may be waived:

(a) Whether the experience, character, and general fitness of the applicant and of the applicant's officers and directors are such as to warrant belief that the applicant will operate the business honestly, fairly, and efficiently;

(b) Whether the length of time that the applicant or a majority of the applicant's officers, directors, and shareholders have been involved in the business of banking in this state has been for a minimum of five consecutive years; and

(c) Whether the condition of financial institutions currently owned by the applicant, the applicant's holding company, if any, or the applicant's officers, directors, or shareholders is such as to indicate that a hearing on the current application would not be necessary;

(4) Except as provided in subdivision (6) of this section, when application is made for transfer of a bank charter and move of the main office of a bank to any location other than within the corporate limits of the city or village of its original charter or, if such bank charter is not located in a city or village, then for transfer outside the county in which it is located, the director shall hold a hearing on the matter if he or she determines, in his or her discretion, that the condition of the applicant warrants a hearing. If the director determines that the condition of the applicant does not warrant a hearing, the director shall (a) publish a notice of the filing of the application in a newspaper of general circulation in the county where the proposed main office and charter of the applicant would be located and (b) give notice of such application to all financial institutions located within the county where the proposed main office and charter would be located and to such other interested parties as the director may determine. If the director receives any substantive objection to the proposed relocation within fifteen days after the first day of publication, he or she shall hold a hearing on the application. Notice of a hearing held pursuant to this subdivision shall be published for two consecutive weeks in a newspaper of general circulation in the county where the main office would be located. The date for hearing the application shall be not less than thirty days after the last publication of notice of hearing and not more than ninety days after the application has been accepted for filing by the director as substantially complete unless the applicant agrees to a later date. When the persons making

application for transfer of a main office and charter are officers or directors of the bank, there is a rebuttable presumption that such persons are parties of integrity and responsibility;

(5) Except as provided in subdivision (6) of this section, when application is made for a move of any bank's main office within the city, village, or county, if not chartered within a city or village, of its original charter, the director shall publish notice of the proposed move in a newspaper of general circulation in the county where the main office of the applicant is located and shall give notice of such intended move to all financial institutions located within the county where such bank is located. If the director receives a substantive objection to such move within fifteen days after publishing such notice, he or she shall publish an additional notice and hold a hearing as provided in subdivision (1) of this section;

(6) With the approval of the director, a bank may move its main office and charter to the location of a branch of the bank without public notice or hearing as long as (a) the condition of the bank, in the discretion of the director, does not warrant a hearing and (b) the branch (i) is located in Nebraska, (ii) has been in operation for at least one year as a branch of the bank or was acquired by the bank pursuant to section 8-1506 or 8-1516, and (iii) is simultaneously relocated to the original main office location;

(7) The director shall send any notice to financial institutions required by this section by first-class mail, postage prepaid, or electronic mail. Electronic mail may be used if the financial institution agrees in advance to receive such notices by electronic mail. A financial institution may designate one office for receipt of any such notice if it has more than one office located within the county where such notice is to be sent or a main office in a county other than the county where such notice is to be sent;

(8) The expense of any publication and mailing required by this section shall be paid by the applicant but payment shall not be a condition precedent to approval by the director; and

(9) Notwithstanding any provision of this section, the director shall take immediate action on any charter application or applications concerned without the benefit of a hearing in the case of an emergency so declared by the Governor, the Secretary of State, and the director.

Source: Laws 1965, c. 25, § 1, p. 191; Laws 1967, c. 19, § 2, p. 117; Laws 1973, LB 164, § 3; Laws 1974, LB 721, § 1; Laws 1979, LB 220, § 2; Laws 2002, LB 957, § 1; Laws 2003, LB 217, § 2; Laws 2005, LB 533, § 2; Laws 2008, LB851, § 1; Laws 2010, LB890, § 1; Laws 2016, LB751, § 1.

8-116 Banks; capital stock; amount required.

(1) Except as provided in subsection (2) of this section, a charter for a bank shall not be issued unless the corporation applying therefor has surplus and paid-up capital stock in an amount not less than the amount necessary for compliance with subsection (1) of section 8-702 for the insurance of deposits.

(2) The director has the authority to determine the minimum amount of paid-up capital stock and surplus required for any corporation applying for a bank

charter, which amount shall not be less than the amount provided in subsection (1) of this section.

Source: Laws 1909, c. 10, § 13, p. 72; R.S.1913, § 292; Laws 1919, c. 190, tit. V, art. XVI, § 11, p. 689; Laws 1921, c. 297, § 3, p. 950; C.S.1922, § 7992; Laws 1923, c. 192, § 1, p. 463; C.S.1929, § 8-122; Laws 1935, c. 19, § 1, p. 95; C.S.Supp.,1941, § 8-122; Laws 1943, c. 19, § 3(1), p. 102; R.S.1943, § 8-119; Laws 1959, c. 15, § 3, p. 132; Laws 1961, c. 15, § 1, p. 111; R.R.S.1943, § 8-119; Laws 1963, c. 29, § 16, p. 140; Laws 1967, c. 19, § 3, p. 118; Laws 1973, LB 164, § 4; Laws 1979, LB 220, § 3; Laws 1983, LB 252, § 2; Laws 2002, LB 1094, § 3; Laws 2008, LB851, § 2; Laws 2015, LB155, § 1; Laws 2017, LB140, § 16.

8-116.01 Banks; capital notes and debentures; issuance; conditions.

With the approval of the director, any bank may at any time, through action of its board of directors and without requiring any action of its stockholders, issue and sell its capital notes or debentures. Such capital notes or debentures shall be subordinate and subject to the claims of depositors and may be subordinated and subjected to the claims of other creditors. Before any such capital notes or debentures are retired or paid by the bank, any existing deficiency of its capital, disregarding the notes or debentures to be retired, must be paid in, in cash, to the end that the sound capital assets shall at least equal the capital or capital stock of the bank. Such capital notes or debentures shall in no case be subject to any assessment. The holders of such capital notes or debentures shall not be held individually responsible as such holders for any debts, contracts, or engagements of such bank and shall not be held liable for assessments to restore impairments in the capital of such bank.

Source: Laws 1935, c. 8, § 11, p. 76; C.S.Supp.,1941, § 8-411; R.S.1943, § 8-710; Laws 1961, c. 14, § 9, p. 109; R.R.S.1943, § 8-710; Laws 1973, LB 164, § 5; Laws 2003, LB 217, § 3; Laws 2005, LB 533, § 3; Laws 2017, LB140, § 17.

8-117 Conditional bank charter; application; contents; hearing; notice; expenses; conversion to full bank charter; extension; written request; notice of expiration.

(1)(a) The director may grant approval for a conditional bank charter which may remain inactive for an initial period of up to eighteen months.

(b) The purpose for which a conditional bank charter may be granted is limited to the acquisition or potential acquisition of a financial institution which (i) is located in this state or which has a branch in this state and (ii) has been determined to be troubled or failing by its primary state or federal regulator.

(2) A person or persons organizing for and desiring to obtain a conditional bank charter shall make, under oath, and transmit to the department an application prescribed by the department, to include, but not be limited to:

(a) The name of the proposed bank;

(b) A draft copy of the articles of incorporation of the proposed bank;

(c) The names, addresses, financial condition, and business history of the proposed stockholders, officers, and directors of the proposed bank;

(d) The sources and amounts of capital that would be available to the proposed bank; and

(e) A preliminary business plan describing the operations of the proposed bank.

(3) Upon receipt of a substantially completed application for a conditional bank charter and payment of the fee required by section 8-602, the director may, in his or her discretion, hold a public hearing on the application. If a hearing is to be held, notice of the filing of the application and the date of hearing thereon shall be published by the department for three weeks in a minimum of two newspapers with general circulation in Nebraska. The newspapers shall be selected at the director's discretion, except that the director shall consider the county or counties of residence of the proposed members of the board of directors of the proposed conditional bank charter in making such selection. The date for hearing the application shall be not less than thirty days after the last publication of notice of hearing. Notice shall also be sent by first-class mail to the main office of all financial institutions doing business in the state. Electronic mail may be used if a financial institution agrees in advance to receive such notice by electronic mail.

(4) If the director determines that a hearing on the application for a conditional bank charter is not necessary, then the department shall publish a notice of the proposed application in a minimum of two newspapers of general circulation in Nebraska. The newspapers shall be selected in accordance with subsection (3) of this section. The department shall send notice of the application by first-class mail to the main office of all financial institutions doing business in the state. Electronic mail may be used if a financial institution agrees in advance to receive such notice by electronic mail. If the director receives a substantive objection to the application within fifteen days after the publication or notice, whichever occurs last, a hearing shall be scheduled on the application.

(5) The expense of any publication and mailing required by this section shall be paid by the applicant but payment shall not be a condition precedent to approval by the director.

(6) If the director upon investigation and after any public hearing on the application is satisfied that (a) the stockholders, officers, and directors of the proposed corporation applying for such conditional bank charter are parties of integrity and responsibility, (b) the applicant has sufficient sources and amounts of capital available to the proposed bank, and (c) the applicant has a business plan describing the operations of the proposed bank that indicates the proposed bank has a reasonable probability of usefulness and success, the department shall, upon the payment of any required fees and costs, grant a conditional bank charter effective for a period not to exceed eighteen months from the date of issuance.

(7) A conditional bank charter may be converted to a full bank charter upon proof satisfactory to the director that:

(a) The financial institution to be acquired is in a troubled or failing status as required by subsection (1) of this section;

(b) The requirements of section 8-110 have been met;

(c) The requirements of section 8-702 have been met;

(d) Capital stock and surplus in amounts determined pursuant to section 8-116 have been paid in;

(e) The fees required by section 8-602 have been paid to the department; and

(f) Any other conditions imposed by the director have been complied with.

(8) A conditional bank charter may be extended for successive periods of one year if the holder of the charter files a written request for an extension of such charter at least ninety days prior to the expiration date of such charter. Such request shall be accompanied by (a) any information deemed necessary by the director to assure the department that the requirements of subsection (6) of this section continue to be met and (b) the fee required by section 8-602.

(9) The department shall issue a notice of expiration of a conditional bank charter if eighteen months have passed since the issuance of such charter and the holder of such charter (a) has not converted to a full bank charter pursuant to subsection (7) of this section, (b) has not made a request for an extension pursuant to subsection (8) of this section, or (c) has made a request for an extension pursuant to subsection (8) of this section which was not approved by the director.

Source: Laws 2010, LB891, § 2; Laws 2016, LB751, § 2; Laws 2017, LB140, § 18.

8-117.01 Repealed. Laws 2002, LB 1094, § 19.

8-118 Banks; unlawful promotion; sale of stock prior to issuance of charter; penalty.

(1) It shall be unlawful for any person for hire (a) to promote or attempt to promote the organization of a corporation to conduct the business of a bank in this state or (b) to sell the capital stock of such a corporation prior to the issuance of a charter to such corporation authorizing its operation as a bank.

(2) Any person violating the provisions of this section is guilty of a Class II misdemeanor.

Source: Laws 1909, c. 10, § 13, p. 72; R.S.1913, § 292; Laws 1919, c. 190, tit. V, art. XVI, § 11, p. 689; Laws 1921, c. 297, § 3, p. 950; C.S.1922, § 7992; Laws 1923, c. 192, § 1, p. 463; C.S.1929, § 8-122; Laws 1935, c. 19, § 1, p. 96; C.S.Supp.,1941, § 8-122; Laws 1943, c. 19, § 3(4), p. 103; R.S.1943, § 8-122; Laws 1959, c. 15, § 6, p. 134; R.R.S.1943, § 8-122; Laws 1963, c. 29, § 18, p. 141; Laws 1967, c. 19, § 5, p. 119; Laws 1973, LB 164, § 6; Laws 1977, LB 40, § 40; Laws 2017, LB140, § 19.

8-119 Capital stock; sale; compensation prohibited; false statement; penalties.

No corporation organized for the purpose of conducting a bank under the laws of this state shall be granted the charter provided in section 8-122 until the corporation has filed with the department a statement, under oath, of the president or cashier of such corporation that no premium, bonus, commission, compensation, reward, salary, or other form of remuneration has been paid, or promised to be paid, to any person for selling the stock of such corporation. The president or cashier of any such corporation who shall be found guilty of filing a false statement under the provisions of this section is guilty of a Class I

misdemeanor. If, after such charter has been delivered, the director determines, after a public hearing, that such statement is false, the department shall cancel such charter, and a receiver shall be appointed for such corporation in the manner provided for in case of a corporation which is conducting a bank in an unsafe or unauthorized manner.

Source: Laws 1919, c. 190, tit. V, art. XVI, § 54, p. 708; C.S.1922, § 8034; C.S.1929, § 8-128; R.S.1943, § 8-130; Laws 1963, c. 29, § 19, p. 141; Laws 1967, c. 19, § 5, p. 119; Laws 1973, LB 164, § 7; Laws 1977, LB 40, § 41; Laws 2017, LB140, § 20.

This section is referred to as providing penalty of fine and imprisonment, in contrasting this section with another section of the banking act which failed to provide a penalty, and holding that the failure to provide a penalty disclosed legislative intent that statute should be directory rather than mandatory. State ex rel. Davis v. Farmers State Bank of Winside, 112 Neb. 597, 200 N.W. 173 (1924).

8-120 Corporation; application to conduct, merge, or transfer bank; contents.

(1) Every corporation organized for and desiring to conduct a bank or to conduct a bank for purposes of a merger with an existing bank shall make under oath and transmit to the department a complete detailed application giving (a) the name of the proposed bank; (b) a copy of the proposed articles of incorporation; (c) the names of the stockholders; (d) the county, city, or village and the exact location therein in which such bank is proposed to be located; (e) the nature of the proposed banking business; (f) the proposed amounts of paid-up capital stock and surplus, and the items of actual cash and property, as reported and approved at a meeting of the stockholders, to be included in such amounts; and (g) a statement that at least twenty percent of the amounts stated in subdivision (f) of this subsection have in fact been paid in to the corporation by its stockholders.

(2) In the case of a merger, the existing bank which is to be merged into shall complete an application and meet the requirements of this section.

(3) This section also applies when application is made for transfer of a bank charter and move of a bank's main office to any location other than (a) within the corporate limits of the city or village of its original charter, (b) within the county in which it is located if such bank charter is not located in a city or village, or (c) as provided in subdivision (6) of section 8-115.01.

Source: Laws 1909, c. 10, § 15, p. 74; R.S.1913, § 294; Laws 1919, c. 190, tit. V, art. XVI, § 15, p. 691; Laws 1921, c. 313, § 1, p. 1001; C.S.1922, § 7996; C.S.1929, § 8-126; Laws 1933, c. 18, § 17, p. 143; C.S.Supp.,1941, § 8-126; R.S.1943, § 8-128; Laws 1959, c. 15, § 9, p. 135; R.R.S.1943, § 8-128; Laws 1963, c. 29, § 20, p. 142; Laws 1967, c. 19, § 7, p. 120; Laws 1980, LB 916, § 1; Laws 2002, LB 957, § 2; Laws 2005, LB 533, § 4; Laws 2008, LB851, § 3; Laws 2017, LB140, § 21.

Where it appears in an error proceeding that an administrative agency acted within its jurisdiction and there is some competent evidence to sustain its findings and order, the order will be sustained. First Nat. Bank of Bellevue v. Southroads Bank, 189 Neb. 748, 205 N.W.2d 346 (1973).

Preliminary statement, without articles of incorporation, was sufficient. First Nat. Bank & Trust Co. of Beatrice v. Ley, 182 Neb. 164, 153 N.W.2d 743 (1967).

8-121 Repealed. Laws 2017, LB140, § 163.

8-122 Issuance of charter to transact business.

(1) After the examination and approval by the Director of Banking and Finance of the application required by section 8-120, if the director upon

investigation and after any public hearing on the application held pursuant to section 8-115.01 shall be satisfied that the stockholders, directors, and officers of the corporation applying for such charter are parties of integrity and responsibility, that the requirements of section 8-702 have been met, and that the public necessity, convenience, and advantage will be promoted by permitting such corporation to engage in business as a bank, the department shall, upon the payment of the required fees, and, upon the filing with the department of a statement, under oath, of the president, secretary, or treasurer, that the paid-up capital stock and surplus have been paid in, as determined by the Director of Banking and Finance in accordance with section 8-116, issue to such corporation a charter to transact the business of a bank in this state provided for in its articles of incorporation. In the case of a bank organized to merge with an existing bank, there shall be a rebuttable presumption that the public necessity, convenience, and advantage will be met by the merger of the two banks, except that such presumption shall not apply when the new bank that is formed by the merger is at a different location than that of the former existing bank. Any application for merger under this subsection shall be subject to section 8-1516.

(2) On payment of the required fees and the receipt of the charter, such corporation may begin to conduct a bank.

Source: Laws 1909, c. 10, § 16, p. 74; Laws 1911, c. 8, § 1, p. 79; R.S.1913, § 295; Laws 1919, c. 190, tit. V, art. XVI, § 16, p. 692; Laws 1921, c. 302, § 2, p. 958; C.S.1922, § 7997; C.S.1929, § 8-127; R.S.1943, § 8-129; Laws 1947, c. 12, § 1, p. 77; Laws 1957, c. 10, § 1, p. 128; R.R.S.1943, § 8-129; Laws 1963, c. 29, § 22, p. 142; Laws 1967, c. 19, § 9, p. 120; Laws 1980, LB 916, § 2; Laws 1983, LB 252, § 3; Laws 1996, LB 1275, § 2; Laws 2002, LB 957, § 3; Laws 2002, LB 1094, § 4; Laws 2008, LB851, § 4; Laws 2017, LB140, § 22.

The Department of Banking and Finance is required to hold a public hearing to determine, among other things, the integrity of the parties applying for a bank merger and the fairness of the merger to minority shareholders. Schmid v. Clarke, Inc., 245 Neb. 856, 515 N.W.2d 665 (1994).

When more than one application is filed for a given license, the Department of Banking and Finance should compare the applications rather than follow a strict first-to-file rule. Southwestern Bank & Trust Co. v. Department of Banking and Finance, 206 Neb. 599, 294 N.W.2d 343 (1980).

This section involves the granting of a bank charter and not the removal of one. Douglas County Bank v. Department of Banking, 187 Neb. 545, 192 N.W.2d 401 (1971).

Finding of Department of Banking in the language of this section is adequate to sustain the issuance of a charter. First Nat. Bank & Trust Co. v. Ley, 182 Neb. 164, 153 N.W.2d 743 (1967).

When an application is made to Department of Banking for a charter to do a banking business, it is its duty to determine, after proper investigation, the integrity and responsibility of the persons making the application. Shumway v. Warrick, 108 Neb. 652, 189 N.W. 301 (1922).

Where it appears that Department of Banking, in granting a charter, has acted within its jurisdiction, and all the jurisdictional facts essential to uphold its final order are sustained by competent evidence, its action will be upheld on review in error proceedings. In re Commercial State Bank, 105 Neb. 248, 179 N.W.1021 (1920).

Under this section, prior to its amendment in 1921, where a corporation filed the oath that the capital stock had been paid in, and if parties were of integrity and responsibility and paid the fees required by law, the corporation was entitled to a charter irrespective of the number of banks in the locality. State ex rel. Woolridge v. Morehead, 100 Neb. 864, 161 N.W. 569 (1917), L.R.A. 1917D 310 (1917).

8-122.01 Repealed. Laws 2002, LB 1094, § 19.

8-123 Transferred to section 8-1902.

8-124 Banks; board of directors; president; meetings; examination; audit.

(1) The affairs and business of any bank shall be managed or controlled by a board of directors of not less than five and not more than twenty-five members, who shall be selected at such time and in such manner as may be provided by

the articles of incorporation of the corporation and in conformity with the Nebraska Banking Act. The board of directors shall select a president. No person shall act as president if he or she is not a member of the board of directors.

(2) The board of directors shall hold at least one regular meeting in each calendar quarter, and at one of such meetings in each year a thorough examination of the books, records, funds, and securities held by the bank shall be made and recorded in detail upon its record book. In lieu of the one annual examination required, the board of directors may accept one annual audit by an accountant or accounting firm approved by the Director of Banking and Finance. The board of directors shall submit such audit to the department within one hundred twenty days after the completion of the audit or, for a periodic audit, within one hundred twenty days after the end of the calendar year.

Source: Laws 1909, c. 10, § 26, p. 78; Laws 1911, c. 8, § 26, p. 81; R.S.1913, § 305; Laws 1919, c. 190, tit. V, art. XVI, § 26, p. 696; C.S.1922, § 8007; C.S.1929, § 8-138; R.S.1943, § 8-140; Laws 1961, c. 15, § 4, p. 112; R.R.S.1943, § 8-140; Laws 1963, c. 29, § 24, p. 143; Laws 1967, c. 21, § 1, p. 123; Laws 1973, LB 164, § 9; Laws 1974, LB 721, § 2; Laws 1987, LB 2, § 6; Laws 1998, LB 1321, § 6; Laws 2005, LB 533, § 5; Laws 2007, LB124, § 3; Laws 2017, LB140, § 23; Laws 2022, LB707, § 8.
Operative date July 21, 2022.

Terms of office of a bank officer are required to be for one year. Sullivan v. David City Bank, 181 Neb. 395, 148 N.W.2d 844 (1967).

Person who permits himself to be held out as director of bank is estopped to deny that he was owner of sufficient shares in his own right to qualify as director. Kienke v. Kirsch, 121 Neb. 688, 238 N.W. 33 (1931).

Buying capital stock of rival bank not an ordinary banking transaction within the powers of a stockholder, the president, a single director, or all combined. Cooper v. Bane, 110 Neb. 83, 196 N.W. 119 (1923).

8-124.01 Banks; board of directors; vacancy; notice; filling; application for approval.

At any time that a vacancy on the board of directors of a bank occurs, the bank shall, within thirty days, notify the department of the vacancy. Vacancies shall be filled within ninety days by appointment by the remaining directors, and any director so appointed shall serve until the next election of directors, except that if the vacancy created leaves a minimum of five directors, appointment shall be optional. When the vacancy has been filled, the bank shall make application to the department for approval of the director appointed in accordance with section 8-126.

Source: Laws 1973, LB 164, § 10; Laws 1995, LB 599, § 1; Laws 2017, LB140, § 24.

8-125 Banks; board of directors; meetings; record; contents; publication.

A full and complete record of the proceedings and business of all meetings of the board of directors shall be recorded in the bank's minutes. Such record of the meetings shall show the gross earnings and disposition thereof by indicating expenses and taxes paid, worthless items charged off, depreciation in assets, amount carried to surplus fund, and amount of dividend, and shall also indicate the amount of undivided profits remaining. Published statements of assets and

liabilities shall show for undivided profits only the net amount after deducting all expenses.

Source: Laws 1923, c. 191, § 37, p. 458; C.S.1929, § 8-139; R.S.1943, § 8-141; Laws 1963, c. 29, § 25, p. 144; Laws 2017, LB140, § 25.

8-126 Bank directors; qualifications; approval by department; revocation of approval; procedure.

(1) A majority of the members of the board of directors of any bank shall have their residences in this state or within twenty-five miles of the main office of the bank. Reasonable efforts shall be made to acquire members of such board of directors from the county in which the main office of such bank is located and from counties in which branches of such bank are located.

(2) Directors of banks shall be persons of good moral character, known integrity, business experience, and responsibility. No person shall act as a member of the board of directors of any bank until such bank applies for and obtains approval from the department.

(3) If the department, upon investigation, determines that any director of a bank is conducting the business of the bank in an unsafe or unauthorized manner or is endangering the interests of the stockholders or depositors, the Director of Banking and Finance has the authority, following notice and opportunity for hearing, to revoke such approval to act as a member of the board of directors.

(4) The Director of Banking and Finance may adopt and promulgate rules and regulations and prescribe forms to carry out this section.

Source: Laws 1909, c. 10, § 12, p. 71; R.S.1913, § 291; Laws 1919, c. 190, tit. V, art. XVI, § 10, p. 689; Laws 1921, c. 313, § 1, p. 1001; C.S.1922, § 7991; C.S.1929, § 8-121; Laws 1935, c. 7, § 1, p. 70; C.S.Supp.,1941, § 8-121; R.S.1943, § 8-118; Laws 1959, c. 15, § 2, p. 132; R.R.S.1943, § 8-118; Laws 1963, c. 29, § 26, p. 144; Laws 1973, LB 164, § 11; Laws 1986, LB 1035, § 1; Laws 1987, LB 2, § 7; Laws 1988, LB 996, § 1; Laws 1989, LB 322, § 1; Laws 1993, LB 81, § 2; Laws 1997, LB 137, § 3; Laws 1998, LB 1321, § 7; Laws 2017, LB140, § 26.

Under former law a director of commercial state bank must have been the owner of at least four percent of its capital stock in his own name and right, and a person having acted as director was estopped to deny ownership of stock standing in his name. Kienke v. Hudson, 122 Neb. 475, 240 N.W. 562 (1932); Kienke v. Kirsch, 121 Neb. 688, 238 N.W. 33 (1931).

8-127 List of stockholders; open to inspection; violation; penalty.

(1) Every bank shall cause to be kept at all times a full and correct list of the names and residences of all its stockholders, the number of shares held by each, and the amount of paid-up capital represented thereby. Such list shall be subject to the inspection of all stockholders of the bank during all business hours, and shall be kept in the business office where all stockholders may have ready access to it.

(2) Any person violating this section is guilty of a Class III misdemeanor.

Source: Laws 1909, c. 10, § 38, p. 85; R.S.1913, § 317; Laws 1919, c. 190, tit. V, art. XVI, § 38, p. 701; C.S.1922, § 8018; C.S.1929, § 8-157; R.S.1943, § 8-162; Laws 1963, c. 29, § 27, p. 145; Laws 1977, LB 40, § 42; Laws 2017, LB140, § 27.

8-128 Capital stock; increase; decrease; notice; publication; denial by director, when.

The paid-in capital stock of any bank may be increased or decreased in the following manner: The stockholders at any regular meeting or at any special meeting duly called for such purpose shall by vote of those owning two-thirds of the capital stock authorize an officer of the bank to notify the department of the proposed increase or reduction of paid-in capital stock, and a notice containing a statement of the amount of any proposed reduction of paid-in capital stock shall be published for two weeks in some newspaper published and of general circulation in the county where the main office of such bank is located. Reduction of paid-in capital stock shall be discretionary with the director, but shall be denied if granting the same would reduce the paid-in capital stock below the requirements of the Nebraska Banking Act or would impair the security of the depositors. The bank shall notify the department when the proposed increase or decrease of the paid-in capital stock has been consummated.

Source: Laws 1909, c. 10, § 34, p. 82; R.S.1913, § 313; Laws 1919, c. 190, tit. V, art. XVI, § 34, p. 699; C.S.1922, § 8014; C.S.1929, § 8-153; Laws 1933, c. 18, § 34, p. 152; C.S.Supp.,1941, § 8-153; R.S. 1943, § 8-157; Laws 1961, c. 15, § 7, p. 113; R.R.S.1943, § 8-157; Laws 1963, c. 29, § 28, p. 145; Laws 1987, LB 2, § 8; Laws 1998, LB 1321, § 8; Laws 2015, LB155, § 2; Laws 2017, LB140, § 28.

8-129 Stockholders' meeting; director may call; notice; expense.

Whenever the director deems it expedient, he or she may call a meeting of the stockholders of any bank by sending notice of such meeting to each stockholder five days previous thereto. All necessary expenses incurred in the giving of such notice shall be borne by the bank whose stockholders are required to convene.

Source: Laws 1933, c. 18, § 41, p. 157; C.S.Supp.,1941, § 8-1,126; R.S. 1943, § 8-1,106; Laws 1963, c. 29, § 29, p. 146; Laws 2017, LB140, § 29.

8-130 Federal reserve system; membership by state banks and trust companies authorized; examinations.

Any bank or trust company, organized under the laws of this state, may subscribe to the capital stock of the Federal Reserve Bank of Kansas City, Missouri, and become a member of the federal reserve system created and organized under an act of Congress of the United States, approved December 23, 1913, and known as the Federal Reserve Act, and may assume such liabilities and exercise such powers as a member of such system as are prescribed by the provisions of such act, or amendments thereto. So long as such bank or trust company shall remain a member of such system, it shall be subject to examination by the legally constituted authorities, and to all provisions of such Federal Reserve Act and regulations made pursuant thereto by the Federal Reserve Board which are applicable to such bank or trust company as a member of the federal reserve system. The director may, in his or her discretion, accept examinations and audits made under the provisions of the

Federal Reserve Act in lieu of examinations required of banks or trust companies organized under the laws of this state.

Source: Laws 1915, c. 175, § 1, p. 359; Laws 1919, c. 190, tit. V, art. XVI, § 65, p. 711; C.S.1922, § 8045; C.S.1929, § 8-163; R.S.1943, § 8-166; Laws 1963, c. 29, § 30, p. 146; Laws 2017, LB140, § 30.

8-131 Repealed. Laws 2003, LB 217, § 50.

8-132 Banks; available funds; deficient reserve; impairment of capital; duty of bank; powers and duties of department; notice to bank.

(1) The available funds of a bank shall consist of cash on hand and balances due from other solvent banks. Cash shall include lawful money of the United States and exchange for any clearinghouse association. Whenever the available funds or any reserve of any bank are deemed deficient by the director, such bank shall not make any new loans or discount otherwise than by discounting or purchasing bills of exchange payable at sight or make any dividends of its profits until it has on hand available funds and reserve deemed sufficient for operation by the director. The department shall notify any bank, in case its available funds or reserves are deemed deficient or its capital is impaired, to make good such available funds, reserves, or capital within such time as the director may direct, and any failure of such bank to make good any deficiency in the amount of its available funds, reserve, or capital within the time directed shall be cause for the department to take possession of such bank, declare it insolvent, and liquidate it as provided in the Nebraska Banking Act.

(2) The capital of any bank shall be deemed to be unimpaired when the amount of capital notes and debentures as represented by cash or sound assets exceeds an impairment as found by the department.

Source: Laws 1909, c. 10, § 23, p. 77; R.S.1913, § 302; Laws 1919, c. 190, tit. V, art. XVI, § 23, p. 695; C.S.1922, § 8004; C.S.1929, § 8-135; Laws 1933, c. 18, § 24, p. 147; C.S.Supp.,1941, § 8-135; R.S. 1943, § 8-137; R.R.S.1943, § 8-137; Laws 1963, c. 29, § 32, p. 147; Laws 1965, c. 28, § 1, p. 200; Laws 1987, LB 2, § 9; Laws 1998, LB 1321, § 9; Laws 2003, LB 217, § 4; Laws 2017, LB140, § 31.

8-132.01 Repealed. Laws 2011, LB 74, § 9.

8-133 Rate of interest; prohibited acts; penalties; pledge of letters of credit authorized.

(1)(a) Except as provided in this section, a bank may pay interest at any rate on any deposits made or retained in the bank.

(b) A bank shall not pay to any officer, director, principal stockholder, or employee a greater rate of interest on the deposits of such officer, director, principal stockholder, or employee than that paid to other depositors on similar deposits with such bank. Any person who causes the payment of a greater rate of interest on such deposits is guilty of a Class IV felony. Any officer, director, principal stockholder, or employee who requests or receives a greater rate of interest on his or her deposits than that paid to other depositors on similar deposits with such bank is guilty of a Class IV felony.

(2) Any officer, director, principal stockholder, or employee of a bank or any other person who, directly or indirectly, and either personally or for the bank, pledges any assets of the bank, except as provided in this section or otherwise by law, for making or retaining a deposit in the bank is guilty of a Class IV felony. Any depositor who accepts any such pledge of assets is guilty of a Class IV felony. Deposits made in violation of this section are not entitled to priority of payment from the assets of the bank.

(3) A bank may secure deposits made by a trustee under 11 U.S.C. 101 et seq. by pledge of the assets of the bank or by furnishing a surety bond as provided in 11 U.S.C. 345.

(4) A bank may secure deposits made by the United States Secretary of the Interior on behalf of any individual Indian or any Indian tribe under 25 U.S.C. 162a by a pledge of the assets of the bank or by furnishing an acceptable bond as provided in 25 U.S.C. 162a.

(5) A bank may secure deposits by a pledge of the assets of the bank or by furnishing an acceptable bond as provided in the Public Funds Deposit Security Act.

(6) Nothing in this section shall prohibit a bank or any officer, director, stockholder, or employee thereof from providing to a depositor a guaranty bond which provides coverage for the deposits of the depositor which are in excess of the amounts insured by the Federal Deposit Insurance Corporation.

(7) Nothing in this section shall prohibit a bank or any officer, director, stockholder, or employee thereof from providing to a depositor an irrevocable, nontransferable, unconditional standby letter of credit issued by the Federal Home Loan Bank of Topeka which provides coverage for the deposits of the depositor which are in excess of the amounts insured by the Federal Deposit Insurance Corporation.

(8) For purposes of this section, principal stockholder means a person owning ten percent or more of the voting shares of the bank.

Source: Laws 1909, c. 10, § 27, p. 79; Laws 1911, c. 8, § 27, p. 81; R.S.1913, § 306; Laws 1919, c. 190, tit. V, art. XVI, § 27, p. 696; Laws 1921, c. 313, § 1, p. 1001; C.S.1922, § 8008; Laws 1925, c. 28, § 1, p. 119; C.S.1929, § 8-140; Laws 1930, Spec. Sess., c. 6, § 8, p. 30; Laws 1933, c. 18, § 26, p. 148; C.S.Supp.,1941, § 8-140; R.S.1943, § 8-142; Laws 1959, c. 15, § 12, p. 136; R.R.S.1943, § 8-142; Laws 1963, c. 29, § 33, p. 147; Laws 1977, LB 40, § 43; Laws 1978, LB 966, § 1; Laws 1980, LB 966, § 1; Laws 1990, LB 956, § 1; Laws 1994, LB 979, § 1; Laws 1996, LB 1053, § 4; Laws 2003, LB 217, § 5; Laws 2009, LB74, § 1; Laws 2017, LB140, § 32.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

1. Excessive interest
2. Other inducements

1. Excessive interest

To make a prima facie case on claim against receiver of insolvent state bank, claimant need only plead and prove ownership of duly issued certificate of deposit. State ex rel. Sorensen v. State Bank of Bee, 128 Neb. 491, 259 N.W. 641 (1935).

Where interest at a greater rate than the maximum allowed by law is paid on certificates of deposit, the claim of the depositor in receivership is not entitled to priority. State ex rel. Sorensen v. State Bank of Bee, 128 Neb. 442, 259 N.W. 172 (1935).

Where holder of certificate on which excess interest has been paid surrenders such certificate to the bank and receives a bill

payable, which is transferred to another, and such other person presents it to the bank while it is a going concern and receives in exchange a certificate of deposit drawing interest at the legal rate, such certificate is entitled to priority. State ex rel. Spillman v. Farmers Bank of Crawford, 116 Neb. 445, 217 N.W. 950 (1928).

Where certificate draws lawful rate but from date anterior to its issuance, transaction was not a deposit entitled to priority. State ex rel. Spillman v. Security Bank of Eddyville, 116 Neb. 165, 216 N.W. 169 (1927).

Where money was placed in a state bank and certificate of deposit issued bearing lawful rate of interest with understanding that bank should pay bonus of one percent above legal rate, transaction was not a deposit entitled to priority. State ex rel. Spillman v. Security State Bank of Eddyville, 115 Neb. 667, 214 N.W. 293 (1927); Iams v. Farmers State Bank of Decatur, 101 Neb. 778, 165 N.W. 145 (1917).

Where agreement was that bank officer individually should pay the excess interest, but, without knowledge of certificate holder, the bank actually pays it, deposit was entitled to priority. State ex rel. Spillman v. Atlas Bank of Neligh, 114 Neb. 781, 210 N.W. 152 (1926); State ex rel. Davis v. Farmers State Bank of Benedict, 112 Neb. 474, 199 N.W. 839 (1924).

Where interest at a rate greater than the maximum allowed has been paid by a state bank, but such practice is abandoned while the bank is a going concern, certificates issued in renewal at a lawful rate are entitled to priority, even though such renewals include accumulations of excess interest. State ex rel. Spillman v. American Exchange Bank of Bristow, 114 Neb. 626, 209 N.W. 217 (1926).

Where agreement for excess interest is a closed transaction, it may be abandoned without tainting future deposits. State ex rel. Davis v. Newcastle State Bank, 114 Neb. 389, 207 N.W. 683 (1926).

Where holder of certificates drawing excessive rate exchanges them for new certificates drawing legal rate, while bank is going concern, the new certificates are entitled to priority. State ex rel. Spillman v. American Exchange Bank of Bristow, 112 Neb. 834, 201 N.W. 895 (1924).

Prohibition of this section does not prevent an officer of a bank, while acting in good faith, from paying additional interest on his personal account, and deposit made under such arrangement is not deprived of priority. State ex rel. Davis v. Wayne County Bank, 112 Neb. 792, 201 N.W. 907 (1924).

Where secret agreement for excess interest has been abandoned, new certificate for actual amount deposited, bearing lawful rate, not vitiated. State ex rel. Davis v. Farmers State Bank of Winside, 112 Neb. 788, 201 N.W. 899 (1924).

This section bearing penalty contrasted with section providing no penalty. State ex rel. Davis v. Farmers State Bank of Winside, 112 Neb. 597, 200 N.W. 173 (1924).

Where bank issued certificates of deposit bearing interest at maximum legal rate and received in exchange an amount less than the face of the certificates, deposit was not entitled to priority. State ex rel. Davis v. Farmers State Bank of Halsey, 111 Neb. 117, 196 N.W. 908 (1923).

Where deposit is represented by cashier's check which includes excess interest, it is not entitled to priority. State ex rel. Davis v. Banking House of A. Castetter, 110 Neb. 564, 194 N.W. 784 (1923).

2. Other inducements

Agreement between stockholders of bank and its depositors and creditors that bank was to be liquidated by its officers, did not contravene this section. Department of Banking v. Walker, 131 Neb. 732, 269 N.W. 907 (1936).

Where another statutory provision requires deposit of public money in bank to be secured, deposit subject to negotiations between bank and city, provisions of this section do not apply. Luikart v. City of Aurora, 125 Neb. 263, 249 N.W. 590 (1933).

Pledge of assets by bank to secure or retain deposit is inducement to depositor to make such deposit, and both the bank official and depositor are subject to criminal prosecution. Bliss v. Pathfinder Irrigation District, 122 Neb. 203, 240 N.W. 291 (1932).

Arrangement for ''parring'' checks, resulting in slight advantage above legal rate to depositor, does not deprive him of priority. State ex rel. Spillman v. Nebraska State Bank of Harvard, 118 Neb. 660, 225 N.W. 778 (1929).

8-134 Deposits; repayment only on presentation of pass book, when; notice.

Banks may, by agreement, provide that deposits received under agreement shall be repaid only on presentation of pass books and may require notice to be given before such deposits are repaid.

Source: Laws 1963, c. 29, § 34, p. 148.

8-135 Deposits; withdrawal methods authorized; lease of safe deposit box; section; how construed.

(1) All persons, regardless of age, may become depositors in any bank and shall be subject to the same duties and liabilities respecting their deposits. Whenever a deposit is accepted by any bank in the name of any person, regardless of age, the deposit may be withdrawn by the depositor by any of the following methods:

(a) Check or other instrument in writing. The check or other instrument in writing constitutes a receipt or acquittance if the check or other instrument in writing is signed by the depositor and constitutes a valid release and discharge to the bank for all payments so made; or

(b) Electronic means through:

(i) Preauthorized direct withdrawal;

(ii) An automatic teller machine;

(iii) A debit card;

(iv) A transfer by telephone;

(v) A network, including the Internet; or

(vi) Any electronic terminal, computer, magnetic tape, or other electronic means.

(2) All persons, individually or with others and regardless of age, may enter into an agreement with a bank for the lease of a safe deposit box and shall be bound by the terms of the agreement.

(3) This section shall not be construed to affect the rights, liabilities, or responsibilities of participants in an electronic fund transfer under the federal Electronic Fund Transfer Act, 15 U.S.C. 1693 et seq., as such act existed on January 1, 2022, and shall not affect the legal relationships between a minor and any person other than the bank.

Source: Laws 1963, c. 27, § 1, p. 132; Laws 1963, c. 29, § 35, p. 148; Laws 2005, LB 533, § 6; Laws 2013, LB213, § 3; Laws 2016, LB760, § 1; Laws 2017, LB140, § 33; Laws 2018, LB812, § 1; Laws 2019, LB258, § 1; Laws 2020, LB909, § 2; Laws 2021, LB363, § 1; Laws 2022, LB707, § 9.
Operative date April 19, 2022.

8-136 Repealed. Laws 1974, LB 354, § 316.

8-137 Checks; certification; requirements; effect.

No officer or employee of any bank shall certify any check drawn upon such bank unless the person, firm, or corporation drawing the check has on deposit with the bank at the time such check is certified an amount of credit, on the depositors' ledger of such bank, subject to the payment of such check, equal to the amount specified in such check. The amount of such check shall not be recoverable from the payee or holder except in case of fraud. Whenever a check drawn upon any bank is certified by any officer or employee of such bank, the amount of the check shall be immediately charged against the account of the person, firm, or corporation drawing the check.

Source: Laws 1909, c. 10, § 39, p. 85; R.S.1913, § 318; Laws 1919, c. 190, tit. V, art. XVI, § 39, p. 701; C.S.1922, § 8019; C.S.1929, § 8-158; R.S.1943, § 8-163; Laws 1963, c. 29, § 37, p. 149; Laws 2017, LB140, § 34.

8-138 Deposits; receiving when insolvent; prohibition; penalty.

No bank shall accept or receive on deposit for any purpose any money, bank bills, United States treasury notes or currency, or other notes, bills, checks, drafts, credits, or currency, when such bank is insolvent. If any bank receives or accepts on deposit any such deposits when such bank is insolvent, the officer, agent, or employee knowingly receiving or accepting or being accessory to, permitting, or conniving at the receiving or accepting on deposit of such bank any such deposit, is guilty of a Class III felony.

Source: Laws 1909, c. 10, § 30, p. 80; R.S.1913, § 309; Laws 1919, c. 190, tit. V, art. XVI, § 30, p. 697; C.S.1922, § 8010; C.S.1929, § 8-147; R.S.1943, § 8-147; Laws 1963, c. 29, § 38, p. 149; Laws 1977, LB 40, § 44; Laws 2017, LB140, § 35.

Insolvent bank has no power to receive deposits. Torgeson v. Department of Trade and Commerce, 127 Neb. 38, 254 N.W. 735 (1934).

In prosecution against banker for receiving deposits knowing bank to be insolvent, intentional fraud, deceit, false reports and wrongful entries on bank books are not elements of the offense as defined by statute. Flannigan v. State, 125 Neb. 519, 250 N.W. 908 (1933).

Instruction to jury defining insolvency of bank as being when the actual cash value of its assets was insufficient to pay its liabilities to depositors, or when it was unable to meet the demands of its creditors in the usual and ordinary manner, was not prejudicial to defendant. Gutru v. State, 125 Neb. 506, 250 N.W. 913 (1933).

Conviction under this section sustained upon evidence that deposits were received when real value of assets were less than liabilities of bank, and defendant had knowledge of the deposits and insolvency. Flannigan v. State, 125 Neb. 163, 249 N.W. 609 (1933).

Banking department has no authority to authorize a bank, its officers or employees, to violate this section. State v. Kastle, 120 Neb. 758, 235 N.W. 458 (1931).

Constitutionality of this section sustained. Westbrook v. State, 120 Neb. 625, 234 N.W. 579 (1931).

This section bearing penalty contrasted with section providing no penalty. State ex rel. Davis v. Farmers State Bank of Winside, 112 Neb. 597, 200 N.W. 173 (1924).

8-139 Executive officers; approval of loans and investments; qualifications; license; revocation; violations; penalty; civil penalty; election to exempt active executive officers from license; procedure.

(1) No loan or investment shall be made by a bank, directly or indirectly, without the approval of an active executive officer.

(2) Executive officers of banks shall be persons of good moral character, known integrity, business experience and responsibility, and be capable of conducting the affairs of a bank on sound banking principles.

(3) Except as provided in subsection (6) of this section, no person shall act as an active executive officer of any bank until such bank has applied for and obtained from the department a license for such person to act as an active executive officer. If the director, upon investigation, is satisfied that any active executive officer of a bank is conducting the business of the bank in an unsafe or unauthorized manner or is endangering the interests of the stockholders or depositors of the bank, the department may revoke the license of such active executive officer or suspend the ability of such active executive officer to continue to act as an active executive officer.

(4) Any person (a) whose license has been revoked or whose authority has been suspended by the department under subsection (3) of this section or who lacks a license and on whose behalf no election was made under subsection (6) of this section and (b) who acts or attempts to act as an active executive officer of a bank is guilty of a Class III felony.

(5) As part of any order of revocation or suspension under subsection (3) of this section, the director may levy a civil penalty against the active executive officer personally in an amount not to exceed ten thousand dollars. The civil penalty shall not be paid out of the assets of the bank in which the active executive officer is employed or otherwise performing services pursuant to contract. The department shall remit the civil penalty collected to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska. Any person whose authority has been revoked or suspended with prejudice under this section shall not be eligible to act as an executive officer at any other bank without authorization to do so from the department.

(6) A bank has the right, on or after August 24, 2017, to elect for its active executive officers to be exempt from the requirement to apply for and obtain a license from the department. An election, once made, shall remain in effect with respect to all active executive officers of the bank until and unless the election is revoked by the bank. An election or revocation shall be made in a form and manner established by the department. Within thirty days after

revoking such election, such bank shall apply for and obtain from the department a license for any person acting or desiring to act as an active executive officer of the bank.

(7) For purposes of this section, active executive officer means any employee of a bank or any person under contract to perform services for a bank who is determined by the department to be a policy-dominant individual in the bank or who exercises (a) management functions, (b) major policymaking functions, or (c) substantial employee supervision, including the power to terminate employment. An active executive officer includes, but is not limited to, a president, a vice-president, a cashier, an assistant cashier, a chief executive officer, a loan officer, or an investment officer.

(8) The director may adopt and promulgate rules and regulations and prescribe forms to be used to carry out the intent of this section.

Source: Laws 1921, c. 297, § 7, p. 952; C.S.1922, § 8048; C.S.1929, § 8-166; Laws 1933, c. 18, § 38, p. 154; C.S.Supp.,1941, § 8-166; R.S.1943, § 8-169; Laws 1963, c. 29, § 39, p. 150; Laws 1977, LB 40, § 45; Laws 2017, LB140, § 36.

8-140 Mortgage loan originator; registration.

Any financial institution chartered by the department that employs a mortgage loan originator, as defined in section 45-702, shall register such employee with the Nationwide Mortgage Licensing System and Registry, as defined in section 45-702, by furnishing the following information concerning the employee's identity to the Nationwide Mortgage Licensing System and Registry:

(1) Fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information, for a state and national criminal history background check; and

(2) Personal history and experience, including authorization for the Nationwide Mortgage Licensing System and Registry to obtain information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

Source: Laws 2017, LB140, § 37.

8-141 Loans; limits; exceptions.

(1) No bank shall directly or indirectly loan to any single corporation, limited liability company, firm, or individual, including in such loans all loans made to the several members or shareholders of such corporation, limited liability company, or firm, for the use and benefit of such corporation, limited liability company, firm, or individual, more than twenty-five percent of the paid-up capital, surplus, and capital notes and debentures or fifteen percent of the unimpaired capital and unimpaired surplus of such bank, whichever is greater. Such limitations shall be subject to the following exceptions:

(a) Obligations of any person, partnership, limited liability company, association, or corporation in the form of notes or drafts secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock, when the market value of the livestock securing the obligation is not at any time less than one hundred fifteen percent of the face amount of the notes covered by such documents, shall be subject under this section to a limitation of ten percent of such capital, surplus, and capital notes and debentures or ten percent of such unimpaired capital and unimpaired

surplus, whichever is greater, in addition to such twenty-five percent of such capital and surplus or such fifteen percent of such unimpaired capital and unimpaired surplus;

(b) Obligations of any person, partnership, limited liability company, association, or corporation secured by not less than a like amount of bonds or notes of the United States issued since April 24, 1917, or certificates of indebtedness of the United States, treasury bills of the United States, or obligations fully guaranteed both as to principal and interest by the United States shall be subject under this section to a limitation of ten percent of such capital, surplus, and capital notes and debentures or ten percent of such unimpaired capital and unimpaired surplus, whichever is greater, in addition to such twenty-five percent of such capital and surplus or such fifteen percent of such unimpaired capital and unimpaired surplus;

(c) Obligations of any person, partnership, limited liability company, association, or corporation which are secured by negotiable warehouse receipts in an amount not less than one hundred fifteen percent of the face amount of the note or notes secured by such documents shall be subject under this section to a limitation of ten percent of such capital, surplus, and capital notes and debentures or ten percent of such unimpaired capital and unimpaired surplus, whichever is greater, in addition to such twenty-five percent of such capital and surplus or such fifteen percent of such unimpaired capital and unimpaired surplus; or

(d) Obligations of any person, partnership, limited liability company, association, or corporation which are secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, in an amount at least equal to the face amount of the note or notes secured by such collateral, shall be subject under this section to a limitation of ten percent of such capital, surplus, and capital notes and debentures or ten percent of such unimpaired capital and unimpaired surplus, whichever is greater, in addition to such twenty-five percent of such capital and surplus or such fifteen percent of such unimpaired capital and unimpaired surplus.

(2)(a) For purposes of this section, the discounting of bills of exchange, drawn in good faith against actually existing values, and the discounting of commercial paper actually owned by the persons negotiating the bills of exchange or commercial paper shall not be considered as the lending of money.

(b) Loans or obligations shall not be subject to any limitation under this section, based upon such capital and surplus or such unimpaired capital and unimpaired surplus, to the extent that such capital and surplus or such unimpaired capital and unimpaired surplus are secured or covered by guaranties, or by commitments or agreements to take over or to purchase such capital and surplus or such unimpaired capital and unimpaired surplus, made by any federal reserve bank or by the United States Government or any authorized agency thereof, including any corporation wholly owned directly or indirectly by the United States, or general obligations of any state of the United States or any political subdivision of the state. The phrase general obligation of any state or any political subdivision of the state means an obligation supported by the full faith and credit of an obligor possessing general powers of taxation, including property taxation, but does not include municipal revenue bonds and sanitary and improvement district warrants which are subject to the limitations set forth in this section.

(c) Any bank may subscribe to, invest in, purchase, and own single-family mortgages secured by the Federal Housing Administration or the United States Department of Veterans Affairs and mortgage-backed certificates of the Government National Mortgage Association which are guaranteed as to payment of principal and interest by the Government National Mortgage Association. Such mortgages and certificates shall not be subject under this section to any limitation based upon such capital and surplus or such unimpaired capital and unimpaired surplus.

(d) Obligations representing loans to any national banking association or to any banking institution organized under the laws of any state, when such loans are approved by the director by rule and regulation or otherwise, shall not be subject under this section to any limitation based upon such capital and surplus or such unimpaired capital and unimpaired surplus.

(e) Loans or extensions of credit secured by a segregated deposit account in the lending bank shall not be subject under this section to any limitation based on such capital and surplus or such unimpaired capital and unimpaired surplus. The director may adopt and promulgate rules and regulations governing the terms and conditions of such security interest and segregated deposit account.

(f) For the purpose of determining lending limits, partnerships shall not be treated as separate entities. Each individual shall be charged with his or her personal debt plus the debt of every partnership in which he or she is a partner, except that for purposes of this section (a) an individual shall only be charged with the debt of any limited partnership in which he or she is a partner to the extent that the terms of the limited partnership agreement provide that such individual is to be held liable for the debts or actions of such limited partnership and (b) no individual shall be charged with the debt of any general partnership in which he or she is a partner beyond the extent to which (i) his or her liability for such partnership debt is limited by the terms of a contract or other written agreement between the bank and such individual and (ii) any personal debt of such individual is incurred for the use and benefit of such general partnership.

(3) A loan made within lending limits at the initial time the loan was made may be renewed, extended, or serviced without regard to changes in the lending limit of a bank following the initial extension of the loan if (a) the renewal, extension, or servicing of the loan does not result in the extension of funds beyond the initial amount of the loan or (b) the accrued interest on the loan is not added to the original amount of the loan in the process of renewal, extension, or servicing.

(4) Any bank may purchase or take an interest in life insurance contracts for any purpose incidental to the business of banking. A bank's purchase of any life insurance contract, as measured by its cash surrender value, from any one life insurance company shall not at any time exceed twenty-five percent of the paid-up capital, surplus, and capital notes and debentures of such bank or fifteen percent of the unimpaired capital and unimpaired surplus of such bank, whichever is greater. A bank's purchase of life insurance contracts, as measured by their cash surrender values, in the aggregate from all life insurance companies shall not at any time exceed thirty-five percent of the paid-up capital, surplus, undivided profits, and capital notes and debentures of such bank. The limitations under this subsection on a bank's purchase of life

insurance contracts, in the aggregate from all life insurance companies, shall not apply to any contract purchased prior to April 5, 1994.

(5) On and after January 21, 2013, the director has the authority to determine the manner and extent to which credit exposure resulting from derivative transactions, repurchase agreements, reverse repurchase agreements, securities lending transactions, and securities borrowing transactions shall be taken into account for purposes of determining compliance with this section. In making such determinations, the director may, but is not required to, act by rule and regulation or order.

(6) For purposes of this section:

(a) Derivative transaction means any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets;

(b) Loan includes:

(i) All direct and indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of that person;

(ii) To the extent specified by rule and regulation or order of the director, any liability of a state bank to advance funds to or on behalf of a person pursuant to a contractual commitment; and

(iii) Any credit exposure to a person arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the bank and the person; and

(c) Unimpaired capital and unimpaired surplus means:

(i) For qualifying banks that have elected to use the community bank leverage ratio framework, as set forth under the Capital Adequacy Standards of the appropriate federal banking agency:

(A) The bank's tier 1 capital as reported according to the capital guidelines of the appropriate federal banking agency; and

(B) The bank's allowance for loan and lease losses or allowance for credit losses, as applicable, as reported in the most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3), as such section existed on January 1, 2022; and

(ii) For all other banks:

(A) The bank's tier 1 and tier 2 capital included in the bank's risk-based capital under the capital guidelines of the appropriate federal banking agency, based on the bank's most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3), as such section existed on January 1, 2022; and

(B) The balance of the bank's allowance for loan and lease losses not included in the bank's tier 2 capital for purposes of the calculation of risk-based capital by the appropriate federal banking agency, based on the bank's most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3), as such section existed on January 1, 2022.

(7) Notwithstanding the provisions of section 8-1,140, the director may, by order, deny or limit the inclusion of goodwill in the calculation of a bank's

unimpaired capital and unimpaired surplus or in the calculation of a bank's paid-up capital and surplus.

Source: Laws 1909, c. 10, § 33, p. 81; R.S.1913, § 312; Laws 1919, c. 190, tit. V, art. XVI, § 33, p. 698; Laws 1921, c. 313, § 1, p. 1002; C.S.1922, § 8013; Laws 1923, c. 191, § 45, p. 461; C.S.1929, § 8-150; Laws 1933, c. 18, § 33, p. 151; C.S.Supp.,1941, § 8-150; Laws 1943, c. 9, § 1(1), p. 67; R.S.1943, § 8-150; Laws 1959, c. 15, § 14, p. 137; R.R.S.1943, § 8-150; Laws 1963, c. 29, § 41, p. 151; Laws 1965, c. 28, § 3, p. 201; Laws 1969, c. 35, § 1, p. 241; Laws 1972, LB 1151, § 1; Laws 1973, LB 164, § 13; Laws 1986, LB 983, § 2; Laws 1987, LB 753, § 1; Laws 1988, LB 788, § 1; Laws 1990, LB 956, § 2; Laws 1993, LB 81, § 3; Laws 1993, LB 121, § 87; Laws 1994, LB 979, § 2; Laws 1999, LB 396, § 7; Laws 2006, LB 876, § 8; Laws 2012, LB963, § 1; Laws 2017, LB140, § 38; Laws 2020, LB909, § 3; Laws 2021, LB363, § 2; Laws 2022, LB707, § 10.
Operative date April 19, 2022.

A violation of this section does not nullify a bank loan which exceeds the statutory limit; status as a loan in excess of a statutory limit is not a defense for a debtor or the debtor's guarantor in an action by a bank to recover the statutorily excessive loan. Schuyler State Bank v. Cech, 228 Neb. 588, 423 N.W.2d 464 (1988).

Language of this section including partnership within its purview contrasted with section 8-140 before 1931 amendment. State v. Pielsticker, 118 Neb. 419, 225 N.W. 51 (1929).

Excessive borrower cannot avail himself of this section to defeat collection of his debt. Bank of College View v. Nelson, 106 Neb. 129, 183 N.W. 100 (1921).

8-142 Loans; excessive amount; violations; penalty.

Any officer, employee, director, or agent of any bank who knowingly violates or knowingly permits a violation of section 8-141 is guilty of:

(1) A Class IV felony when the violation, either separately or as part of one scheme or course of conduct, results in the insolvency of the bank;

(2) A Class I misdemeanor when the violation, either separately or as part of one scheme or course of conduct, (a) results in a monetary loss to the bank of over twenty thousand dollars or (b) exceeds the authorized limit under section 8-141 by forty thousand dollars or more;

(3) A Class II misdemeanor when the violation, either separately or as part of one scheme or course of conduct, (a) results in a monetary loss to the bank of ten thousand dollars or more, but not more than twenty thousand dollars, or (b) exceeds the authorized limit under section 8-141 by twenty thousand dollars or more, but less than forty thousand dollars; or

(4) A Class III misdemeanor when the violation, either separately or as part of one scheme or course of conduct, (a) results in no monetary loss to the bank or a monetary loss to the bank of less than ten thousand dollars, or (b) exceeds the authorized limit under section 8-141 by ten thousand dollars or more, but less than twenty thousand dollars.

Source: Laws 1909, c. 10, § 33, p. 82; R.S.1913, § 312; Laws 1919, c. 190, tit. V, art. XVI, § 33, p. 698; Laws 1921, c. 313, § 1, p. 1002; C.S.1922, § 8013; Laws 1923, c. 191, § 45, p. 461; C.S.1929, § 8-150; Laws 1933, c. 18, § 33, p. 152; C.S.Supp.,1941, § 8-150; Laws 1943, c. 9, § 1(2), p. 68; R.S.1943, § 8-151; Laws 1963, c. 29, § 42, p. 152; Laws 1977, LB 40, § 47; Laws 2010, LB890, § 2.

8-143 Loans; excessive amount; violations; forfeiture of charter; directors' personal liability.

If the directors of any bank knowingly violate or knowingly permit any of the officers, employees, or agents of the bank to violate section 8-141, all rights, privileges, and franchises of the bank shall be forfeited. Before the charter of the bank is declared forfeited, the violation shall be determined and adjudged by a court of competent jurisdiction in an action brought for that purpose by the Director of Banking and Finance in his or her own name. In case of such violation, every director of the bank who participated in or knowingly assented to the violation or permission to violate section 8-141 shall be liable in his or her personal and individual capacity for all damages which the bank, its shareholders, or any other person has sustained in consequence of such violation.

Source: Laws 1923, c. 191, § 45, p. 461; C.S.1929, § 8-150; Laws 1933, c. 18, § 33, p. 152; C.S.Supp.,1941, § 8-150; Laws 1943, c. 9, § 1(3), p. 68; R.S.1943, § 8-152; Laws 1959, c. 15, § 15, p. 138; R.R.S. 1943, § 8-152; Laws 1963, c. 29, § 43, p. 152; Laws 2010, LB890, § 3; Laws 2017, LB140, § 39.

To state a cause of action under this section against bank directors, a plaintiff must factually allege that (1) the loan exceeds the limit imposed by section 8-141; (2) the directors participated in or knowingly assented to the violation of section 8-141; (3) the plaintiff is a person entitled to relief under this section; and (4) the plaintiff has sustained damages as the result of the excessive loan. Schuyler State Bank v. Cech, 228 Neb. 588, 423 N.W.2d 464 (1988).

That part of this section imposing personal liability upon bank directors for damages sustained as the result of knowingly making excessive loans is remedial in character, and a cause of action therefor is complete the moment the excessive loan is made. Department of Banking v. McMullen, 134 Neb. 338, 278 N.W. 551 (1938).

This section bearing penalty contrasted with section 8-147. State ex rel. Davis v. Farmers State Bank of Winside, 112 Neb. 597, 200 N.W. 173 (1924).

8-143.01 Extension of credit; limits; written report; credit report; violation; penalty; powers of director.

(1) No bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons in an amount that, when aggregated with the amount of all other extensions of credit by the bank to that person and to all related interests of that person, exceeds the higher of twenty-five thousand dollars or five percent of the bank's unimpaired capital and unimpaired surplus unless (a) the extension of credit has been approved in advance by a majority vote of the entire board of directors of the bank, a record of which shall be made and kept as a part of the records of such bank, and (b) the interested party has abstained from participating directly or indirectly in such vote.

(2) No bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons in an amount that, when aggregated with the amount of all other extensions of credit by the bank to that person and to all related interests of that person, exceeds five hundred thousand dollars except by complying with the requirements of subdivisions (1)(a) and (b) of this section.

(3) No bank shall extend credit to any of its executive officers, and no such executive officer shall borrow from or otherwise become indebted to his or her bank, except in the amounts and for the purposes set forth in subsection (4) of this section.

(4) A bank shall be authorized to extend credit to any of its executive officers:

(a) In any amount to finance the education of such executive officer's children;

(b)(i) In any amount to finance or refinance the purchase, construction, maintenance, or improvement of a residence of such executive officer if the extension of credit is secured by a first lien on the residence and the residence is owned or is expected to be owned after the extension of credit by the executive officer and (ii) in the case of a refinancing, only the amount of the refinancing used to repay the original extension of credit, together with the closing costs of the refinancing, and any additional amount thereof used for any of the purposes enumerated in this subdivision are included within this category of credit;

(c) In any amount if the extension of credit is (i) secured by a perfected security interest in bonds, notes, certificates of indebtedness, or treasury bills of the United States or in other such obligations fully guaranteed as to principal and interest by the United States, (ii) secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States, or (iii) secured by a perfected security interest in a segregated deposit account in the lending bank; or

(d) For any other purpose not specified in subdivisions (a), (b), and (c) of this subsection if the aggregate amount of such other extensions of credit to such executive officer does not exceed, at any one time, the greater of two and one-half percent of the bank's unimpaired capital and unimpaired surplus or twenty-five thousand dollars, but in no event greater than one hundred thousand dollars or the amount of the bank's lending limit as prescribed in section 8-141, whichever is less.

(5)(a) Except as provided in subdivision (b) or (c) of this subsection, any executive officer shall make, on an annual basis, a written report to the board of directors of the bank of which he or she is an executive officer stating the date and amount of all loans or indebtedness on which he or she is a borrower, cosigner, or guarantor, the security therefor, and the purpose for which the proceeds have been or are to be used.

(b) Except as provided in subdivision (c) of this subsection, in lieu of the reports required by subdivision (a) of this subsection, the board of directors of a bank may obtain a credit report from a recognized credit agency, on an annual basis, for any or all of its executive officers.

(c) Subdivisions (a) and (b) of this subsection do not apply to any executive officer if such officer is excluded by a resolution of the board of directors or by the bylaws of the bank from participating in the major policymaking functions of the bank and does not actually participate in the major policymaking functions of the bank.

(6) No bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons in an amount that, when aggregated with the amount of all other extensions of credit by the bank to that person and to all related interests of that person, exceeds the lending limit of the bank as prescribed in section 8-141.

(7)(a) Except as provided in subdivision (b) of this subsection, no bank shall extend credit to any of its executive officers, directors, or principal shareholders or to any related interest of such persons unless the extension of credit (i) is made on substantially the same terms, including interest rates and collateral,

as, and following credit-underwriting procedures that are not less stringent than, those prevailing at the time for comparable transactions by the bank with other persons that are not covered by this section and who are not employed by the bank and (ii) does not involve more than the normal risk of repayment or present other unfavorable features.

(b) Nothing in subdivision (a) of this subsection shall prohibit any extension of credit made by a bank pursuant to a benefit or compensation program under the provisions of 12 C.F.R. 215.4(a)(2), as such regulation existed on January 1, 2022.

(8) For purposes of this section:

(a) Executive officer means a person who participates or has authority to participate, other than in the capacity of director, in the major policymaking functions of the bank, whether or not the officer has an official title, the title designates such officer as an assistant, or such officer is serving without salary or other compensation. Executive officer includes the chairperson of the board of directors, the president, all vice presidents, the cashier, the corporate secretary, and the treasurer, unless the executive officer is excluded by a resolution of the board of directors or by the bylaws of the bank from participating, other than in the capacity of director, in the major policymaking functions of the bank, and the executive officer does not actually participate in such functions. A manager or assistant manager of a branch of a bank shall not be considered to be an executive officer unless such individual participates or is authorized to participate in the major policymaking functions of the bank; and

(b) Unimpaired capital and unimpaired surplus means the sum of:

(i) The total equity capital of the bank reported on its most recent consolidated report of condition filed under section 8-166;

(ii) Any subordinated notes and debentures approved as an addition to the bank's capital structure by the appropriate federal banking agency; and

(iii) Any valuation reserves created by charges to the bank's income reported on its most recent consolidated report of condition filed under section 8-166.

(9) Any executive officer, director, or principal shareholder of a bank or any other person who intentionally violates this section or who aids, abets, or assists in a violation of this section is guilty of a Class IV felony.

(10) The Director of Banking and Finance may adopt and promulgate rules and regulations to carry out this section, including rules and regulations defining or further defining terms used in this section, consistent with the provisions of 12 U.S.C. 84 and implementing Regulation O as such section and regulation existed on January 1, 2022.

Source: Laws 1994, LB 611, § 2; Laws 1997, LB 137, § 4; Laws 1999, LB 396, § 8; Laws 2001, LB 53, § 1; Laws 2005, LB 533, § 7; Laws 2008, LB851, § 5; Laws 2017, LB140, § 40; Laws 2018, LB812, § 2; Laws 2019, LB258, § 2; Laws 2020, LB909, § 4; Laws 2021, LB363, § 3; Laws 2022, LB707, § 11.
Operative date April 19, 2022.

8-144 Loans or extension of credit; improper; willful and knowing violation; liability.

Any officer or employee of any bank who willfully and knowingly violates any provision of sections 8-141 to 8-143.01 shall be liable under his or her bond for any loss to the bank resulting therefrom.

Source: Laws 1909, c. 10, § 40, p. 86; R.S.1913, § 319; Laws 1919, c. 190, tit. V, art. XVI, § 40, p. 701; C.S.1922, § 8020; C.S.1929, § 8-159; R.S.1943, § 8-153; Laws 1963, c. 29, § 44, p. 152; Laws 1994, LB 611, § 3; Laws 2017, LB140, § 41.

8-145 Loans; other improper solicitation or receipt of benefits; unlawful inducement; penalty.

Any stockholder or director, officer, agent, or employee of any bank who, for the use or benefit of himself or herself or any person other than the bank, solicits, asks for, or receives or agrees to receive from any person any gift or compensation or reward or inducement of any kind for (1) procuring or endeavoring to procure any loan from such bank to any person, (2) procuring or endeavoring to procure the purchase by such bank from any person of any negotiable or nonnegotiable instrument of any kind by discount or otherwise, (3) procuring or endeavoring to procure the purchase by such bank from any person of any real or personal property of any kind, or (4) procuring or endeavoring to procure such bank to permit any person to overdraw his or her account with such bank, is guilty of a Class I misdemeanor.

Source: Laws 1923, c. 191, § 40, p. 458; C.S.1929, § 8-151; R.S.1943, § 8-154; Laws 1963, c. 29, § 45, p. 152; Laws 1977, LB 40, § 48; Laws 2017, LB140, § 42.

8-146 Repealed. Laws 1972, LB 1358, § 1.

8-147 Direct borrowing of bank; loans and investments; limitation on amounts; illegal transfer of assets; violation; penalty.

(1) The aggregate amount of direct borrowing of any bank shall at no time exceed the amount of its paid-up capital, surplus, undivided profits, capital reserves, capital notes, and debentures, except with the prior written permission of the director. Direct borrowing does not include:

(a) Money borrowed on the bank's bills payable secured by (i) direct or indirect obligations of the United States Government or (ii) obligations guaranteed by agencies of the United States Government;

(b) Rediscounts, bills payable, borrowings, or other liabilities with or to the federal reserve system or the federal reserve banks, if the bank is a member of the federal reserve system;

(c) Rediscounts, bills payable, borrowings, or other liabilities with or to the Federal Home Loan Bank System or the Federal Home Loan Banks, if the bank is a member of the Federal Home Loan Bank System; or

(d) Rediscounts, bills payable, borrowings, or other liabilities with or to the federal intermediate credit banks.

(2) The aggregate amount of the loans and investments of any bank shall at no time exceed fifteen times the amount of its paid-up capital, surplus, undivided profits, capital reserves, capital notes, and debentures. For purposes of this section, loans and investments shall not include a bank's (a) cash reserves, (b) real estate and buildings at which the bank is authorized to conduct its

business, (c) furniture and fixtures, and (d) obligations set forth in subdivisions (1)(a), (b), and (c) of this section.

(3) Any bank becoming a member of the federal reserve system or the Federal Home Loan Bank System shall have the same privileges to the same extent as national banks.

(4) With the prior written permission of the director, a bank may rediscount paper in an amount in excess of its paid-up capital stock.

(5) Any transfer of assets of a bank in violation of this section is void as against the creditors of the bank.

(6) Any officer, director, or employee of a bank who does, or permits to be done, any act in violation of this section and any other person who knowingly assists in the violation of this section is guilty of a Class IV felony.

Source: Laws 1909, c. 10, § 24, p. 78; R.S.1913, § 303; Laws 1919, c. 190, tit. V, art. XVI, § 24, p. 695; Laws 1922, Spec. Sess., c. 6, § 1, p. 66; C.S.1922, § 8005; Laws 1923, c. 190, § 1, p. 435; C.S.1929, § 8-136; Laws 1933, c. 18, § 25, p. 147; C.S.Supp.,1941, § 8-136; R.S.1943, § 8-138; Laws 1945, c. 8, § 1, p. 105; Laws 1959, c. 15, § 11, p. 136; R.R.S.1943, § 8-138; Laws 1963, c. 29, § 47, p. 153; Laws 1969, c. 36, § 1, p. 243; Laws 1973, LB 143, § 1; Laws 1977, LB 40, § 49; Laws 1982, LB 779, § 1; Laws 1983, LB 177, § 1; Laws 1994, LB 979, § 3; Laws 1996, LB 1053, § 5; Laws 1997, LB 2, § 1; Laws 2017, LB140, § 43.

Query made by court as to whether borrowing of money upon behalf of bank through execution of individual obligations of directors to third parties was a transaction in violation of this section. State ex rel. Sorensen v. Farmers State Bank of Wood River, 127 Neb. 139, 254 N.W. 728 (1934).

Bank may rediscount note and mortgage beyond the limits provided in this section by permission of the banking department. Luikart v. Hunt, 124 Neb. 642, 247 N.W. 790 (1933).

Execution by bank officer of bills payable in behalf of bank in excess of the amount of its capital stock and surplus justified conviction under this section. Hinds v. State, 121 Neb. 508, 237 N.W. 617 (1931).

Prior to amendment of this section in 1923, in absence of provision for penalty, loan to bank made in violation of this section was not void, and where contract was completely executed by lending of money and execution and delivery of notes therefor, borrowing bank could not refuse payment of notes. State ex rel. Davis v. Farmers State Bank of Winside, 112 Neb. 597, 200 N.W. 173 (1924).

8-148 Banks; own capital stock; loans on, purchase, or use as collateral by bank prohibited; exceptions.

(1) Except as provided in subsection (2) or (3) of this section, a bank shall not make any loan or discount on the security of the shares of its own capital stock or the capital stock of its holding company, if any, be the purchaser or holder of any such shares, or purchase any securities convertible into stock or, except as provided in this section and sections 8-148.01, 8-148.02, 8-148.04, 8-148.06, 8-149, and 21-2109, the shares of any corporation, unless such security or purchase is necessary to prevent loss upon a debt previously contracted in good faith. Such stock so purchased or acquired shall, within six months after the time of its purchase unless written approval of a longer holding period is obtained from the director, be sold or disposed of at public or private sale, or in default thereof, a receiver may be appointed to close up the business of the bank, except that such stock, if shares of another bank or a bank holding company, shall be sold or disposed of as required by the director. In no case shall the amount of stock so held at any one time exceed ten percent of the paid-up capital of such bank.

(2) Any bank may subscribe to, invest, purchase, and own shares of investment companies registered under the Investment Company Act of 1940 when the investment companies' assets consist of and are limited to obligations that

are eligible for investment by the bank. The director may adopt and promulgate rules and regulations governing the amounts, terms, and conditions of such subscriptions, investments, purchases, and ownership.

(3) Any bank may subscribe to, invest, purchase, and own Student Loan Marketing Association stock, Government National Mortgage Association stock, Federal National Mortgage Association stock, Federal Agricultural Mortgage Corporation stock, Federal Home Loan Mortgage Corporation stock, or stock issued by any authorized agency of the United States Government, including any corporation or enterprise wholly owned directly or indirectly by the United States, or with the authority to borrow directly from the United States treasury, which the director has approved by rule and regulation or order. The director may adopt and promulgate rules and regulations governing the amounts, terms, and conditions of such subscriptions, investments, purchases, and ownerships, except that a bank shall not obligate more than five percent of its capital, surplus, undivided profits, and unencumbered reserves for such stock.

Source: Laws 1909, c. 10, § 25, p. 78; R.S.1913, § 304; Laws 1919, c. 190, tit. V, art. XVI, § 25, p. 695; C.S.1922, § 8006; C.S.1929, § 8-137; R.S.1943, § 8-139; Laws 1963, c. 29, § 48, p. 154; Laws 1973, LB 164, § 14; Laws 1985, LB 165, § 1; Laws 1987, LB 532, § 1; Laws 1987, LB 453, § 2; Laws 1987, LB 237, § 1; Laws 1988, LB 996, § 2; Laws 1993, LB 81, § 4; Laws 2003, LB 217, § 6; Laws 2005, LB 533, § 8; Laws 2017, LB140, § 44.

Except to prevent loss upon a debt previously contracted in good faith, a state bank is without power, directly or through agent, to buy or hold capital stock of another bank. Cooper v. Bane, 110 Neb. 83, 196 N.W. 119 (1923).

8-148.01 Corporation operating a computer center; investment of funds; limitation.

Any bank may invest not more than ten percent of its capital and surplus either in stock of a corporation operating a computer center or directly, alone or with others, in a computer center. With written approval of the director, such additional percentage of its capital and surplus may be so invested as the director shall approve. Such investment is not subject to the provisions of sections 8-148, 8-149, and 8-150.

Source: Laws 1967, c. 18, § 1, p. 116; Laws 1993, LB 81, § 5; Laws 2017, LB140, § 45.

8-148.02 Banks; subscribe, invest, buy, and own stock; agricultural credit corporation; livestock loan company; limitation.

Any bank may subscribe to, invest, buy, and own stock in any agricultural credit corporation or livestock loan company, or its affiliate, the principal business of which corporation must be the extension of short and intermediate term credit to farmers and ranchers, including partnerships, limited liability companies, and corporations engaged in farming and ranching, for agricultural purposes, including the breeding, raising, fattening, or marketing of livestock. The bank shall not obligate more than thirty-five percent of its paid-up capital, surplus, undivided profits, capital reserves, capital notes, and debentures for such purposes, except that if the bank owns at least eighty percent of the voting stock of such agricultural credit corporation or livestock loan company, the limitation on the amount of obligation for such purposes shall not apply. Such

subscription, investment, possession, or ownership is not subject to the provisions of sections 8-148, 8-149, and 8-150.

Source: Laws 1969, c. 30, § 1, p. 235; Laws 1971, LB 720, § 1; Laws 1974, LB 845, § 1; Laws 1982, LB 779, § 2; Laws 1993, LB 121, § 88; Laws 2017, LB140, § 46.

8-148.03 Bonds of the State of Israel; securities; banks; savings and loan associations, insurance companies, credit unions; invest funds.

Bonds of the State of Israel are hereby made securities in which banks, savings and loan associations, insurance companies, and credit unions may properly and legally invest funds.

Source: Laws 1974, LB 845, § 3.

8-148.04 Community development investments; conditions.

(1) Any bank may make a community development investment or investments either directly or through purchasing an equity interest in or an evidence of indebtedness of an entity primarily engaged in making community development investments, if the following conditions are satisfied:

(a) An investment under this subsection does not expose the bank to unlimited liability; and

(b) The bank's aggregate investment under this subsection does not exceed fifteen percent of its capital and surplus. If the bank's investment in any one entity will exceed five percent of its capital and surplus, the prior written approval of the director must be obtained.

(2) Nothing in this section prevents a bank from charging off as a contribution an investment made pursuant to subsection (1) of this section.

(3) The subscription, investment, possession, or ownership is not subject to sections 8-148, 8-149, and 8-150.

(4) For purposes of this section, community development investments means investments of a predominantly civic, community, or public nature and not merely private and entrepreneurial.

Source: Laws 1993, LB 81, § 6; Laws 1994, LB 979, § 4; Laws 1996, LB 1184, § 1; Laws 2006, LB 876, § 9; Laws 2007, LB124, § 4; Laws 2017, LB140, § 47.

8-148.05 Qualified Canadian Government obligations; investment.

(1) Any bank may deal in, underwrite, and purchase for its own account qualified Canadian Government obligations to the same extent that such bank may deal in, underwrite, and purchase for its own account obligations of the United States Government or general obligations of any state thereof.

(2) For purposes of this section:

(a) Qualified Canadian Government obligation means any debt obligation which is backed by Canada or any Canadian province to a degree which is comparable to the liability of the United States Government or any state thereof for any obligation which is backed by the full faith and credit of the United States Government or any state thereof. Qualified Canadian Government obligations also includes any debt obligation of any agent of Canada or any Canadian province if:

(i) The obligation of the agent is assumed in such agent's capacity as agent for Canada or any Canadian province; and

(ii) Canada or any Canadian province, on whose behalf such agent is acting with respect to such obligation, is ultimately and unconditionally liable for such obligation; and

(b) The term Canadian province means a province of Canada and includes the Yukon Territory and the Northwest Territories and their successors.

Source: Laws 1993, LB 423, § 1; Laws 2017, LB140, § 48.

8-148.06 Banks; subscribe, invest, buy, own, and sell stock; bank subsidiaries; limitation.

Any bank may subscribe to, invest in, buy, own, and sell the common stock, obligations, and other securities of one or more bank subsidiaries organized under the laws of the State of Nebraska. A bank shall not obligate more than thirty-five percent of its paid-up capital stock, surplus, undivided profits, capital reserves, and capital notes and debentures for such purposes. An additional percentage of its paid-up capital stock, surplus, undivided profits, capital reserves, and capital notes and debentures may be invested with written approval of the director. The subscription, investment, possession, or ownership is not subject to sections 8-148, 8-149, and 8-150.

Source: Laws 1995, LB 384, § 2; Laws 2022, LB707, § 12.
Operative date July 21, 2022.

8-148.07 Bank subsidiary; authorized activities.

A bank subsidiary shall engage in only those activities:

(1) Prescribed under subdivision (6) of section 8-101.03; or

(2) That its bank shareholder, shareholders, member, members, investor, or investors are authorized to perform under the laws of this state and shall engage in those activities only at locations in this state where the bank shareholder, shareholders, member, members, investor, or investors could be authorized to perform activities.

Source: Laws 1995, LB 384, § 3; Laws 2000, LB 932, § 2; Laws 2017, LB140, § 49; Laws 2022, LB707, § 13.
Operative date July 21, 2022.

8-148.08 Bank subsidiary; examination and regulation.

A bank subsidiary is subject to examination and regulation by the department to the same extent as its bank shareholder, shareholders, member, members, investor, or investors.

Source: Laws 1995, LB 384, § 4; Laws 2017, LB140, § 50; Laws 2022, LB707, § 14.
Operative date July 21, 2022.

8-148.09 Bank; financial institution; merger, acquisition, or asset acquisition; transactions authorized.

(1) Any bank may subscribe to, invest, buy, and own stock of another financial institution if the transaction is part of the merger or consolidation of the other financial institution with the acquiring bank, or the acquisition of

substantially all of the assets of the other financial institution by the acquiring bank, and if:

(a) The merger, consolidation, or asset acquisition occurs on the same day as the acquisition of the shares of the other financial institution and the other financial institution will not be operated by the acquiring bank as a separate entity; and

(b) The transaction receives the prior approval of the director.

(2) Any bank may subscribe to, invest, buy, and own stock of a company controlling another financial institution if the transaction is part of (a) the merger or consolidation of the company controlling the other financial institution with the company controlling the acquiring bank, or the acquisition of substantially all of the assets of the company controlling the other financial institution by the company controlling the acquiring bank, and (b) the merger or consolidation of the other financial institution with the acquiring bank, or the acquisition of substantially all of the assets of the other financial institution by the acquiring bank, and if:

(i) The merger, consolidation, or asset acquisition occurs on the same day as the acquisition of the shares of the company controlling the other financial institution, and neither the company controlling the other financial institution nor the other financial institution will be operated by the acquiring bank as a separate entity; and

(ii) The transaction receives the prior approval of the director.

(3) Any bank that acquires stock of another financial institution or company controlling another financial institution pursuant to this section shall not be deemed to be a bank holding company for purposes of the Nebraska Bank Holding Company Act of 1995, so long as the conditions of subdivision (1)(a) or (2)(b)(i) of this section, as applicable, are satisfied.

(4) For purposes of this section, financial institution means a bank, savings bank, credit card bank, savings and loan association, digital asset depository institution, building and loan association, trust company, or credit union organized under the laws of any state or organized under the laws of the United States.

Source: Laws 2017, LB140, § 51; Laws 2021, LB649, § 37.

8-148.10 Digital asset depository institution; investment; conditions.

Any financial institution as defined in section 8-3003 other than a digital asset depository institution as defined in section 8-3003 may invest not more than ten percent of its capital and surplus either in stock of a corporation operating a digital asset depository institution or directly, alone, or with others, in a digital asset depository institution. With written approval of the director, such additional percentage of its capital and surplus may be so invested as the director shall approve. Such investment is not subject to sections 8-148, 8-149, and 8-150.

Source: Laws 2021, LB649, § 39.

8-149 Banks; investment in bank premises or holding corporations; loans upon security of stock of holding corporation; written approval of Director of Banking and Finance required; when.

(1) No bank shall, without the written approval of the director, (a) invest in bank premises or in the stock, bonds, debentures, or other such obligations of any corporation holding the premises of such bank, or (b) make loans to or upon the security of the stock of any such corporation, if the aggregate of all such investments and loans will exceed the paid-up capital stock, surplus, and capital notes and debentures of such bank. Stock held as authorized by this section shall not be subject to the provisions of section 8-148.

(2) Investments by a bank in bank premises necessary for the transaction of its business shall include, but not be limited to:

(a) Premises that are owned and occupied, or to be occupied if under construction, by the bank, its branches, or its consolidated subsidiaries;

(b) Real estate acquired and intended, in good faith, for use in future expansions;

(c) Parking facilities that are used by customers or employees of the bank, its branches, or its consolidated subsidiaries;

(d) Residential property for the use of officers or employees of the bank, its branches, or its consolidated subsidiaries who are:

(i) Located in areas where suitable housing at a reasonable price is not readily available; or

(ii) Temporarily assigned to a foreign country, including foreign nationals temporarily assigned to the United States; and

(e) Property for the use of officers, employees, or customers of the bank, its branches, and its consolidated subsidiaries or for the temporary lodging of such persons in areas where suitable commercial lodging is not readily available, if the purchase and operation of the property qualifies as a deductible business expense for federal tax purposes.

Source: Laws 1963, c. 29, § 49, p. 155; Laws 1973, LB 164, § 15; Laws 1997, LB 137, § 5; Laws 2007, LB124, § 5.

8-150 Banks; real estate; power to acquire and convey; limitations and conditions.

(1) Any bank may purchase, hold, and convey real estate that is (a) acquired pursuant to section 8-149, (b) conveyed to it for debts due the bank, or (c) purchased at sale under judgments, decrees, deeds of trust, or mortgages held by the bank or purchased to secure debts due to it upon its securities, but the bank at such sale shall not bid a larger amount than required to satisfy such judgments or decrees with costs. Real estate acquired in satisfaction of debts or at a sale upon judgments, decrees, deeds of trust, or mortgages shall be sold at private or public sale within five years unless authority shall be given in writing by the director to hold it for a longer period.

(2) The total amount of real estate held by any bank for purposes of subdivisions (1)(b) and (c) of this section shall not be entered on the records of the bank as an asset at a value greater than (a) the unpaid balance of the debts due the bank plus its out-of-pocket expenses incurred in acquiring clear title, (b) its judgments or decrees with costs, or (c) the appraised value of such real estate, whichever is less, except that a bank may expend funds as necessary for repairs or to complete a project in order to market such property.

(3) A bank may utilize property acquired by it under subdivisions (1)(b) and (c) of this section in any manner authorized by the director.

Source: Laws 1909, c. 10, § 29, p. 80; R.S.1913, § 308; Laws 1919, c. 190, tit. V, art. XVI, § 29, p. 697; C.S.1922, § 8009-a; Laws 1925, c. 30, § 10, p. 128; C.S.1929, § 8-145; Laws 1933, c. 18, § 29, p. 149; C.S.Supp.,1941, § 8-145; R.S.1943, § 8-145; Laws 1959, c. 15, § 13, p. 137; R.R.S.1943, § 8-145; Laws 1963, c. 29, § 50, p. 155; Laws 1985, LB 653, § 5; Laws 2017, LB140, § 52.

8-151 Repealed. Laws 2017, LB140, § 163.

8-152 Banks; loans on real estate; authorized.

A bank may make loans secured by real estate or may participate with other financial institutions in such loans whether such participation occurs at the inception of the loan or at any time after the loan was made.

Source: Laws 1963, c. 29, § 52, p. 156; Laws 1965, c. 28, § 4, p. 202; Laws 1972, LB 1226, § 1; Laws 1973, LB 164, § 16; Laws 1974, LB 845, § 2; Laws 1979, LB 220, § 6; Laws 1982, LB 779, § 3; Laws 1994, LB 979, § 5; Laws 2017, LB140, § 53.

8-153 Checks; preprinted information; cleared at par; exception.

All checks, unless sent to banks as special collection items, shall have preprinted the magnetically encoded routing and transit symbol of the bank and either the name of the maker or the magnetically encoded account number of the maker. Except for checks sent to banks as special collection items or checks presented for payment by the payee in person, all checks drawn on any bank shall be cleared at par by the bank on which they are drawn. The term at par applies only to the settlement of checks between collecting and paying or remitting banks and does not apply to or prohibit a bank from deducting a fee from the face amount of the check for paying the check if the check is presented to the bank by the payee in person.

Source: Laws 1945, c. 11, § 1, p. 110; R.R.S.1943, § 8-163.01; Laws 1963, c. 29, § 53, p. 157; Laws 1979, LB 269, § 1; Laws 2015, LB155, § 3; Laws 2017, LB140, § 54.

Special collection items are those which in fact actually require the employment of unusual and individual treatment. Placek v. Edstrom, 151 Neb. 225, 37 N.W.2d 203 (1949).

Act sustained as constitutional. Placek v. Edstrom, 148 Neb. 79, 26 N.W.2d 489 (1947).

8-154 Repealed. Laws 1981, LB 199, § 1.

8-155 Repealed. Laws 2014, LB 714, § 1.

8-156 Repealed. Laws 2014, LB 714, § 1.

8-157 Branch banking; Director of Banking and Finance; powers.

(1) Except as otherwise provided in this section and section 8-2103, the general business of every bank shall be transacted at the place of business specified in its charter.

(2)(a)(i) Except as provided in subdivision (2)(a)(ii) of this section, with the approval of the director, any bank located in this state may establish and

maintain in this state an unlimited number of branches at which all banking transactions allowed by law may be made.

(ii) Any bank that owns or controls more than twenty-two percent of the total deposits in Nebraska, as described in subdivision (2)(c) of section 8-910 and computed in accordance with subsection (3) of section 8-910, or any bank that is a subsidiary of a bank holding company that owns or controls more than twenty-two percent of the total deposits in Nebraska, as described in subdivision (2)(c) of section 8-910 and computed in accordance with subsection (3) of section 8-910, shall not establish and maintain an unlimited number of branches as provided in subdivision (2)(a)(i) of this section. With the approval of the director, a bank as described in this subdivision may establish and maintain in the county in which the main office of such bank is located an unlimited number of branches at which all banking transactions allowed by law may be made, except that if the main office of such bank is located in a Class I or Class III county, such bank may establish and maintain in Class I and Class III counties an unlimited number of branches at which all banking transactions allowed by law may be made.

(iii) Any bank which establishes and maintains branches pursuant to subdivision (2)(a)(i) of this section and which subsequently becomes a bank as described in subdivision (2)(a)(ii) of this section shall not be subject to the limitations as to location of branches contained in subdivision (2)(a)(ii) of this section with regard to any such established branch and shall continue to be entitled to maintain any such established branch as if such bank had not become a bank as described in subdivision (2)(a)(ii) of this section.

(b) With the approval of the director, any bank or any branch may establish and maintain a mobile branch at which all banking transactions allowed by law may be made. Such mobile branch may consist of one or more vehicles which may transact business only within the county in which such bank or such branch is located and within counties in this state which adjoin such county.

(c) For purposes of this subsection:

(i) Class I county means a county in this state with a population of four hundred thousand or more as determined by the most recent federal decennial census;

(ii) Class II county means a county in this state with a population of at least two hundred thousand and less than four hundred thousand as determined by the most recent federal decennial census;

(iii) Class III county means a county in this state with a population of at least one hundred thousand and less than two hundred thousand as determined by the most recent federal decennial census; and

(iv) Class IV county means a county in this state with a population of less than one hundred thousand as determined by the most recent federal decennial census.

(3) With the approval of the director, a bank may establish and maintain branches acquired pursuant to section 8-1506 or 8-1516. All banking transactions allowed by law may be made at such branches.

(4) With the approval of the director, a bank may acquire the assets and assume the deposits of a branch of another financial institution in Nebraska if the acquired branch is converted to a branch of the acquiring bank. All banking

transactions allowed by law may be made at a branch acquired pursuant to this subsection.

(5) With the approval of the director, a bank may establish a branch pursuant to subdivision (6) of section 8-115.01. All banking transactions allowed by law may be made at such branch.

(6) The name given to any branch established and maintained pursuant to this section shall not be substantially similar to the name of any existing bank or branch which is unaffiliated with the newly created branch and is located in the same city, village, or county. The name of such newly created branch shall be approved by the director.

(7) A bank which has a main chartered office or an approved branch located in the State of Nebraska may, through any of its executive officers, including executive officers licensed as such pursuant to section 8-139, or designated agents, conduct a loan closing at a location other than the place of business specified in the bank's charter or any branch thereof.

(8) A bank which has a main chartered office or approved branch located in the State of Nebraska may, upon notification to the department, establish savings account programs at any elementary or secondary school, whether public or private, that has students who reside in the same city or village as the main chartered office or branch of the bank, or, if the main office of the bank is located in an unincorporated area of a county, at any school that has students who reside in the same unincorporated area. The savings account programs shall be limited to the establishment of individual student accounts and the receipt of deposits for such accounts.

(9) Upon receiving an application for a branch to be established pursuant to subdivision (2)(a) of this section, to establish a mobile branch pursuant to subdivision (2)(b) of this section, to acquire a branch of another financial institution pursuant to subsection (4) of this section, to establish or acquire a branch pursuant to subsection (1) of section 8-2103, or to move the location of an established branch other than a move made pursuant to subdivision (6) of section 8-115.01, the director shall hold a public hearing on the matter if he or she determines, in his or her discretion, that the condition of the applicant bank warrants a hearing. If the director determines that the condition of the bank does not warrant a hearing, the director shall publish a notice of the filing of the application in a newspaper of general circulation in the county where the proposed branch or mobile branch would be located, the expense of which shall be paid by the applicant bank. If the director receives any substantive objection to the proposed branch or mobile branch within fifteen days after publication of such notice, he or she shall hold a hearing on the application. Notice of a hearing held pursuant to this subsection shall be published for two consecutive weeks in a newspaper of general circulation in the county where the proposed branch or mobile branch would be located. The date for hearing the application shall not be more than ninety days after the filing of the application and not less than thirty days after the last publication of notice of hearing. The expense of any publication required by this section shall be paid by the applicant but payment shall not be a condition precedent to approval by the director.

Source: Laws 1927, c. 33, § 1, p. 153; C.S.1929, § 8-1,118; R.S.1943, § 8-1,105; Laws 1959, c. 17, § 1, p. 141; R.R.S.1943, § 8-1,105; Laws 1963, c. 29, § 57, p. 158; Laws 1973, LB 312, § 1; Laws

1975, LB 269, § 2; Laws 1977, LB 77, § 1; Laws 1983, LB 58, § 1; Laws 1983, LB 252, § 4; Laws 1984, LB 1026, § 1; Laws 1985, LB 295, § 1; Laws 1985, LB 625, § 1; Laws 1986, LB 983, § 3; Laws 1987, LB 615, § 2; Laws 1988, LB 703, § 1; Laws 1989, LB 272, § 1; Laws 1990, LB 956, § 4; Laws 1991, LB 190, § 1; Laws 1991, LB 782, § 1; Laws 1992, LB 470, § 1; Laws 1992, LB 757, § 3; Laws 1993, LB 81, § 7; Laws 1995, LB 456, § 1; Laws 1995, LB 599, § 2; Laws 1996, LB 1275, § 3; Laws 1997, LB 56, § 1; Laws 1997, LB 136, § 1; Laws 1997, LB 137, § 6; Laws 1997, LB 351, § 9; Laws 2002, LB 957, § 4; Laws 2002, LB 1089, § 2; Laws 2002, LB 1094, § 5; Laws 2003, LB 217, § 7; Laws 2005, LB 533, § 9; Laws 2008, LB851, § 6; Laws 2010, LB890, § 4; Laws 2012, LB963, § 2; Laws 2016, LB742, § 2; Laws 2016, LB751, § 3; Laws 2017, LB140, § 55.

Subsection (3) of this section does not indicate that the approval of the director of the Department of Banking and Finance absolves a bank from any obligations it may owe to the minority shareholders, that the director is required to disapprove a merger that is unfair to the minority shareholders, or that the director is empowered to require a bank to pay the fair value of a dissenter's shares. Stoneman v. United Neb. Bank, 254 Neb. 477, 577 N.W.2d 271 (1998).

Detached facility approximately one block from bank, providing drive-in and walk-in teller stations offering most banking services, is a branch bank. Nebraskans for Independent Banking, Inc. v. Omaha Nat. Bank, 530 F.2d 755 (8th Cir. 1976). (Opinion vacated and cause remanded to district court for further proceedings in light of Supreme Court per curiam opinion, 426 U.S. 310, dated June 7, 1976.)

Federal district court would not abstain from deciding whether state banking statute was properly adopted by Nebraska Legislature where analysis of the applicable Nebraska case law left no doubt that such statute was invalid. Nebraskans for Independent Banking, Inc. v. Omaha Nat. Bank, 423 F.Supp. 519 (D. Neb. 1976).

Branch banking is illegal in Nebraska. Farris v. Indian Hills Nat. Bank, 244 F.Supp. 594 (D. Neb. 1964).

8-157.01 Establishing financial institution; automatic teller machines; use; availability; user financial institution; switch; use and access; duties.

(1) Any establishing financial institution may establish and maintain any number of automatic teller machines at which all banking transactions, defined as receiving deposits of every kind and nature and crediting such to customer accounts, cashing checks and cash withdrawals, transferring funds from checking accounts to savings accounts, transferring funds from savings accounts to checking accounts, transferring funds from either checking accounts and savings accounts to accounts of other customers, transferring payments from customer accounts into accounts maintained by other customers of the financial institution or the financial institution, including preauthorized draft authority, preauthorized loans, and credit transactions, receiving payments payable at the financial institution or otherwise, account balance inquiry, and any other transaction incidental to the business of the financial institution or which will provide a benefit to the financial institution's customers or the general public, may be conducted. Any automatic teller machine owned by a nonfinancial institution third party shall be sponsored by an establishing financial institution. Neither such automatic teller machines nor the transactions conducted thereat shall be construed as the establishment of a branch or as branch banking.

(2) Any financial institution may become a user financial institution by agreeing to pay the establishing financial institution the automatic teller machine usage fee. Such agreement shall be implied by the use of such automatic teller machines.

(3)(a)(i) All automatic teller machines shall be made available on a nondiscriminating basis for use by Nebraska customers of a user financial institution and (ii) all Nebraska automatic teller machine transactions initiated by

Nebraska customers of a user financial institution shall be made on a nondiscriminating basis.

(b) It shall not be deemed discrimination if (i) an automatic teller machine does not offer the same transaction services as other automatic teller machines, (ii) there are no automatic teller machine usage fees charged between affiliate financial institutions for the use of automatic teller machines, (iii) the automatic teller machine usage fees of an establishing financial institution that authorizes and directly or indirectly routes Nebraska automatic teller machine transactions to multiple switches, all of which comply with the requirements of subdivision (3)(d) of this section, differ solely based upon the fees established by the switches, (iv) automatic teller machine usage fees differ based upon whether the transaction initiated at an automatic teller machine is subject to a surcharge or provided on a surcharge-free basis, or (v) the automatic teller machines established or sponsored by an establishing financial institution are made available for use by Nebraska customers of any user financial institution which agrees to pay the automatic teller machine usage fee and which conforms to the operating rules and technical standards established by the switch to which a Nebraska automatic teller machine transaction is directly or indirectly routed.

(c) The director, upon notice and after a hearing, may terminate or suspend the use of any automatic teller machine if he or she determines that the automatic teller machine is not made available on a nondiscriminating basis or that Nebraska automatic teller machine transactions initiated at such automatic teller machine are not made on a nondiscriminating basis.

(d) A switch (i) shall provide to all financial institutions that have a main office or approved branch located in the State of Nebraska and that conform to the operating rules and technical standards established by the switch an equal opportunity to participate in the switch for the use of and access thereto; (ii) shall be capable of operating to accept and route Nebraska automatic teller machine transactions, whether receiving data from an automatic teller machine, an establishing financial institution, or a data processing center; and (iii) shall be capable of being directly or indirectly connected to every data processing center for any automatic teller machine.

(e) The director, upon notice and after a hearing, may terminate or suspend the operation of any switch with respect to all Nebraska automatic teller machine transactions if he or she determines that the switch is not being operated in the manner required under subdivision (3)(d) of this section.

(f) Subject to the requirement for a financial institution to comply with this subsection, no user financial institution or establishing financial institution shall be required to become a member of any particular switch.

(4) Any consumer initiating an electronic funds transfer at an automatic teller machine for which an automatic teller machine surcharge will be imposed shall receive notice in accordance with the provisions of 15 U.S.C. 1693b(d)(3)(A) and (B), as such section existed on January 1, 2022. Such notice shall appear on the screen of the automatic teller machine or appear on a paper notice issued from such machine after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction.

(5) A point-of-sale terminal may be established at any point within this state by a financial institution, a group of two or more financial institutions, or a combination of a financial institution or financial institutions and a third party

or parties. Such parties may contract with a seller of goods and services or any other third party for the operation of point-of-sale terminals.

(6) A seller of goods and services or any other third party on whose premises one or more point-of-sale terminals are established shall not be, solely by virtue of such establishment, a financial institution and shall not be subject to the laws governing, or other requirements imposed on, financial institutions, except for the requirement that it faithfully perform its obligations in connection with any transaction originated at any point-of-sale terminal on its premises.

(7) Nothing in this section shall be construed to prohibit nonbank employees from assisting in transactions originated at automatic teller machines or point-of-sale terminals, and such assistance shall not be deemed to be engaging in the business of banking.

(8)(a) Annually by September 1, any entity operating as a switch in Nebraska shall file a notice with the department setting forth its name, address, and contact information for an officer authorized to answer inquiries related to its operations in Nebraska.

(b) Any entity intending to operate in Nebraska as a switch shall file a notice with the department setting forth its name, address, and contact information for an officer authorized to answer inquiries related to its operations in Nebraska. Such notice shall be filed at least thirty days prior to the date on which the switch commences operations, and thereafter annually by September 1.

(9) Nothing in this section prohibits ordinary clearinghouse transactions between financial institutions.

(10) Nothing in this section shall prevent any financial institution which has a main chartered office or an approved branch located in the State of Nebraska from participating in a national automatic teller machine program to allow its customers to use automatic teller machines located outside of the State of Nebraska which are established by out-of-state financial institutions or foreign financial institutions or to allow customers of out-of-state financial institutions or foreign financial institutions to use its automatic teller machines. Such participation and any automatic teller machine usage fees charged or received pursuant to the national automatic teller machine program or usage fees charged for the use of its automatic teller machines by customers of out-of-state financial institutions or foreign financial institutions shall not be considered for purposes of determining (a) if an automatic teller machine has been made available or Nebraska automatic teller machine transactions have been made on a nondiscriminating basis for use by Nebraska customers of a user financial institution or (b) if a switch complies with subdivision (3)(d) of this section.

(11) An agreement to operate or share an automatic teller machine may not prohibit, limit, or restrict the right of the operator or owner of the automatic teller machine to charge a customer conducting a transaction using an account from a foreign financial institution an access fee or surcharge not otherwise prohibited under state or federal law.

(12) Switch fees shall not be subject to this section or be regulated by the department.

(13) Nothing in this section shall prevent a group of two or more credit unions, each of which has a main chartered office or an approved branch located in the State of Nebraska, from participating in a credit union service

organization organized on or before January 1, 2015, for the purpose of owning automatic teller machines, provided that all participating credit unions have an ownership interest in the credit union service organization and that the credit union service organization has an ownership interest in each of the participating credit unions' automatic teller machines. Such participation and any automatic teller machine usage fees associated with Nebraska automatic teller machine transactions initiated by customers of participating credit unions at such automatic teller machines shall not be considered for purposes of determining if such automatic teller machines have been made available on a nondiscriminating basis or if Nebraska automatic teller machine transactions initiated at such automatic teller machines have been made on a nondiscriminating basis, provided that all Nebraska automatic teller machine transactions initiated by customers of participating credit unions result in the same automatic teller machine usage fees for essentially the same service routed over the same switch.

(14) Nebraska automatic teller machine usage fees and any agreements relating to Nebraska automatic teller machine usage fees shall comply with subsection (3) of this section.

(15) For purposes of this section:

(a) Access means the ability to utilize an automatic teller machine or a point-of-sale terminal to conduct permitted banking transactions or purchase goods and services electronically;

(b) Account means a checking account, a savings account, a share account, or any other customer asset account held by a financial institution. Such an account may also include a line of credit which a financial institution has agreed to extend to its customer;

(c) Affiliate financial institution means any financial institution which is a subsidiary of the same bank holding company;

(d) Automatic teller machine usage fee means any per transaction fee established by a switch or otherwise established on behalf of an establishing financial institution and collected from the user financial institution and paid to the establishing financial institution for the use of the automatic teller machine. An automatic teller machine usage fee shall not include switch fees;

(e) Electronic funds transfer means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through a point-of-sale terminal, an automatic teller machine, or a personal terminal for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account;

(f) Essentially the same service means the same Nebraska automatic teller machine transaction offered by an establishing financial institution irrespective of the user financial institution, the Nebraska customer of which initiates the Nebraska automatic teller machine transaction. A Nebraska automatic teller machine transaction that is subject to a surcharge is not essentially the same service as the same banking transaction for which a surcharge is not imposed;

(g) Establishing financial institution means any financial institution which has a main chartered office or approved branch located in the State of Nebraska that establishes or sponsors an automatic teller machine or any out-of-state financial institution that establishes or sponsors an automatic teller machine;

(h) Financial institution means a bank, savings bank, building and loan association, savings and loan association, or credit union, whether chartered by the department, the United States, or a foreign state agency; any other similar organization which is covered by federal deposit insurance; or a subsidiary of any such entity;

(i) Foreign financial institution means a financial institution located outside the United States;

(j) Nebraska automatic teller machine transaction means a banking transaction as defined in subsection (1) of this section which is (i) initiated at an automatic teller machine established in whole or in part or sponsored by an establishing financial institution, (ii) for an account of a Nebraska customer of a user financial institution, and (iii) processed through a switch regardless of whether it is routed directly or indirectly from an automatic teller machine;

(k) Personal terminal means a personal computer and telephone, wherever located, operated by a customer of a financial institution for the purpose of initiating a transaction affecting an account of the customer;

(l) Sponsoring an automatic teller machine means the acceptance of responsibility by an establishing financial institution for compliance with all provisions of law governing automatic teller machines and Nebraska automatic teller machine transactions in connection with an automatic teller machine owned by a nonfinancial institution third party;

(m) Switch fee means a fee established by a switch and assessed to a user financial institution or to an establishing financial institution other than an automatic teller machine usage fee; and

(n) User financial institution means any financial institution which has a main chartered office or approved branch located in the State of Nebraska which avails itself of and provides its customers with automatic teller machine services.

Source: Laws 1987, LB 615, § 3; Laws 1992, LB 470, § 2; Laws 1993, LB 81, § 8; Laws 1993, LB 423, § 2; Laws 1999, LB 396, § 9; Laws 2000, LB 932, § 3; Laws 2002, LB 1089, § 3; Laws 2003, LB 131, § 4; Laws 2004, LB 999, § 2; Laws 2009, LB75, § 1; Laws 2009, LB327, § 4; Laws 2013, LB100, § 1; Laws 2015, LB348, § 2; Laws 2016, LB760, § 2; Laws 2017, LB140, § 56; Laws 2018, LB812, § 3; Laws 2019, LB258, § 3; Laws 2019, LB603, § 1; Laws 2020, LB909, § 5; Laws 2021, LB363, § 4; Laws 2022, LB707, § 15.
Operative date April 19, 2022.

8-158 Banks; appointment as personal representative or special administrator; authorized.

Any bank may be appointed and shall have power to act, either by itself or jointly with any natural person or persons, as personal representative of the estate of any deceased person or as special administrator of the estate of any deceased person under the appointment of a court of record having jurisdiction of the estate of such deceased person. When a bank is so appointed and an oath is required to be made, whether in order to qualify or for any other purpose,

the president, vice president, or secretary of the bank may, on behalf of the bank, make and subscribe to the required oath.

Source: Laws 1959, c. 18, § 1, p. 142; Laws 1961, c. 14, § 3, p. 107; Laws 1961, c. 16, § 1, p. 116; R.R.S.1943, § 8-1,117; Laws 1963, c. 29, § 58, p. 158; Laws 1973, LB 164, § 17; Laws 1986, LB 909, § 1; Laws 2017, LB140, § 57.

8-159 Banks; trust department; authorization.

Any bank, having adopted or amended its articles of incorporation to authorize the conduct of a trust business as defined in the Nebraska Trust Company Act, may be further chartered by the director to transact a trust company business in a trust department in connection with such bank.

Source: Laws 1959, c. 19, § 1, p. 143; Laws 1961, c. 14, § 4, p. 107; R.R.S.1943, § 8-1,118; Laws 1963, c. 29, § 59, p. 159; Laws 1993, LB 81, § 9; Laws 1998, LB 1321, § 10.

Cross References

Nebraska Trust Company Act, see section 8-201.01.

8-160 Banks; trust department; amendment of charter; supervision.

The director has the authority to issue to banks amendments to their charters of authority to transact trust business as defined in the Nebraska Trust Company Act and has general supervision and control over such trust department of banks.

Source: Laws 1959, c. 19, § 2, p. 143; Laws 1961, c. 14, § 5, p. 108; R.R.S.1943, § 8-1,119; Laws 1963, c. 29, § 60, p. 159; Laws 1993, LB 81, § 10; Laws 1998, LB 1321, § 11; Laws 2017, LB140, § 58.

Cross References

Nebraska Trust Company Act, see section 8-201.01.

8-161 Banks; trust department; application; investigation; authorization.

The director, before granting to any bank the right to operate a trust department, shall require such bank to make an application for amendment of its charter, setting forth such information as the director may require. If, upon investigation, the director is satisfied that the trust department of the bank requesting such amendment will be operated by officers of integrity and responsibility, the department shall, with such additional capital as the director shall require, issue to such bank an amendment to its charter, entitling it to operate a trust department and entitling it to transact the business provided for in the Nebraska Trust Company Act.

Source: Laws 1959, c. 19, § 3, p. 144; Laws 1961, c. 14, § 6, p. 108; R.R.S.1943, § 8-1,120; Laws 1963, c. 29, § 61, p. 159; Laws 1993, LB 81, § 11; Laws 1998, LB 1321, § 12; Laws 2017, LB140, § 59.

Cross References

Nebraska Trust Company Act, see section 8-201.01.

8-162 Banks; trust department; separation from other departments; powers; duties.

The trust department of a bank when chartered under sections 8-159 to 8-161 shall be separate and apart from every other department of the bank and shall have all of the powers, duties, and obligations of a trust company provided in the Nebraska Trust Company Act.

Source: Laws 1959, c. 19, § 4, p. 144; Laws 1961, c. 14, § 7, p. 108; R.R.S.1943, § 8-1,121; Laws 1963, c. 29, § 62, p. 159; Laws 1993, LB 81, § 12; Laws 1998, LB 1321, § 13.

Cross References

Nebraska Trust Company Act, see section 8-201.01.

8-162.01 Banks; trust department; conduct of business; location.

Any bank authorized to transact a trust company business in a trust department pursuant to sections 8-159 to 8-162 may conduct such trust company business at the office of any bank which is a subsidiary of the same bank holding company as the authorized bank.

Source: Laws 1993, LB 81, § 13.

8-162.02 Bank; fiduciary account controlled by trust department; collateral; public funds exempt.

(1) A bank may deposit or have on deposit funds of a fiduciary account controlled by the bank's trust department unless prohibited by applicable law.

(2) To the extent that the funds are awaiting investment or distribution and are not insured or guaranteed by the Federal Deposit Insurance Corporation, a bank shall set aside collateral as security under the control of appropriate fiduciary officers and bank employees. The bank shall place pledged assets of fiduciary accounts in the joint custody or control of not fewer than two of the fiduciary officers or employees of the bank designated for that purpose by the board of directors. The bank may maintain the investments of a fiduciary account off-premises if consistent with applicable law and if the bank maintains adequate safeguards and controls. The market value of the collateral shall at all times equal or exceed the amount of the uninsured or unguaranteed fiduciary funds awaiting investment or distribution.

(3) A bank may satisfy the collateral requirements of this section with any of the following: (a) Direct obligations of the United States or other obligations fully guaranteed by the United States as to principal and interest; (b) readily marketable securities of the classes in which banks, trust companies, or other corporations exercising fiduciary powers are permitted to invest fiduciary funds under applicable state law; and (c) surety bonds, to the extent the surety bonds provide adequate security, unless prohibited by applicable law.

(4) A bank, acting in its fiduciary capacity, may deposit funds of a fiduciary account that are awaiting investment or distribution with an affiliated insured depository institution unless prohibited by applicable law. The bank may set aside collateral as security for a deposit by or with an affiliate of fiduciary funds awaiting investment or distribution, as it would if the deposit was made at the bank, unless such action is prohibited by applicable law.

(5) Public funds deposited in and held by a bank are not subject to this section.

(6) This section does not apply to a fiduciary account in which, pursuant to the terms of the governing instrument, full investment authority is retained by the grantor or is vested in persons or entities other than the bank and the bank, acting in its fiduciary capacity, does not have the power to exert any influence over investment decisions.

Source: Laws 2009, LB327, § 2; Laws 2014, LB788, § 2; Laws 2017, LB140, § 60.

8-163 Dividends; withdrawal of capital or surplus prohibited; not made; when.

(1) No bank shall withdraw or permit to be withdrawn, either in the form of dividends or otherwise, any part of its capital or surplus without the written permission of the director. If losses have at any time been sustained equal to or exceeding the retained net income, no dividends shall be made without the written permission of the director. No dividend shall be made by any bank in an amount greater than the retained net income without the written permission of the director.

(2) As used in this section, retained net income means the sum of the bank's net income, as reported in its most recent report of condition and income, less any dividends declared during such year, for the current and two prior calendar years. Retained net income is reduced by any net losses incurred during that year not already reported in net income and by any transfers out of undivided profits to fund the retirement of preferred stock. Transfers out of undivided profits to the surplus account will not be treated as reductions to retained net income.

Source: Laws 1909, c. 10, § 34, p. 82; R.S.1913, § 313; Laws 1919, c. 190, tit. V, art. XVI, § 34, p. 699; C.S.1922, § 8014; C.S.1929, § 8-153; Laws 1933, c. 18, § 34, p. 152; C.S.Supp.,1941, § 8-153; R.S. 1943, § 8-156; Laws 1963, c. 29, § 63, p. 160; Laws 1988, LB 996, § 3; Laws 2009, LB327, § 5; Laws 2017, LB140, § 61; Laws 2021, LB363, § 5.

8-164 Dividends declared; conditions.

The board of directors of any bank may declare dividends on its capital stock but only under the following conditions:

(1) All bad debts required to be charged off by either the board of directors or the department shall first have been charged off. All debts due any bank on which interest is past due and unpaid for a period of six months, unless such debts are well secured or in the process of collection, shall be considered bad debts within the meaning of this section; and

(2) Twenty percent of the net profits accumulated since the preceding dividend shall first have been carried to the surplus fund unless such surplus fund equals or exceeds the amount of the paid-up capital stock.

Source: Laws 1909, c. 10, § 28, p. 79; R.S.1913, § 307; Laws 1919, c. 190, tit. V, art. XVI, § 28, p. 696; C.S.1922, § 8009; C.S.1929, § 8142; Laws 1930, Spec. Sess., c. 6, § 11, p. 31; Laws 1933, c. 18, § 27, p. 149; Laws 1935, c. 10, § 1, p. 78; Laws 1937, c. 16, § 1, p. 122; C.S.Supp.,1941, § 8-142; Laws 1943, c. 19, § 4, p. 104; R.S.1943, § 8-143; Laws 1951, c. 10, § 1, p. 82; Laws 1953, c. 7, § 1, p. 71;

R.R.S.1943, § 8-143; Laws 1963, c. 29, § 64, p. 160; Laws 1985, LB 653, § 6; Laws 1988, LB 996, § 4; Laws 1994, LB 979, § 6; Laws 2017, LB140, § 62.

Stockholders ordinarily are entitled to share equally in the distribution of dividends, which should go to the record owners of the stock when such dividends are declared, but this may be varied by agreement between the stockholders, and a purchaser of corporate stock, with notice of such an agreement, takes title to the stock subject thereto. Empson v. Deuel County State Bank, 134 Neb. 597, 279 N.W. 293 (1938).

8-165 Losses; charged to surplus fund; restoration of surplus fund; effect on dividends.

Any losses sustained by any bank in excess of its undivided profits shall be charged to its surplus fund. Its surplus fund shall thereafter be reimbursed from the earnings, and no dividends shall thereafter be declared or paid by any such bank, without the written permission of the director, until such surplus fund shall be fully restored to its former amount.

Source: Laws 1923, c. 191, § 38, p. 458; C.S.1929, § 8-144; R.S.1943, § 8-144; Laws 1949, c. 8, § 1, p. 68; R.R.S.1943, § 8-144; Laws 1963, c. 29, § 65, p. 160; Laws 1988, LB 996, § 5.

8-166 Banks; reports to department; form; number required; verification; waiver.

(1) Every bank shall make to the department not less than two reports during each year according to the form which may be prescribed by the department, which report shall be certified as correct, in the manner prescribed by the department, by the president, vice president, cashier, or assistant cashier and in addition by two members of the board of directors.

(2) The director may waive the requirements of this section if a bank files its reports electronically with the Federal Deposit Insurance Corporation, the Federal Reserve Board, or an electronic collection agent of the Federal Deposit Insurance Corporation or the Federal Reserve Board.

Source: Laws 1909, c. 10, § 17, p. 75; R.S.1913, § 296; Laws 1919, c. 190, tit. V, art. XVI, § 17, p. 692; C.S.1922, § 7998; C.S.1929, § 8-129; Laws 1933, c. 18, § 19, p. 144; Laws 1941, c. 10, § 1, p. 80; C.S.Supp.,1941, § 8-129; R.S.1943, § 8-131; Laws 1957, c. 11, § 1, p. 134; Laws 1961, c. 15, § 2, p. 111; R.R.S.1943, § 8-131; Laws 1963, c. 29, § 66, p. 161; Laws 1997, LB 137, § 7; Laws 2017, LB140, § 63.

8-167 Banks; reports to department; contents.

Each report required by section 8-166 shall exhibit in detail and under appropriate headings the resources and liabilities of the bank at the close of business on any past day specified by the call for report and shall be submitted to the department within thirty days, or as may be required by the department, after the receipt of requisition for the report.

Source: Laws 1909, c. 10, § 18, p. 75; R.S.1913, § 297; Laws 1919, c. 190, tit. V, art. XVI, § 18, p. 693; C.S.1922, § 7999; C.S.1929, § 8-130; Laws 1933, c. 18, § 20, p. 145; Laws 1941, c. 10, § 2, p. 81; C.S.Supp.,1941, § 8-130; R.S.1943, § 8-132; Laws 1963, c. 29, § 67, p. 161; Laws 1978, LB 641, § 2; Laws 1986, LB 960, § 1; Laws 2017, LB140, § 64; Laws 2020, LB909, § 6.

Purpose of Legislature was to require a full statement of the transactions of the officers concerning the business done by them in their official capacities as officers and agents of the bank. Wentz v. State, 108 Neb. 597, 188 N.W. 467 (1922).

8-167.01 Repealed. Laws 2020, LB909, § 59.

8-168 Banks; special reports to director.

A bank shall furnish special reports as may be required by the director to enable the department to obtain full and complete knowledge of the condition of the bank.

Source: Laws 1909, c. 10, § 19, p. 76; R.S.1913, § 298; Laws 1919, c. 190, tit. V, art. XVI, § 19, p. 693; C.S.1922, § 8000; C.S.1929, § 8-131; Laws 1933, c. 18, § 21, p. 145; C.S.Supp.,1941, § 8-131; R.S. 1943, § 8-133; Laws 1963, c. 29, § 68, p. 161; Laws 2017, LB140, § 66.

8-169 Banks; reports; published statements; failure to make; penalty, recovery.

Any bank that fails, neglects, or refuses to make or furnish any report or any published statement required by the Nebraska Banking Act shall pay to the department a penalty of fifty dollars for each day such failure shall continue, unless the director shall extend the time for filing such report.

Source: Laws 1909, c. 10, § 20, p. 76; R.S.1913, § 299; Laws 1919, c. 190, tit. V, art. XVI, § 20, p. 693; C.S.1922, § 8001; C.S.1929, § 8-132; Laws 1933, c. 18, § 22, p. 146; C.S.Supp.,1941, § 8-132; R.S. 1943, § 8-134; R.R.S.1943, § 8-134; Laws 1963, c. 29, § 59, p. 162; Laws 1973, LB 164, § 18; Laws 1998, LB 1321, § 14; Laws 2017, LB140, § 67.

This section is referred to as providing penalty in contrasting this section with another section of the banking act which failed to provide a penalty, and holding that the failure to provide a penalty disclosed legislative intent that statute should be directory rather than mandatory. State ex rel. Davis v. Farmers State Bank of Winside, 112 Neb. 597, 200 N.W. 173 (1924).

8-170 Records and files; time required to be kept; destroy, when.

(1) Banks shall not be required to preserve or keep their records or files or copies thereof for a period longer than six years next after the first day of January of the year following the time of the making or filing of such records or files except as provided in subsection (2) of this section.

(2)(a) Ledger sheets showing unpaid balances in favor of depositors of banks shall not be destroyed unless the bank has remitted such unpaid balances to the State Treasurer in accordance with the Uniform Disposition of Unclaimed Property Act. Banks shall retain a record of every such remittance for ten years following the date of such remittance.

(b) Corporate records that relate to the corporation or the corporate existence of the bank shall not be destroyed.

(3) All records or files or copies thereof shall be readable or legible.

Source: Laws 1949, c. 10, § 1, p. 71; R.R.S.1943, § 8-1,111; Laws 1963, c. 29, § 70, p. 162; Laws 1999, LB 396, § 10; Laws 2017, LB140, § 68.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

8-171 Records; destruction; liability; excuse for failure to produce.

No liability shall accrue against any bank destroying any records or files in accordance with sections 8-170 to 8-174. In any cause or proceedings in which any such records or files may be called into question or be demanded of the bank or any officer or employee of the bank, a showing that such records or files have been destroyed in accordance with the terms of sections 8-170 to 8-174 shall be a sufficient excuse for the failure to produce such records or files.

Source: Laws 1949, c. 10, § 2, p. 71; R.R.S.1943, § 8-1,112; Laws 1963, c. 29, § 71, p. 162; Laws 2017, LB140, § 69.

8-172 Repealed. Laws 1975, LB 279, § 75.

8-173 Actions against bank on claims inconsistent with records; accrual of cause of action; limitations.

All causes of action against a bank based upon a claim or claims inconsistent with an entry or entries in any bank record or ledger, made in the regular course of business, shall accrue one year after the date of such entry or entries. No action founded upon such a cause shall be brought after the expiration of five years from the date of such accrual.

Source: Laws 1949, c. 10, § 4, p. 71; Laws 1951, c. 13, § 1, p. 88; R.R.S.1943, § 8-1,114; Laws 1963, c. 29, § 73, p. 163; Laws 2017, LB140, § 70.

8-174 Records and files; destruction; applicable to national banks.

Sections 8-170 to 8-174, so far as may be permitted by the laws of the United States, shall apply to the records and files of national banks.

Source: Laws 1949, c. 10, § 5, p. 72; R.R.S.1943, § 8-1,115; Laws 1963, c. 29, § 74, p. 163; Laws 2017, LB140, § 71.

8-175 Banks; false entry or statement; other offenses relating to books and records; penalty.

Any person who willfully and knowingly subscribes to, or makes, or causes to be made, any false statement or false entry in the books of any bank, knowingly subscribes to or exhibits false papers with the intent to deceive any person or persons authorized to examine into the affairs of any such bank, makes, states, or publishes any false statement of the amount of the assets or liabilities of any such bank, fails to make true and correct entry in the books and records of such bank of its business and transactions in the manner and form prescribed by the department, mutilates, alters, destroys, secretes, or removes any of the books or records of such bank without the written consent of the director, or makes, states, or publishes any false statement of the amount of the assets or liabilities of any such bank, is guilty of a Class III felony.

Source: Laws 1909, c. 10, § 21, p. 77; R.S.1913, § 300; Laws 1919, c. 190, tit. V, art. XVI, § 21, p. 694; C.S.1922, § 8002; C.S.1929, § 8-133; Laws 1933, c. 18, § 23, p. 146; C.S.Supp.,1941, § 8-133; R.S. 1943, § 8-135; Laws 1963, c. 29, § 75, p. 163; Laws 1977, LB 40, § 51; Laws 2017, LB140, § 72.

Crime of making a false statement of condition of a bank with intent to deceive was a felony. State v. Hylton, 175 Neb. 828, 124 N.W.2d 230 (1963).

Mere making of false report is not sufficient to sustain conviction under this section, but in addition intent to deceive must be charged and proved. Foreman v. State, 127 Neb. 824, 257 N.W. 237 (1934).

In prosecution hereunder it is not essential to the commission of the offense that the statement be made in the presence of two directors of bank. Flannigan v. State, 124 Neb. 748, 248 N.W. 92 (1933).

Intent to deceive is an element of the felony described herein. Foreman v. State, 124 Neb. 74, 245 N.W. 422 (1932), 85 A.L.R. 821 (1932).

This section applies to minutes of meetings of board of directors. Kienke v. Kirsch, 121 Neb. 688, 238 N.W. 33 (1931).

To be guilty under this section, bank officer must willfully and knowingly make the entry, the entry must be false, and it must have been made with intent to deceive. Spearman v. State, 120 Neb. 799, 235 N.W. 465 (1931).

Omission by bank officer to include in report to banking department a certificate of deposit caused to be issued by him to pay a personal obligation is making false statement under this section. Wentz v. State, 108 Neb. 597, 188 N.W. 467 (1922).

8-176 Repealed. Laws 1965, c. 141, § 2, p. 482.

8-177 Banks; consolidation; approval required; creditors' claims.

Any bank, which is in good faith winding up its business for the purpose of consolidating with some other financial institution, may transfer its resources and liabilities to the financial institution with which it is in the process of consolidation, but no consolidation shall be made without the consent of the director, nor shall such consolidation operate to defeat the claim of any creditor or hinder any creditor in the collection of his or her debt against any such bank or financial institution.

Source: Laws 1909, c. 10, § 41, p. 86; R.S.1913, § 320; Laws 1919, c. 190, tit. V, art. XVI, § 41, p. 701; C.S.1922, § 8021; C.S.1929, § 8-160; Laws 1933, c. 18, § 36, p. 154; C.S.Supp.,1941, § 8-160; R.S. 1943, § 8-164; Laws 1963, c. 29, § 77, p. 164; Laws 2017, LB140, § 73.

An indebtedness of a bank incurred in an attempted liquidation in violation of this section is ultra vires and does not furnish the foundation for stockholders' double liability. Luikart v. Jones, 138 Neb. 472, 293 N.W. 346 (1940).

This section does not, of itself, make a consolidated bank liable for debts of old banks. Wilson v. Continental National Bank, 130 Neb. 614, 266 N.W. 68 (1936).

Two state banks cannot consolidate without consent of banking department, and sale of entire capital stock to stockholder, president and director of rival bank is not necessarily a consolidation within the meaning of this section. Cooper v. Bane, 110 Neb. 83, 196 N.W. 119 (1923).

8-178 National bank; reorganization as state bank; authorization; vote required; trust company business; conversion; public hearing; when.

(1) Any national bank located and doing business within the State of Nebraska which follows the procedure prescribed by the laws of the United States may convert into a state bank or merge or consolidate with a state bank upon a vote of the holders of at least two-thirds of the capital stock of such state bank when the resulting state bank meets the requirements of the state law as to the formation of a new state bank. If the national bank has been further chartered to conduct a trust company business within a trust department of the bank, the trust department to be converted shall meet the requirements of state law as to the formation of a trust company business within a trust department of a state bank.

(2) The public hearing requirement of subdivision (1) of section 8-115.01 and the rules and regulations of the director shall be required only if (a) after publishing a notice of the proposed conversion in a newspaper of general circulation in the county where the main office of the national bank is located, the expense of which shall be paid by the applicant bank, the director receives an objection to the conversion within fifteen days after such publication or (b) in the discretion of the director, the condition of the bank warrants a hearing.

If the national bank has been further chartered to conduct a trust company business within a trust department of the bank, the notice of the proposed conversion of the national bank shall include notice that the trust department will be converted in connection with the national bank conversion.

Source: Laws 1909, c. 11, § 1, p. 96; R.S.1913, § 343; Laws 1919, c. 190, tit. V, art. XVI, § 63, p. 711; C.S.1922, § 8043; C.S.1929, § 8-161; Laws 1933, c. 18, § 37, p. 154; C.S.Supp.,1941, § 8-161; R.S. 1943, § 8-165; Laws 1951, c. 11, § 1(1), p. 84; R.R.S.1943, § 8-165; Laws 1963, c. 29, § 78, p. 165; Laws 1995, LB 599, § 3; Laws 2002, LB 957, § 5; Laws 2006, LB 876, § 10; Laws 2017, LB140, § 74.

8-179 National bank; reorganization as state bank; procedure; trust company business; charter.

(1) The resulting state bank under section 8-178 shall file a statement with the department, under the oath of its president or cashier, (a) showing that the procedure prescribed by the laws of the United States and by this state have been followed, (b) setting forth in the statement the matter prescribed by sections 8-1901 to 8-1903, and (c) if the national bank has been further chartered to conduct a trust company business within a trust department of the bank, setting forth the matter prescribed by sections 8-159 to 8-162.01. Upon payment of all applicable fees, the department shall issue to such corporation, a charter to transact the business provided for in its articles of incorporation, and, if applicable, a charter to conduct a trust company business within a trust department of the bank.

(2) The department may accept good assets of any such national bank, worth not less than par, in lieu of the payment otherwise provided by law for the stock of such resulting bank. When the parties requesting the conversion, merger, or consolidation are officers or directors of either the national bank or of the state bank, they shall be accepted without investigation as parties of integrity and responsibility. Unless the resulting bank is at a different location than the former national or state bank, the department shall recognize the public necessity, convenience, and advantage of permitting the resulting bank and, if applicable, the trust company business within a trust department of the bank, to engage in business.

Source: Laws 1951, c. 11, § 1(2), p. 84; R.R.S.1943, § 8-165.01; Laws 1963, c. 29, § 79, p. 165; Laws 1995, LB 384, § 5; Laws 2006, LB 876, § 11; Laws 2017, LB140, § 75.

8-180 State bank; reorganization as national bank; vote required.

Any state bank, without the approval of any state authority, may, upon a vote of the holders of at least two-thirds of its capital stock, convert into and merge or consolidate with a national bank as provided by federal law.

Source: Laws 1951, c. 11, § 1(3), p. 85; R.R.S.1943, § 8-165.02; Laws 1963, c. 29, § 80, p. 165; Laws 2017, LB140, § 76.

8-181 National or state bank; conversion, merger, or consolidation; resulting bank; considered same corporate entity; termination of franchise.

When a national bank has converted into or merged or consolidated with a state bank, or a state bank has converted into or merged or consolidated with a

national bank, the resulting bank shall be considered the same business and corporate entity as the former bank or banks and as a continuation thereof, and the ownership and title to all properties and assets and the obligations and liabilities of the converting, merging, or consolidating banks shall automatically pass to and become the properties and assets and the obligations and liabilities of the resulting bank. Upon the conversion, merger, or consolidation, when the resulting bank is a national bank, the franchise of the converting, merging, or consolidating state bank shall automatically terminate.

Source: Laws 1951, c. 11, § 1(4), p. 85; R.R.S.1943, § 8-165.03; Laws 1963, c. 29, § 81, p. 166.

8-182 State bank; conversion, merger, or consolidation with a national bank; objecting stockholders; stock; payment.

The owner of shares of a state bank which were voted against a conversion into or a merger or consolidation with a national bank under section 8-181 shall be entitled to receive, from the assets of such state bank, the value of such stock in cash, when the conversion, merger, or consolidation becomes effective, upon written demand made to the resulting bank at any time within thirty days after the effective date of the conversion, merger, or consolidation, accompanied by the surrender of the stock certificates. The value of such shares shall be determined, as of the date of the shareholders' meeting approving the conversion, merger, or consolidation, by three appraisers, one to be selected by the owners of two-thirds of the shares voting against the conversion, merger, or consolidation, one by the board of directors of the resulting state bank, and the third by the two so chosen. If the appraisal is not completed within sixty days after the conversion, merger, or consolidation becomes effective the department shall cause an appraisal to be made and such appraisal shall then govern. The expenses of appraisal shall be paid by the resulting bank.

Source: Laws 1951, c. 11, § 1(5), p. 85; R.R.S.1943, § 8-165.04; Laws 1963, c. 29, § 82, p. 166; Laws 2017, LB140, § 77.

8-183 National or state bank; conversion, merger, or consolidation; resulting bank; assets; valuation.

Without approval by the director, no asset shall be carried on the books of the bank resulting pursuant to section 8-181, when the resulting bank is a state bank, at a valuation higher than that on the books of the converting, merging, or consolidating bank at the time of the examination, by a state or national bank examiner, last occurring before the effective date of the conversion, merger, or consolidation.

Source: Laws 1951, c. 11, § 1(6), p. 86; R.R.S.1943, § 8-165.05; Laws 1963, c. 29, § 83, p. 167; Laws 2017, LB140, § 78.

8-183.01 State or federal savings association; conversion to state bank; plan of conversion; procedure.

(1) Any state or federal savings association, whether formed as a mutual association or a capital stock association, may apply to the director to convert to a state bank.

(2) Any savings association seeking to convert its form of organization pursuant to this section shall first obtain approval of a plan of conversion by

resolution adopted by not less than a two-thirds majority vote of the total number of directors authorized to vote.

(3) Upon approval of a plan of conversion by the board of directors, such plan and the resolution approving it shall be submitted to the director. The director shall approve the plan of conversion if he or she finds, after appropriate investigation, that:

(a) The plan of conversion is fair and equitable;

(b) The interests of the applicant, its members or shareholders, its savings account holders, and the public are adequately protected; and

(c) The converting savings association has complied with the requirements of this section.

(4) If the director approves the plan of conversion, the approval shall be in writing and sent to the home office of the converting savings association. As part of its approval, the director may prescribe terms and conditions to be fulfilled either before or after the conversion to cause the converting savings association to conform to the requirements of the Nebraska Banking Act.

(5) If the director disapproves the plan of conversion, the reasons for such disapproval shall be stated in writing and sent to the home office of the converting savings association, which shall be afforded an opportunity to amend and resubmit the plan within a reasonable period of time as prescribed by the director. In the event the director disapproves the plan after such resubmission, written notice of such final disapproval shall be sent by certified mail to the savings association's home office.

Source: Laws 1998, LB 1321, § 27.

8-183.02 State or federal savings association; plan of conversion; approval.

(1) If the director approves a plan of conversion in accordance with section 8-183.01, such plan shall be submitted for adoption to the members or shareholders of the converting savings association by vote at a meeting called to consider such action. At least three weeks prior to such meeting, a copy of the plan, together with an accurate summary plan description explaining the operation of the plan and the rights, duties, obligations, liabilities, conditions, and requirements which may be imposed upon such members or shareholders and the converted association as a result of the operation of the plan, shall be mailed to each member or shareholder eligible to vote at such meeting.

(2) The plan of conversion must be approved by not less than sixty percent of the total outstanding shares, which may be voted by proxy or in person at the meeting called to consider such conversion.

(3) A certified copy of the proceedings at such meeting shall be filed with the director within thirty days after such meeting.

(4) If the plan of conversion is approved, the board of directors of the savings association shall take action to obtain a state bank charter, adopt articles of incorporation, adopt bylaws, elect directors and officers, and take such other action as is required or appropriate for a state bank corporation.

Source: Laws 1998, LB 1321, § 28.

8-183.03 State or federal savings association; conversion to state bank; requirements.

(1) To obtain a state bank charter, a savings association shall meet the requirements of state law as to the formation of a new state bank. The public hearing requirement of subdivision (1) of section 8-115.01 shall only be required if (a) after publishing a notice of the proposed conversion in a newspaper of general circulation in the county where the main office of the converting savings association is located, the expense of which shall be paid by the applicant savings association, the director receives a substantive objection to the conversion within fifteen days after such publication or (b) in the discretion of the director, the condition of the savings association warrants a hearing.

(2) If the savings association is a federal association, compliance with the procedure for conversion to a state bank prescribed by the laws of the United States, if any, shall be demonstrated to the director.

(3) When the persons requesting the conversion of the savings association are officers or directors of the savings association, there shall be a rebuttable presumption that such persons are parties of integrity and responsibility.

(4) If the main office of the resulting state bank is to be at the same location as the main office of the converting savings association, the director shall recognize that the public necessity, convenience, and advantage of the community will be met by permitting the resulting bank to engage in business.

(5) The director may make an examination of the applicant savings association prior to his or her decision on the application for a state bank charter. The cost of such examination shall be paid by the applicant savings association.

Source: Laws 1998, LB 1321, § 29; Laws 2002, LB 957, § 6.

8-183.04 State or federal savings association; mutual savings association; retention of mutual form authorized.

(1) Notwithstanding any other provision of the Nebraska Banking Act or any other Nebraska law, a state or federal savings association which was formed and in operation as a mutual savings association as of July 15, 1998, may elect to retain its mutual form of corporate organization upon conversion to a state bank.

(2) All references to shareholders or stockholders for state banks shall be deemed to be references to members for such a converted savings association.

(3) The amount and type of capital required for such a converted savings association shall be as required for federal mutual savings associations in 12 C.F.R. 5.21, as such regulation existed on January 1, 2022, except that if at any time the department determines that the capital of such a converted savings association is impaired, the director may require the members to make up the capital impairment.

(4) The director may adopt and promulgate rules and regulations governing such converted mutual savings associations. In adopting and promulgating such rules and regulations, the director may consider the provisions of sections 8-301 to 8-384 governing savings associations in mutual form of corporate organization.

Source: Laws 1998, LB 1321, § 30; Laws 2005, LB 533, § 10; Laws 2010, LB890, § 5; Laws 2017, LB140, § 79; Laws 2018, LB812, § 5; Laws 2019, LB258, § 5; Laws 2020, LB909, § 7; Laws 2021, LB363, § 6; Laws 2022, LB707, § 16.
Operative date April 19, 2022.

8-183.05 State or federal savings association; issuance of state bank charter; effect; section, how construed.

(1) Upon the issuance of a state bank charter to a converting savings association, the corporate existence of the converting savings association shall not terminate, but such bank shall be a continuation of the entity so converted and all property of the converted savings association, including its rights, titles, and interests in and to all property of whatever kind, whether real, personal, or mixed, things in action, and every right, privilege, interest, and asset of any conceivable value or benefit then existing, or pertaining to it, or which would inure to it, immediately, by operation of law and without any conveyance or transfer and without any further act or deed, shall vest in and remain the property of such converted savings association, and the same shall have, hold, and enjoy the same in its own right as fully and to the same extent as the same was possessed, held, and enjoyed by the converting savings association.

(2) Upon issuance of the charter, the new state bank shall continue to have and succeed to all the rights, obligations, and relations of the converting savings association.

(3) All pending actions and other judicial proceedings to which the converting savings association is a party shall not be abated or discontinued by reason of such conversion but may be prosecuted to final judgment, order, or decree in the same manner as if such conversion had not been made, and such converted savings association may continue the actions in its new corporate name. Any judgment, order, or decree may be rendered for or against the converting savings association theretofore involved in the proceedings.

(4) Nothing in this section shall be construed to authorize a converted savings association to establish branches except as permitted by section 8-157 and the Interstate Branching and Merger Act. This subsection shall not be construed to require divestiture of any branches of a savings association in existence at the time of the conversion to a state bank charter.

Source: Laws 1998, LB 1321, § 31; Laws 2002, LB 1089, § 4; Laws 2012, LB963, § 3; Laws 2017, LB140, § 80.

Cross References

Interstate Branching and Merger Act, see section 8-2101.

8-184 Voluntary liquidation; approval required; examination; fees.

Whenever any bank shall desire to go into voluntary liquidation, it shall first obtain the written consent of the director who may, before granting such request, order a special examination of the affairs of such bank, for which the same fees may be collected as in regular examination.

Source: Laws 1909, c. 10, § 34, p. 83; R.S.1913, § 313; Laws 1919, c. 190, tit. V, art. XVI, § 34, p. 699; C.S.1922, § 8014; C.S.1929, § 8-153; Laws 1933, c. 18, § 34, p. 153; C.S.Supp., 1941, § 8-153; R.S. 1943, § 8-158; Laws 1963, c. 29, § 84, p. 167; Laws 2017, LB140, § 81.

8-185 Voluntary liquidation; procedure.

Any bank may voluntarily liquidate by paying off all its depositors in full. The bank so liquidating shall file a certified statement with the department, setting forth the fact that all its liabilities have been paid and naming its stockholders

with the amount of stock held by each, and surrender its charter. The department shall cause an examination to be made of any such bank for the purpose of determining that all of its liabilities, except liabilities to stockholders, have been paid. Upon such examination, if it appears that all liabilities other than liabilities to stockholders have been paid, the bank shall cease to be subject to the Nebraska Banking Act.

Source: Laws 1909, c. 10, § 42, p. 86; R.S.1913, § 321; Laws 1919, c. 190, tit. V, art. XVI, § 42, p. 702; Laws 1921, c. 299, § 1, p. 954; C.S.1922, § 8022; C.S.1929, § 8-169; Laws 1933, c. 18, § 39, p. 155; C.S.Supp.,1941, § 8-169; R.S.1943, § 8-159; Laws 1963, c. 29, § 85, p. 167; Laws 1987, LB 2, § 10; Laws 1998, LB 1321, § 15; Laws 2017, LB140, § 82.

8-186 Bank; possession; voluntary surrender to department; notice; posting; liens dissolved.

Any bank may place its affairs and assets under the control of the department by posting on its door the following notice: This bank is in the hands of the Department of Banking and Finance. The posting of such notice, or the taking possession of any bank by the department or by any financial institution examiner shall be sufficient to place all of its assets of whatever nature immediately in the possession of the department, and shall operate as a bar to the levying of attachments or executions thereon, and shall operate to dissolve and release all levies, judgment liens, attachments, or other liens obtained through legal proceedings within sixty days next preceding the posting of such notice or the taking possession of such bank by the department.

Source: Laws 1909, c. 10, § 43, p. 86; R.S.1913, § 322; Laws 1919, c. 190, tit. V, art. XVI, § 43, p. 703; C.S.1922, § 8023; C.S.1929, § 8-170; Laws 1933, c. 18, § 40, p. 156; C.S.Supp.,1941, § 8-170; R.S. 1943, § 8-172; Laws 1963, c. 29, § 86, p. 168; Laws 2017, LB140, § 83.

8-187 Banks; department may take possession; when; examination of affairs; liens dissolved; retention of possession.

Whenever it appears to the director from any examination or report provided for by the laws of this state that (1) the capital of any bank is impaired, (2) a bank is conducting its business in an unsafe or unauthorized manner, (3) a bank is endangering the interests of its depositors, (4) a bank, upon its failure, refuses to make any of the reports or statements required by the laws of this state, (5) the officers or employees of any bank refuse to submit its books, papers, and affairs to the inspection of any examiner, (6) any officer of a bank refuses to be examined upon oath touching the affairs of the bank, (7) from any examination or report provided for by law, the director has reason to conclude that a bank is in an unsafe or unsound condition to transact the business for which it is organized or that it is unsafe and inexpedient for the bank to continue its business, or (8) a bank neglects or refuses to observe any order of the director, the department may immediately take possession of the property and business of the bank, conduct the affairs of the bank, and retain possession of all money, rights, credits, assets, and property of every description belonging to the bank, as against any mesne or final process issued by any court against the bank whose property has been taken and retain possession for a sufficient

time to make an examination of its affairs and dispose of such property as provided by law. All levies, judgment liens, attachments, or other liens obtained through legal proceedings against the bank or its property, acquired within sixty days next preceding the taking of possession of the bank, in the event the bank is liquidated and the business of the bank is not resumed or carried on after the taking of possession of the bank by the department, shall be void and the property affected by the levy, judgment lien, attachment, or other lien so obtained shall be wholly discharged and released from any levy, judgment lien, attachment, or other lien. The department shall retain possession of the property and business of the bank until the bank resumes business or its affairs are finally liquidated under the Nebraska Banking Act.

Source: Laws 1909, c. 10, § 48, p. 89; R.S.1913, § 328; Laws 1919, c. 190, tit. V, art. XVI, § 49, p. 705; C.S.1922, § 8029; Laws 1923, c. 191, § 11, p. 443; Laws 1925, c. 30, § 1, p. 122; Laws 1929, c. 38, § 16, p. 164; C.S.1929, § 8-181; Laws 1933, c. 18, § 42, p. 157; C.S.Supp.,1941, § 8-181; R.S.1943, § 8-173; Laws 1963, c. 29, § 87, p. 168; Laws 1987, LB 2, § 11; Laws 1998, LB 1321, § 16; Laws 2017, LB140, § 84.

1. Taking possession
2. Liens
3. Liquidation
4. Reorganization
5. Miscellaneous

1. Taking possession

This section empowers the Department of Banking and Finance to take possession of the property and business of a bank and conduct its affairs, retaining possession of all money, rights, credits, assets, and property of every description belonging to the bank, whenever it finds that a bank is conducting its business in an unsafe or unauthorized manner. Even after a court has appointed a receiver to liquidate a banking corporation's assets and business, this section still empowers the Department of Banking and Finance to take possession of that bank and conduct its affairs, since the corporation continues its legal existence. In re Invol. Dissolution of Battle Creek State Bank, 254 Neb. 120, 575 N.W.2d. 356 (1998).

Taking over of bank was authorized under this section, and acts performed in reference to closed transactions wherein fraud was not charged were not subject to collateral attack. Torgeson v. Department of Trade and Commerce, 127 Neb. 38, 254 N.W. 735 (1934).

Taking over of bank by Department of Banking to manage or liquidate does not effect dissolution of corporation, which retains identity and is subject to suit, provided there is no interference with assets. Svoboda v. Snyder State Bank, 117 Neb. 431, 220 N.W. 566 (1928).

In case of noncompliance with provisions for payment of guaranty fund assessments, Department of Banking was authorized to forthwith take possession of property and business of the bank. Abie State Bank v. Bryan, 282 U.S. 765 (1930).

Upon first taking possession of bank under this section, and pending determination of what course to pursue, state banking officials are entitled to hold assets as against any mesne or final process issued by any court. Metropolitan Savings Bank & Trust Co. v. Farmers' State Bank, 20 F.2d 775 (8th Cir 1927).

2. Liens

Whenever the practices or condition of a state bank is such that it is taken in charge by Department of Banking, all attachment liens acquired within thirty days are dissolved. Luikart v. Hunt, 124 Neb. 642, 247 N.W. 790 (1933).

Judgment obtained against bank while in hands of state banking officials is not a lien upon real estate of the bank. Brownell v. Svoboda, 118 Neb. 76, 223 N.W. 641 (1929).

3. Liquidation

Under this section, prior to 1929 amendment, Guaranty Fund Commission was required to determine within a reasonable time whether it would operate bank as going concern or liquidate it through a receiver. Morrill County v. Bliss, 125 Neb. 97, 249 N.W. 98 (1933).

Under prior act, this section did not grant to Department of Banking authority to wind up the affairs of an insolvent state bank without the aid of a court. State ex rel. Sorensen v. State Bank of Minatare, 123 Neb. 109, 242 N.W. 278 (1932).

Conveyance of property of bank to trustee for purpose of liquidation and distribution to depositors creates express trust and constitutes equitable conversion of real estate into money. Jensen v. Ballmer, 121 Neb. 488, 237 N.W. 613 (1931).

Court was not authorized to appoint receiver in foreclosure action to take charge of mortgaged real estate of bank, where its entire assets are already under control of Department of Banking as receiver of bank. Wells v. Farmers State Bank of Overton, 121 Neb. 462, 237 N.W. 402 (1931).

State banking officials in charge of bank are entitled to reasonable time to determine whether to turn it back or operate it, and in meantime assets immune from execution; creditor seeking to levy must allege and prove state banking officials have been in charge longer than reasonable. McBride v. Taylor, 117 Neb. 381, 220 N.W. 683 (1928).

Where state bank was taken over by Department of Banking and a receiver appointed, the fact of actual insolvency, coupled with admissions by bank directors in statement to department, constituted ''voluntary assignment'' giving United States priority as to postal funds. Bliss v. United States, 44 F.2d 909 (8th Cir. 1930).

This section summarized in reviewing statutory provisions bearing on right of receiver of bank to sue in foreign jurisdiction to recover stockholder's liability. Luikart v. Spurck, 1 F.Supp. 53 (D. Ill. 1932).

4. Reorganization

City not consenting to reorganization plan under this section was entitled to recover balance of deposit unpaid from surety on bond of city treasurer, where bond to secure the deposit had not been given. City of Cozad v. Thompson, 126 Neb. 79, 252 N.W. 606 (1934).

Reorganization, recapitalization and reopening of bank taken over by banking officials under this section do not result in the dissolution of the old bank or in the creation of a new bank. Barber v. Bryan, 123 Neb. 566, 243 N.W. 834 (1932).

Reorganization of insolvent bank is not binding on nonconsenting depositor, who is entitled to sue reorganized bank and liquidation association, but can recover against reorganized bank only to extent of proportionate share of assets taken over by it. Hessen Siak Shams v. Nebraska State Bank of Bloomfield, 48 F.2d 894 (D. Neb. 1931).

5. Miscellaneous

Under facts in this case, denial of motion for continuance under section 8-195 was not erroneous. Elm Creek State Bank v. Department of Banking, 191 Neb. 584, 216 N.W.2d 883 (1974).

Department of Banking is vested with general supervision and control of state banks with authority to do all things necessary for protection of depositors therein. Brownell v. Adams, 121 Neb. 304, 236 N.W. 750 (1931).

Offense of receiving deposits when bank insolvent is not modified by statute permitting Department of Banking to operate bank as going concern. State v. Kastle, 120 Neb. 758, 235 N.W. 458 (1931).

Suit against bank being operated as going concern by Guaranty Fund Commission is not suit against the state. Svoboda v. Snyder State Bank, 117 Neb. 431, 220 N.W. 566 (1928); Metropolitan Savings Bank & Trust Co. of Pittsburgh, Pa. v. Farmers' State Bank of Rosalie, Neb., et al., 20 F.2d 775 (8th Cir. 1927).

This section summarized in reviewing statutory provisions bearing upon general supervisory power of Department of Banking over state banks. State ex rel. Davis v. Exchange Bank of Ogallala, 114 Neb. 664, 209 N.W. 249 (1926).

This section summarized in reviewing statutory provisions bearing upon duty of Department of Banking to see that banking business is conducted in safe manner and that interests of depositors are protected. State ex rel. Chamberlin v. Morehead, 99 Neb. 146, 155 N.W. 879 (1915).

8-188 Banks; possession by department; effective upon notice.

The director or any deputy, counsel, or examiner authorized by the director may, on behalf of the department, take possession of a bank by handing to the president, cashier, or any person in charge of the bank, a written notice that the bank is in the possession of the department.

Source: Laws 1925, c. 30, § 2, p. 123; C.S.1929, § 8-183; Laws 1933, c. 18, § 45, p. 159; C.S.Supp.,1941, § 8-183; R.S.1943, § 8-174; Laws 1963, c. 29, § 88, p. 169; Laws 2017, LB140, § 85.

Under facts in this case, denial of motion for continuance under section 8-195 was not erroneous. Elm Creek State Bank v. Department of Banking, 191 Neb. 584, 216 N.W.2d 883 (1974).

8-189 Banks; attempted prevention of possession by department; penalty.

Any officer, director, or employee of a bank who attempts to prevent the department from taking possession of such bank is guilty of a Class I misdemeanor.

Source: Laws 1923, c. 191, § 14, p. 445; C.S.1929, § 8-184; Laws 1933, c. 18, § 46, p. 159; C.S.Supp.,1941, § 8-184; R.S.1943, § 8-175; Laws 1963, c. 29, § 89, p. 169; Laws 1977, LB 40, § 52; Laws 2017, LB140, § 86.

8-190 Banks; possession by department; refusal to deliver; possession by banks; application for court order.

Whenever any bank refuses or neglects to deliver possession of its affairs, assets, or property of whatever nature to the department or to any person ordered or appointed to take charge of such bank according to the Nebraska Banking Act, the director shall make an application to the district court of the county in which the main office of such bank is located or to any judge of such court for an order placing the department or such person in charge thereof and of its affairs and property. If the judge of the district court having jurisdiction is absent from the district at the time such application is to be made, any judge of the Court of Appeals or Supreme Court may grant such order, but the petition and order of possession shall be immediately transmitted to the clerk of the district court of the county in which the main office of such bank is located.

Source: Laws 1909, c. 10, § 56, p. 94; R.S.1913, § 336; Laws 1919, c. 190, tit. V, art. XVI, § 57, p. 709; C.S.1922, § 8037; C.S.1929, § 8-185;

Laws 1933, c. 18, § 47, p. 159; C.S.Supp.,1941, § 8-185; R.S. 1943, § 8-176; Laws 1963, c. 29, § 90, p. 170; Laws 1987, LB 2, § 12; Laws 1991, LB 732, § 12; Laws 1998, LB 1321, § 17; Laws 2017, LB140, § 87.

8-191 Banks; possession by department; notice to banks and trust companies; notice or knowledge of possession forestalls liens.

Upon taking possession of the property and business of any bank, the department shall immediately give notice of such fact by letter or electronic mail to all banks or trust companies holding or in possession of any assets of such bank, so far as known by the department. No bank or trust company so notified or knowing of such possession by the department shall have a lien or charge for any payment, advance, or clearance thereafter made, or liability thereafter incurred, against any of the assets of the bank of whose property and business the department shall have taken possession unless the bank be continued as a going concern.

Source: Laws 1923, c. 191, § 16, p. 445; C.S.1929, § 8-187; Laws 1933, c. 18, § 49, p. 160; C.S.Supp.,1941, § 8-187; R.S.1943, § 8-177; Laws 1963, c. 29, § 91, p. 170; Laws 2017, LB140, § 88.

Act of Department of Banking in taking over insolvent bank is not subject to collateral attack. Torgeson v. Department of Trade and Commerce, 127 Neb. 38, 254 N.W. 735 (1934).

Notice of possession of bank by Department of Banking forestalls all future liens, unless the bank be continued as a going concern. Luikart v. Hunt, 124 Neb. 642, 247 N.W. 790 (1933).

8-192 Banks; possession by department; inventory of assets and liabilities; filing.

Upon taking charge of any bank, the director shall cause to be made an inventory in triplicate of all the property, assets, and liabilities of the bank so far as the property, assets, and liabilities of the bank can be ascertained. One copy of the inventory shall be filed with the director, one copy of the inventory retained in the bank, and, after the declaration of insolvency of the bank as provided in section 8-194, one copy of the inventory shall be filed with the clerk of the district court of the county in which the main office of the bank is located.

Source: Laws 1929, c. 38, § 21, p. 167; C.S.1929, § 8-188; Laws 1933, c. 18, § 50, p. 161; C.S.Supp.,1941, § 8-188; R.S.1943, § 8-178; Laws 1963, c. 29, § 92, p. 170; Laws 2017, LB140, § 89.

Under facts in this case, denial of motion for continuance under section 8-195 was not erroneous. Elm Creek State Bank v. Department of Banking, 191 Neb. 584, 216 N.W.2d 883 (1974).

8-193 Banks; redelivery of possession; bond; departmental supervision; repossession by department.

Whenever the officers, directors, stockholders, or owners of any insolvent bank give good and sufficient bond running to the department with an incorporated surety company authorized by the laws of this state to transact such business, conditioned upon the full settlement of all the liabilities of such bank by such officers, directors, stockholders, or owners within a stated time, and the bond is approved by the director, then the department shall turn over all the assets of such bank to the officers, directors, stockholders, or owners of the bank furnishing the bond, reserving the same right to require report of the condition and to examine into the affairs of the bank as existed in the

department previous to its closing. If, upon such examination, it is found by the department that the officers, directors, stockholders, or owners are not closing up the affairs of the bank in such manner as to discharge its liabilities and to close up its affairs in a manner satisfactory to the department within a reasonable time, the department shall take immediate possession of the bank for liquidation under the Nebraska Banking Act.

Source: Laws 1919, c. 190, tit. V, art. XVI, § 8, p. 688; C.S.1922, § 7989; Laws 1923, c. 191, § 13, p. 444; C.S.1929, § 8-189; Laws 1933, c. 18, § 51, p. 161; C.S.Supp.,1941, § 8-189; R.S.1943, § 8-179; Laws 1963, c. 29, § 93, p. 171; Laws 1987, LB 2, § 13; Laws 1998, LB 1321, § 18; Laws 2017, LB140, § 90.

Agreement between stockholders of bank and its depositors and creditors under which bank officers were to liquidate bank does not contravene statute where Department of Banking accepted bank officers' joint and several liability in lieu of surety bond. Department of Banking v. Walker, 131 Neb. 732, 269 N.W. 907 (1936).

8-194 Insolvent banks; determination; declaration by director; filing.

Upon determination of insolvency of any bank by the director and failure of the stockholders or owners to restore solvency within the time and in the manner provided by law, or upon violation of the laws of the state by the bank, the director shall make a finding in writing of the condition of the affairs of such bank and a declaration of insolvency and such finding and declaration shall be filed with the clerk of the district court of the county in which the main office of such bank is located.

Source: Laws 1929, c. 38, § 10, p. 162; C.S.1929, § 8-190; Laws 1933, c. 18, § 53, p. 162; Laws 1935, c. 16, § 1, p. 89; C.S.Supp.,1941, § 8-190; R.S.1943, § 8-180; Laws 1963, c. 29, § 94, p. 171; Laws 2017, LB140, § 91.

1. Priority of deposits
2. Appointment of receiver
3. Miscellaneous

1. Priority of deposits

Receiver takes and holds assets of insolvent bank subject to liens against them as they exist at time court enters decree of insolvency. Wells v. Farmers State Bank of Overton, 124 Neb. 386, 246 N.W. 714 (1933).

Priority of unsecured deposits is fixed by status at time of actual closing of bank when court, under this section, adjudges it insolvent and orders it liquidated. State ex rel. Sorensen v. Thurston State Bank, 121 Neb. 407, 237 N.W. 293 (1931).

Upon taking possession of bank under this section, priority of United States attaches for debts due from bank. United States v. Bliss, 40 F.2d 935 (D. Neb. 1930), affirmed on appeal, Bliss v. United States, 44 F.2d 909 (8th Cir. 1930).

2. Appointment of receiver

Amendment of 1933 manifested legislative intent to provide for administrative rather than judicial receivership of banks. Farmers State Bank of Clarks v. Luikart, 131 Neb. 692, 269 N.W. 627 (1936).

Appointment of receiver for purposes of liquidation includes power in receiver to sue for recovery of assets and for losses which bank has suffered by wrongful acts of its officers in violation of their bonds. Luikart v. Flannigan, 130 Neb. 901, 267 N.W. 165 (1936).

Appointment of receiver and judicial determination of deficiency of assets does not vest court appointing receiver with exclusive jurisdiction to try an equity suit for purpose of determining liability of stockholders. Parker v. Luehrmann, 126 Neb. 1, 252 N.W. 402 (1934).

3. Miscellaneous

In a proceeding by a state bank under section 8-195, the bank has the burden to establish that declaration of insolvency hereunder was erroneous. Elm Creek State Bank v. Department of Banking, 191 Neb. 584, 216 N.W.2d 883 (1974).

This section does not constitute an unlawful delegation of judicial power to an executive department of government. Department of Banking v. Hedges, 136 Neb. 382, 286 N.W. 277 (1939).

Taking over of banking corporation by Department of Banking does not effect a dissolution of corporation; it retains its corporate capacity and may be sued on its contracts. Torgeson v. Department of Trade and Commerce, 127 Neb. 38, 254 N.W. 735 (1934).

Receiver of insolvent Nebraska state bank may sue to recover stockholder's double liability in foreign jurisdiction. Luikart v. Spurck, 1 F.Supp. 53 (D. Ill. 1932).

8-195 Insolvent banks; possession by department; petition to enjoin; show cause order; findings by district court; disposition of case.

Whenever any bank of whose property and business the department has taken possession or whose insolvency has been declared under section 8-194

deems itself aggrieved by such actions, it may, at any time not later than ten days after such declaration of insolvency has been filed with the clerk of the district court of the county in which the main office of the bank is located, petition the district court to enjoin further proceedings. The court, after citing the Director of Banking and Finance to show cause why further proceedings should not be enjoined, hearing the allegations and proofs of the parties, and determining the facts, may, upon proof by the bank, its officers, or its directors that it is solvent, that the business of the bank has been and is being conducted as provided by law, that it is not endangering the interests of its depositors and other creditors, and that the Director of Banking and Finance has acted arbitrarily and abused his or her discretion either by taking possession of the bank or by finding and declaring the bank to be insolvent and ordering its liquidation, set aside such declaration of insolvency and enjoin the director from proceeding further, and direct him or her to surrender the business and property to the bank. On proof that the bank is insolvent and that its stockholders or owners have failed to restore solvency as provided by law, or that the bank is being operated in violation of law, and that the director has acted within his or her powers, the petition shall be dismissed by the court.

Source: Laws 1929, c. 38, § 10, p. 162; C.S.1929, § 8-190; Laws 1933, c. 18, § 53, p. 162; Laws 1935, c. 16, § 1, p. 89; C.S.Supp.,1941, § 8-190; R.S.1943, § 8-181; Laws 1963, c. 29, § 95, p. 172; Laws 2017, LB140, § 92.

In a proceeding by a state bank hereunder, the bank has burden to establish that a declaration of insolvency under section 8-194 was erroneous. Elm Creek State Bank v. Department of Banking, 191 Neb. 584, 216 N.W.2d 883 (1974).

8-196 Insolvent banks; liquidation; injunction; appeal; bond.

An appeal under section 8-195 shall operate as a stay of judgment of the district court, and no bond need be given if the appeal is taken by the director. If the appeal is taken by the bank, a bond shall be given as required by law for an appeal in civil cases.

Source: Laws 1933, c. 18, § 53, p. 162; Laws 1935, c. 16, § 1, p. 89; C.S.Supp.,1941, § 8-190; R.S.1943, § 8-182; Laws 1963, c. 29, § 96, p. 172; Laws 1991, LB 732, § 13; Laws 2017, LB140, § 93.

8-197 Insolvent banks; liquidation by Federal Deposit Insurance Corporation or by liquidating trustees.

(1) Pending final judgment on the petition to enjoin under section 8-195, the department shall retain possession of the property and business of the bank. If not enjoined, the director shall proceed to liquidate the affairs of the bank as provided in the Nebraska Banking Act, except that: (a) The Federal Deposit Insurance Corporation may, under the laws of this state, accept the appointment as receiver or liquidating agent of any insolvent bank the deposits of which are insured by the Federal Deposit Insurance Corporation; or (b) when any bank is declared insolvent and ordered to be liquidated and the deposits of such bank are not insured by the Federal Deposit Insurance Corporation, then depositors and other creditors of such insolvent bank, representing fifty-one percent or more of the deposits and other claims in number and in amount of the total thereof, shall have the right to liquidate such insolvent bank by and through liquidating trustees, who shall have the same power as the department and the director to liquidate such bank if, within thirty days after the filing of the declaration of insolvency, articles of trusteeship executed and acknowl-

edged by fifty-one percent or more of the depositors and other creditors in number, representing fifty-one percent or more of the total of all deposits and claims in such bank, are filed with the director. The articles creating the trusteeship shall be in writing, shall name the trustees, shall state the terms and conditions of such trust, and shall become effective when it is determined by the director that fifty-one percent or more of the depositors and other creditors in number, representing fifty-one percent or more of the total of all deposits and claims in such bank, have signed and acknowledged the same. All nonconsenting depositors and other creditors of the insolvent bank shall be held to be subject to the terms and conditions of such trusteeship to the same extent and with the same effect as if they had joined in the execution thereof, and their respective claims shall be treated in all respects as if they had joined in the execution of such articles of trusteeship. Upon finding that such articles have been executed and acknowledged as provided in this section, the director shall thereupon transfer all of the assets of the insolvent bank to such liquidating trustees and take their receipt therefor, and all duties and responsibilities of the department and the director as otherwise provided by law with respect to such liquidation shall be assumed by such liquidating trustees. The director shall then be relieved from further responsibility in connection therewith, and the director and the person who issued the applicable bond or equivalent commercial insurance policy shall be released from further liability on the director's official bond or equivalent commercial insurance policy in respect to such liquidation. The trustees shall then proceed to liquidate such bank as nearly as may be in the manner provided by law for the liquidation of insolvent banks by the department acting as receiver and liquidating agent.

(2) When the Federal Deposit Insurance Corporation or any party other than the department is appointed receiver and liquidating agent of an insolvent bank or other financial institution chartered by the department, all references to the department or the director as provided in the act for the liquidation of such banks and financial institutions shall mean the Federal Deposit Insurance Corporation or other appointed receiver and liquidating agent.

Source: Laws 1933, c. 18, § 53, p. 163; Laws 1935, c. 16, § 1, p. 90; C.S.Supp.,1941, § 8-190; R.S.1943, § 8-183; Laws 1963, c. 29, § 97, p. 173; Laws 1987, LB 2, § 14; Laws 1988, LB 994, § 1; Laws 1998, LB 1321, § 19; Laws 2004, LB 884, § 5; Laws 2017, LB140, § 94.

8-198 Financial institutions; designation of receiver and liquidating agent; department; powers.

The department may be designated the receiver and liquidating agent for any financial institution chartered by the department and, subject to the district court's supervision and control, may proceed to liquidate such financial institution or reorganize it in accordance with the Nebraska Banking Act.

Source: Laws 1929, c. 38, § 11, p. 163; C.S.1929, § 8-192; Laws 1933, c. 18, § 52, p. 162; Laws 1941, c. 9, § 1, p. 79; Laws 1941, c. 180, § 1, p. 700; C.S.Supp.,1941, § 8-192; R.S.1943, § 8-184; Laws 1963, c. 29, § 98, p. 174; Laws 1985, LB 653, § 7; Laws 1998, LB 1321, § 20; Laws 2017, LB140, § 95.

This section does not constitute an unlawful delegation of judicial power to an executive department of government. Department of Banking v. Hedges, 136 Neb. 382, 286 N.W. 277 (1939).

Under 1929 act, Department of Banking was ineligible to be appointed judicial receiver as it is not a qualified legal entity. State ex rel. Sorensen v. Hoskins State Bank, 132 Neb. 878, 273 N.W. 834 (1937).

Under 1929 act, the appointment of a receiver was a judicial act to be performed by the courts. State ex rel. Sorensen v. Nebraska State Bank, 124 Neb. 449, 247 N.W. 31 (1933).

Under 1929 act, this section in a judicial proceeding amounted to no more than a legislative recommendation to the judiciary to appoint secretary as receiver. State ex rel. Sorensen v. State Bank of Minatare, 123 Neb. 109, 242 N.W. 278 (1932).

8-199 Financial institutions; department as receiver; powers; no compensation to director.

Whenever the department has been designated receiver for a financial institution chartered by the department, the department shall have all the powers and privileges provided by the laws of this state with respect to any other receiver and such incidental powers as shall be necessary to carry out an orderly and efficient liquidation or reorganization of any such financial institution for which the department may have become receiver, either by operation of law or by judicial appointment. Acting by and through the director, the department may in its own name as such receiver enforce on behalf of such financial institution or its creditors, shareholders, or owners, by actions at law or in equity, all debts or other obligations of whatever kind or nature due to such financial institution or the creditors or shareholders thereof. In like manner, the department may make, execute, and deliver any and all deeds, assignments, and other instruments necessary and proper to effectuate any sale of real or personal property, or the settlement of any obligations belonging or due to such financial institution for which the department may have become receiver, or its creditors, shareholders, or owners, when such sale or settlement is approved by the district court of the county in which the main office of such financial institution is located. The director shall receive no fees, salary, or other compensation for his or her services in connection with the liquidation or reorganization of such financial institutions other than his or her salary.

Source: Laws 1941, c. 9, § 1, p. 79; Laws 1941, c. 180, § 1, p. 700; C.S.Supp.,1941, § 8-192; R.S.1943, § 8-185; Laws 1963, c. 29, § 99, p. 174; Laws 1985, LB 653, § 8; Laws 2017, LB140, § 96.

In the absence of an allegation of an individual harm upon which a claimant can directly bring suit, claims are derivative and are properly pursued by the receiver under section 8-199 (Reissue 1983). Weimer v. Amen, 235 Neb. 287, 455 N.W.2d 145 (1990).

Section 8-199 (Reissue 1983) does not unconstitutionally deny access to the courts, violate due process, nor take property for a public purpose without just compensation. Weimer v. Amen, 235 Neb. 287, 455 N.W.2d 145 (1990).

Section 8-199 (Reissue 1983) granted the receiver broad authority to enforce all debts or other obligations of whatever kind or nature due to the creditors of the failed institution which arose by virtue of the institution's insolvency. Weimer v. Amen, 235 Neb. 287, 455 N.W.2d 145 (1990).

8-1,100 Insolvent banks; liquidation; special deputies, assistants, counsel; appointment; compensation; discharge.

The director may, under his or her hand and official seal, appoint such special deputies or assistants as he or she may find necessary for the efficient and economical liquidation of insolvent banks, with powers specified in the certificate of appointment, to assist him or her in the liquidation. The certificate shall be filed with the director and a certified copy with the clerk of the district court of the county in which the main office of such bank is located. He or she may also employ such counsel and expert assistance as may be necessary to perform the work of liquidation. He or she shall, subject to the approval of the district court of the county in which the main office of the insolvent bank is located, fix the compensation for the services rendered by such special deputies, assistants, and counsel, which shall be taxed as costs of the liquidation. He

or she may discharge such special deputies, assistants, or counsel at any time or may assign them to one or more liquidations or transfer them from one liquidation to another.

Source: Laws 1929, c. 38, § 13, p. 163; C.S.1929, § 8-194; Laws 1933, c. 18, § 56, p. 164; Laws 1933, c. 96, § 2, p. 382; C.S.Supp.,1941, § 8-194; R.S.1943, § 8-186; Laws 1963, c. 29, § 100, p. 175; Laws 2017, LB140, § 97.

Under this section, the Director of Banking is given power to appoint deputies and assistants, with powers specified in a certificate of appointment, to assist him in the liquidation. Department of Banking v. Hedges, 136 Neb. 382, 286 N.W. 277 (1939).

This section referred to in stating contentions of parties that former method of liquidating insolvent banks had been changed by 1929 act. State ex rel. Sorensen v. State Bank of Minatare, 123 Neb. 109, 242 N.W. 278 (1932).

8-1,101 Insolvent banks; liquidation; special deputies, assistants; bond or insurance; conditions.

Upon the declaration of insolvency, the director shall require bonds or equivalent commercial insurance policies from the special deputies or assistants in sums and with such condition as the director shall specify, to be approved by the district court. The costs of any such bond or policy shall be taxed as costs in the liquidation. Such bond or policy shall be conditioned for the faithful performance of duty, and include indemnity to the department as receiver and liquidating agent.

Source: Laws 1929, c. 38, § 14, p. 164; C.S.1929, § 8-195; Laws 1933, c. 18, § 60, p. 165; C.S.Supp.,1941, § 8-195; R.S.1943, § 8-187; Laws 1963, c. 29, § 101, p. 175; Laws 2004, LB 884, § 6; Laws 2017, LB140, § 98.

8-1,102 Insolvent banks; department as receiver and liquidating agent; liens dissolved; assets; transfers to defraud creditors; preferences.

Upon the declaration of insolvency of a bank by the director, the department shall become the receiver and liquidating agent to wind up the business of that bank, and the department shall be vested with the title to all of the assets of such bank wherever the assets may be situated and whatever kind and character such assets may be, as of the date of the filing of the declaration of insolvency with the clerk of the district court of the county in which the main office of such bank is located. All levies, judgment liens, attachments, or other liens obtained through legal proceedings against such bank or its property acquired within sixty days next preceding the filing of the declaration of insolvency shall be void, and the property affected by the levy, judgment lien, attachment, or other lien obtained through legal proceedings, shall be wholly discharged and released therefrom. If at any time within sixty days prior to the taking over by the director of a bank which is later declared insolvent any transfers of the assets of such bank are made to prevent liquidation and distribution of such assets to the bank's creditors as provided in the Nebraska Banking Act or if any transfers are made so as to create a preference of one creditor over another, such transfers shall be void and the director shall be entitled to recover such assets for the benefit of the trust.

Source: Laws 1933, c. 18, § 54, p. 163; C.S.Supp.,1941, § 8-1,127; R.S. 1943, § 8-188; Laws 1963, c. 29, § 102, p. 176; Laws 1987, LB 2, § 15; Laws 1998, LB 1321, § 21; Laws 2017, LB140, § 99.

8-1,103 Insolvent banks; liquidation; Director of Banking and Finance; powers.

For the purpose of executing and performing any of the powers and duties hereby conferred upon him or her, the director may, in the name of the department or the insolvent bank or in his or her own name as director, prosecute and defend any and all actions and other legal proceedings and may, in the name of the department or the insolvent bank or in his or her own name as director, execute, acknowledge, and deliver any and all deeds, assignments, releases, and other instruments necessary and proper to effectuate any sale of real or personal property or sale or compromise authorized by order of the court as provided in the Nebraska Banking Act. Any deed or other instrument executed pursuant to such authority shall be valid and effectual for all purposes as though the same had been executed by the officers of the insolvent bank by authority of its board of directors.

Source: Laws 1933, c. 18, § 58, p. 165; C.S.Supp.,1941, § 8-1,129; R.S. 1943, § 8-189; Laws 1963, c. 29, § 103, p. 176; Laws 1987, LB 2, § 16; Laws 1998, LB 1321, § 22; Laws 2017, LB140, § 100.

Department of Banking is a legal entity entitled to sue and defend under this section. Department of Banking v. Hedges, 136 Neb. 382, 286 N.W. 277 (1939).

8-1,104 Insolvent banks; liquidation; director; collection of debts; sale or compromise of certain debts; procedure; deposit or investment of funds.

Upon taking possession of the property and business of any bank, the director shall collect all money due to such bank and do such other acts as are necessary to conserve its assets and business and, on declaration of insolvency, he or she shall proceed to liquidate the affairs of the bank under the Nebraska Banking Act. He or she shall collect all debts due to and belonging to the bank. If he or she desires to sell or compromise any or all bad or doubtful debts or any or all of the real and personal property of such bank, he or she shall apply to the district court of the county in which the main office of the bank is located for an order permitting such sale or compromise on such terms and in such manner as the court may direct. All money so collected by the director may be, from time to time, deposited in one or more state banks or national banks. No deposits of such money shall be made unless a pledge of assets, a guaranty bond, or both are given as security for such deposit. All depository banks are authorized to give such security. The director may invest a portion or all of such money in short-time interest-bearing securities of the federal government.

Source: Laws 1933, c. 18, § 67, p. 169; C.S.Supp.,1941, § 8-1,131; R.S. 1943, § 8-190; Laws 1963, c. 29, § 104, p. 177; Laws 1987, LB 2, § 17; Laws 1998, LB 1321, § 23; Laws 2017, LB140, § 101.

This section does not constitute an unlawful delegation of judicial power to an executive department of government. Department of Banking v. Hedges, 136 Neb. 382, 286 N.W. 277 (1939).

8-1,105 Insolvent banks; reorganization or liquidation proceedings; district judge; jurisdiction.

In any proceeding in connection with the insolvency, liquidation, or reorganization of a bank of which a district court has jurisdiction, a judge of the district court shall exercise such jurisdiction in any county in the judicial district for which he or she was appointed to perform any official act in the manner and

with the same effect as he or she might exercise in the county in which the matter arose, or to which it may have been transferred, and he or she may perform any such act in chambers with the same effect as in open court.

Source: Laws 1925, c. 30, § 16, p. 131; C.S.1929, § 8-191; Laws 1933, c. 18, § 55, p. 163; C.S.Supp.,1941, § 8-191; R.S.1943, § 8-191; Laws 1963, c. 29, § 105, p. 178; Laws 2017, LB140, § 102.

Powers of district judge may be exercised at chambers. Mueller v. Keeley, 163 Neb. 613, 80 N.W.2d 707 (1957).

Under this section, jurisdiction is conferred upon a judge of the district court to act in chambers in connection with the insolvency, liquidation, or reorganization of a bank with the same effect as in open court. Department of Banking v. Hedges, 136 Neb. 382, 286 N.W. 277 (1939).

Appointment of receiver and judicial determination of deficiency of assets does not vest court appointing receiver with exclusive jurisdiction to try an equity suit for purpose of determining liability of stockholders. Parker v. Luehrmann, 126 Neb. 1, 252 N.W. 402 (1934).

Section sustained as constitutional, and suit for accounting brought by depositor against receiver of bank and state banking officials is a proceeding which may be tried in chambers under this section. Morrill County v. Bliss, 125 Neb. 97, 249 N.W. 98 (1933).

This section referred to in stating contentions of parties that former method of liquidating insolvent banks had been changed by 1929 act. State ex rel. Sorensen v. State Bank of Minatare, 123 Neb. 109, 242 N.W. 278 (1932).

On order to show cause, filed by bank receiver in district court of county where receivership proceedings are pending, court has jurisdiction, at chambers in another county, to adjudicate whether possession of land should be surrendered to receiver. State ex rel. Spillman v. Neligh State Bank, 116 Neb. 858, 219 N.W. 392 (1928).

8-1,106 Insolvent banks; claims; filing; time limit.

The director, within twenty days after the declaration of insolvency of a bank, shall file with the clerk of the district court of the county in which the main office of such bank is located, a list setting forth the name and address of each of the creditors of such bank as shown by the books thereof or who are known by the director to be creditors, and within thirty days after filing the list of creditors, he or she shall also file an order fixing the time and place for filing claims against such bank. The time fixed for filing claims shall not be more than sixty days nor less than thirty days from the date of the filing of the order, and within seven days after the filing of such order, the director shall mail to each known creditor of such bank a copy of the order and a blank form for proof of claim. The director shall also post a copy of the order on the door of the bank, and within two weeks from the date of the order he or she shall cause notice to be given by publication, in such newspapers as he or she may direct, once each week for two successive weeks, calling on all persons who may have claims against the bank to present them to the director within the time and the place provided for in the order and to make proof thereof. Such claims shall be sworn to by the creditor or his or her representative. Any claim, other than claims for deposits and exchange, not presented and filed within the time fixed by such order shall be forever barred. Claims for deposits or exchange as shown by the books of the bank presented after the expiration of the time fixed in the order for filing claims may be allowed by the director upon a showing being made by the creditor, within six months from the date of the expiration of the time for filing claims as fixed by the order, that he or she did not have knowledge of the closing of the bank and did not receive notice within time to permit the filing of his or her claim before the time fixed for filing claims had expired.

Source: Laws 1923, c. 191, § 21, p. 448; C.S.1929, § 8-198; Laws 1933, c. 18, § 62, p. 167; C.S.Supp.,1941, § 8-198; R.S.1943, § 8-192; Laws 1963, c. 29, § 106, p. 178; Laws 2017, LB140, § 103.

Section applies not only to depositor's claims but to all claims against assets in hands of receiver, and allowance of claim constitutes judgment. State ex rel. Spillman v. Platte Valley State Bank, 128 Neb. 562, 259 N.W. 643 (1935).

Special time limit for filing claims against insolvent state bank will be applied to bar claims only when the record affirmatively shows compliance with statutory procedure and conditions.

State ex rel. Spillman v. State Bank of Papillion, 119 Neb. 525, 232 N.W. 585 (1930).

Duty of receiver to pay taxes before depositors whether claim for taxes filed or not, notwithstanding order of court barring claims not filed. State ex rel. Spillman v. Ord State Bank, 117 Neb. 189, 220 N.W. 265 (1928).

8-1,107 Insolvent banks; claims; listing and classification; notice to claimant; filing of objection; powers and duties of director.

(1) Upon the expiration of the time fixed for presentation of claims, the director shall thoroughly investigate all claims and file with the clerk of the district court of the county in which the main office of the insolvent bank is located a complete list of all claims against which he or she knows of no defense and which, in his or her judgment, are valid, designating their priority of payment, together with a list of the claims which, in his or her judgment, are invalid. He or she shall also file an order allowing or rejecting such claims as classified.

(2) When the director reclassifies or rejects a claim, which rejection shall be made when he or she doubts the legality of a claim, he or she shall serve written notice of such reclassification or rejection upon the claimant by either registered or certified mail and file, with the clerk of the district court of the county in which the main office of the bank is located, an affidavit of the service of such notice, which affidavit shall be prima facie evidence of such service. Such notice shall state the time and place for the filing by claimant of his or her objections to the classification, reclassification, or rejection of his or her claim.

Source: Laws 1923, c. 191, § 22, p. 449; C.S.1929, § 8-199; Laws 1930, Spec. Sess., c. 6, § 9, p. 30; Laws 1933, c. 18, § 63, p. 168; C.S.Supp.,1941, § 8-199; R.S.1943, § 8-193; Laws 1957, c. 242, § 4, p. 818; R.S.1943, § 8-193; Laws 1963, c. 29, § 107, p. 179; Laws 2017, LB140, § 104.

This section does not constitute an unlawful delegation of judicial power to an executive department of government. Department of Banking v. Hedges, 136 Neb. 382, 286 N.W. 277 (1939).

8-1,108 Insolvent banks; claims; objections to classification; hearing.

Any person objecting to the classification of his or her claim and the order based thereon must, within thirty days of the filing of the classification and order with the clerk of the district court, begin an action in that court asking to reclassify his or her claim and to set aside the order of the director. Notice of this action shall be given by the service of a copy of the petition therein upon the director, who shall, within thirty days of such service, file his or her answer or other pleading. The court shall then set the matter for hearing at the earliest convenient date and shall try and determine the issues according to the usual procedure in matters of equity.

Source: Laws 1923, c. 191, § 23, p. 449; C.S.1929, § 8-1,100; Laws 1930, Spec. Sess., c. 6, § 10, p. 31; Laws 1933, c. 18, § 64, p. 168; C.S.Supp.,1941, § 8-1,100; R.S.1943, § 8-194; Laws 1963, c. 29, § 108, p. 179; Laws 2017, LB140, § 105.

When payment of a dividend is deferred by reason of an unsuccessful contest of an alleged setoff, the creditor so delayed should be allowed interest on the dividend to put that creditor on an equality with the other creditors in his class. Colburn v. Ley, 191 Neb. 427, 215 N.W.2d 869 (1974).

Where any controversy over allowance of claims arises under this section, judicial power is invoked. Department of Banking v. Hedges, 136 Neb. 382, 286 N.W. 277 (1939).

An order fixing a time for filing of petitions of intervention by claimants under this section is not a final judgment, and may be modified at a subsequent term without compliance with the general statute authorizing modification of final judgments at subsequent terms. State ex rel. Sorensen v. South Omaha State Bank, 135 Neb. 478, 282 N.W. 382 (1938).

8-1,109 Insolvent banks; claims; certificate of indebtedness; assignment; payments endorsed on certificate.

Upon the allowance of a claim against an insolvent bank, the director shall, upon request of the claimant, issue and deliver to the claimant a certificate of indebtedness showing the amount of the claim, the date of the allowance thereof, and whether such claim is one having priority of payment or is a general claim. Any assignment of a claim or certificate of indebtedness shall be filed with the director and shall not be binding until so filed. Upon payment of any distribution on a claim, evidenced by a certificate of indebtedness, such certificate shall be presented and an endorsement of such payment shall be made on the certificate.

Source: Laws 1929, c. 38, § 22, p. 167; C.S.1929, § 8-1,101; Laws 1933, c. 18, § 65, p. 169; C.S.Supp.,1941, § 8-1,101; R.S.1943, § 8-195; Laws 1963, c. 29, § 109, p. 180; Laws 2017, LB140, § 106.

8-1,110 Insolvent banks; claims; priority.

The claims of depositors for deposits not otherwise secured and claims of holders of exchange shall have priority over all other claims, except federal, state, county, and municipal taxes. Such claims shall, at the time of the declaration of insolvency of a bank, be a first lien on all the assets of the bank from which they are due. No claim to priority shall be allowed which is based upon any evidence of indebtedness in the hands of or originally issued to any stockholder, officer, or employee of such bank and which represents money obtained by such stockholder, officer, or employee from himself, herself, or some other person, firm, corporation, or bank in lieu of or for the purpose of effecting a loan of funds to such failed bank.

Source: Laws 1909, c. 10, § 52, p. 92; R.S.1913, § 332; Laws 1919, c. 190, tit. V, art. XVI, § 53, p. 707; C.S.1922, § 8033; Laws 1923, c. 191, § 24, p. 450; Laws 1925, c. 30, § 12, p. 129; Laws 1929, c. 38, § 19, p. 166; Laws 1929, c. 39, § 1, p. 169; C.S.1929, § 8-1,102; Laws 1930, Spec. Sess., c. 6, § 7, p. 28; Laws 1933, c. 18, § 66, p. 169; Laws 1935, c. 16, § 2, p. 91; C.S.Supp.,1941, § 8-1,102; R.S.1943, § 8-196; Laws 1963, c. 29, § 110, p. 180; Laws 2017, LB140, § 107.

1. Priority allowed
2. Priority disallowed
3. Trust fund
4. Miscellaneous

1. Priority allowed

Statute impresses on assets of failed state bank a first lien for depositors and holders of exchange. State ex rel. Sorensen v. State Bank of Omaha, 128 Neb. 148, 258 N.W. 260 (1934).

By use of term ''otherwise secured'' Legislature intended to exclude from participation in the lien only such depositors as take security for their deposits and in some degree deplete the assets of the bank. State ex rel. Sorensen v. Bank of Campbell, 125 Neb. 485, 251 N.W. 101 (1933).

Priority of lien hereunder fixed by status at time of adjudication of insolvency. Wells v. Farmers State Bank of Overton, 124 Neb. 386, 246 N.W. 714 (1933).

A judgment lien upon the guaranty fund was created by allowance of claim for deposits, and Legislature could not transfer assets of the guaranty fund subject to such lien to depositors' final settlement fund. Bliss v. Bryan, 123 Neb. 461, 243 N.W. 625 (1932).

Payee of draft drawn by bank becoming insolvent before draft paid is holder of exchange hereunder and entitled to payment as a depositor. State ex rel. Sorensen v. First State Bank of Alliance, 123 Neb. 23, 241 N.W. 783 (1932).

Proceeds of forged notes fraudulently endorsed and negotiated by payee may become deposit, chargeable upon guaranty fund, in bank operated and controlled by him. State ex rel. Spillman v. Dunbar State Bank, 120 Neb. 325, 232 N.W. 578 (1930).

County deposit, not protected by bank depository bond, held not otherwise secured, and therefore entitled to priority. State ex rel. Spillman v. Dunbar State Bank, 119 Neb. 335, 228 N.W. 868 (1930).

Renewal of certificate held by officer did not effect loan to bank and was, therefore, entitled to priority. State ex rel. Spillman v. Citizens State Bank of Potter, 117 Neb. 358, 220 N.W. 593 (1928).

Bank paying drafts drawn upon it by correspondent bank which fails is subrogated to rights of original holders of the drafts, and entitled to priority under this section. Nebraska Nat. Bank v. Bruning, 114 Neb. 719, 209 N.W. 510 (1926).

Deposits by bank officer, as trustee, of trust funds raised to assist bank as well as another corporation with which officer is connected, although erroneously credited to officer individually, are entitled to priority. State ex rel. Davis v. Exchange Bank of Ogallala, 114 Neb. 664, 209 N.W. 249 (1926).

Notes discounted by solvent bank for another, and credited to the latter, constitute deposit entitled to priority. State ex rel. Davis v. Newcastle State Bank, 114 Neb. 389, 207 N.W. 683 (1926).

Deposit of own money by stockholder, who does nothing to effect loan to bank from any source is entitled to priority; otherwise, where he deposits money borrowed from another to assist bank. State ex rel. Davis v. Farmers State Bank, 113 Neb. 348, 203 N.W. 572 (1925).

Certificate of deposit issued in payment for negotiable paper in good faith sold to bank by stockholder without fraud or collusion is entitled to priority. State ex rel. Davis v. Farmers State Bank of Allen, 113 Neb. 82, 201 N.W. 893 (1925).

Certificates of deposit are not deprived of priority, although excessive interest paid thereon, where bank officer agrees individually to pay the excess and holder had no knowledge that bank paid it. State ex rel. Davis v. Farmers State Bank of Benedict, 112 Neb. 474, 199 N.W. 839 (1924).

Entire county deposit, although in excess of fifty percent of bank's capital as limited by general revenue statute, is entitled to priority. State ex rel. Davis v. Peoples State Bank of Anselmo, 111 Neb. 126, 196 N.W. 912 (1923), opinion vacated 111 Neb. 136, 198 N.W. 1018 (1924).

Good faith deposit subject to check, drawing interest not exceeding statutory rate, is entitled to priority. Central State Bank v. Farmers State Bank, 101 Neb. 210, 162 N.W. 637 (1917).

United States held entitled to priority over depositors as to postal funds. Bliss v. United States, 44 F.2d 909 (8th Cir. 1930).

2. Priority disallowed

Sureties who are liable on bond given to secure deposit of village in bank which becomes insolvent, and recoup part of their loss by selling bonds given them by the bank for their protection, are not entitled to preferred claim against assets of bank. Shumway v. Department of Banking, 130 Neb. 491, 265 N.W. 553 (1936), opinion withdrawn 131 Neb. 246, 267 N.W. 469 (1936).

Municipal funds deposited in state bank and protected by depository bond, premium of which is paid by bank, becomes, on failure of bank, a deposit ''otherwise secured'' within the statute, and precludes municipality from obtaining preference or participating in distribution of assets on par with unsecured creditors. State ex rel. Sorensen v. South Omaha State Bank, 129 Neb. 43, 260 N.W. 278 (1935).

Deposit of city funds in state bank is ''otherwise secured'' where city requires bank to give depository bond and pay premium therefor. State ex rel. Sorensen v. State Bank of Omaha, 125 Neb. 492, 251 N.W. 99 (1933).

Insolvent bank may not prefer a depositor by exchange of note and mortgage taken from its assets for depositor's certificate of deposit. Luikart v. Hunt, 124 Neb. 642, 247 N.W. 790 (1933).

City exacting security for deposits is to be classified as ''otherwise secured'' under this section and is not entitled to share as preferred creditor in assets of bank and depositor's final settlement fund, and city's claim as to unsecured balance of deposits should be allowed as general claim only. State ex rel. Sorensen v. First State Bank of Alliance, 122 Neb. 109, 239 N.W. 646 (1931).

Where bonds left with bank for safekeeping were sold and proceeds converted by bank officers, certificates of deposit being substituted therefor without the owner's knowledge or authority, claim was not entitled to priority, because the money or its equivalent was not shown to have been placed in or at the command of the bank, and therefore no deposit was created. State ex rel. Spillman v. Dunbar State Bank, 119 Neb. 763, 230 N.W. 687 (1930).

Stockholder who procures and places in bank money to meet pressing demand or to replenish reserve, not for his own use or convenience, is not depositor entitled to priority. State ex rel. Spillman v. Farmers State Bank of Wolbach, 117 Neb. 448, 220 N.W. 569 (1928); State ex rel. Spillman v. Citizens State Bank of Potter, 117 Neb. 358, 220 N.W. 593 (1928); State ex rel. Spillman v. Security State Bank of Eddyville, 116 Neb. 521, 218 N.W. 408 (1928); State ex rel. Spillman v. Farmers State Bank of Dix, 115 Neb. 574, 214 N.W. 4 (1927); State ex rel. Spillman v. Atlas Bank of Neligh, 114 Neb. 646, 209 N.W. 333 (1926).

Stockholder depositing liberty bonds which bank wrongfully converts, who later accepts certificate of deposit therefor, knowing bank to be insolvent, is not protected. State ex rel. Spillman v. Atlas Bank of Neligh, 114 Neb. 650, 209 N.W. 334 (1926).

Promissory note, secured by worthless third mortgage is not money or equivalent entitling deposit to priority, and subsequent holder of assigned certificate is not innocent purchaser. State ex rel. Davis v. Kilgore State Bank, 113 Neb. 772, 205 N.W. 297 (1925).

Where officers of bank converted their stock into ostensible deposits by series of questionable transactions, claim was not entitled to priority. State ex rel. Davis v. Farmers State Bank of Winside, 112 Neb. 380, 199 N.W. 812 (1924).

Where certificates of deposit are issued to officer to negotiate for replenishing cash reserve, and the bank receives nothing at time of issuance, the claim is not entitled to priority. State ex rel. Davis v. Farmers State Bank of Halsey, 111 Neb. 117, 196 N.W. 908 (1923).

Where certificate of deposit is issued with understanding that bank will pay bonus in addition to statutory interest, the transaction amounts to a loan of funds not entitled to priority of payment. Iams v. Farmers State Bank, 101 Neb. 778, 165 N.W. 145 (1917).

No preference or priority for the claims of the state against insolvent banks is provided except claims for taxes. City of Lincoln, Neb. v. Ricketts, 84 F.2d 795 (8th Cir. 1936).

3. Trust fund

Fund created by delivery of notes by stockholders to bank to cover contingent reserve was an asset of bank upon which the statutory lien of this section attached upon closing of bank, and was not a trust fund reclaimable by the stockholders. Jorgenson v. Department of Banking, 136 Neb. 1, 284 N.W. 747 (1939).

Basis for giving trust fund priority over depositors under this section is that trust fund does not constitute assets of the bank, but is really property of the claimant held by the bank as trustee. State ex rel. Sorensen v. Citizens Bank of Stuart, 124 Neb. 575, 248 N.W. 82 (1933).

Statute is not applicable to claim based upon trust fund unlawfully converted by bank as trustee. State ex rel. Sorensen v. Farmers State Bank of Polk, 121 Neb. 532, 237 N.W. 857 (1931), 82 A.L.R. 7 (1931).

4. Miscellaneous

Contract for liquidation of bank did not violate this section. Department of Banking v. Walker, 131 Neb. 732, 269 N.W. 907 (1936).

Statute does not apply to fund unlawfully converted by the bank as trustee to its own use. State ex rel. Sorensen v. Citizens Bank of Stuart, 124 Neb. 717, 247 N.W. 427 (1933).

Statutory lien hereunder does not foreclose constitutional powers of equity court to direct a disposition of bank assets in contravention thereof. State ex rel. Sorensen v. Nebraska State Bank, 124 Neb. 449, 247 N.W. 31 (1933).

This section violates neither state constitutional prohibition of special and class legislation (Art. III, sec. 18) nor the 14th

amendment to federal Constitution, equal protection clause. State ex rel. Sorensen v. First State Bank of Alliance, 122 Neb. 502, 240 N.W. 747 (1932), 79 A.L.R. 576 (1932).

This section was intended to prevent state banks from securing deposits, by the pledging of assets, except in the cases specified where pledging is authorized. Bliss v. Pathfinder Irrigation District, 122 Neb. 203, 240 N.W. 291 (1932).

Priority of unsecured deposits fixed by status at time of actual closing of bank when court adjudges it insolvent and orders liquidation. State ex rel. Sorensen v. Thurston State Bank, 121 Neb. 407, 237 N.W. 293 (1931).

Under this and other sections cited, the Department of Banking is vested with general supervision and control of state banks with authority to do all things reasonably necessary for protection of depositors therein. Brownell v. Adams, 121 Neb. 304, 236 N.W. 750 (1931).

This section gives to depositors of a failed bank a lien only on the assets of the bank. State ex rel. Spillman v. Citizens State Bank of Royal, 118 Neb. 337, 224 N.W. 868 (1929).

This section is referred to as showing that some form of deposits was contemplated as an integral part of the business of banks. Gamble v. Daniel, 39 F.2d 451 (8th Cir. 1930), appeal dismissed 281 U.S. 705 (1930).

8-1,111 Insolvent banks; priority; not affected by federal deposit insurance.

When a bank whose deposits are insured by the Federal Deposit Insurance Corporation becomes insolvent, neither the deposits in the bank nor the exchange of such bank shall be deemed to be otherwise secured by reason of such insurance for purposes of section 8-1,110.

Source: Laws 1935, c. 16, § 2, p. 91; C.S.Supp.,1941, § 8-1,102; R.S.1943, § 8-197; Laws 1963, c. 29, § 111, p. 181; Laws 2017, LB140, § 108.

8-1,112 Insolvent banks; director; payment of dividends.

At any time after the expiration of the date fixed for the presentation of claims, the district court may by order, upon the application of the director, authorize the director to declare out of the funds remaining in his or her hands, after the payment of expenses, one or more distributions, and at the earliest possible date the director shall declare a final distribution as may be directed by the district court of the county in which the main office of such bank is located.

Source: Laws 1933, c. 18, § 69, p. 170; C.S.Supp.,1941, § 8-1,133; R.S. 1943, § 8-198; Laws 1963, c. 29, § 112, p. 181; Laws 2017, LB140, § 109.

This section does not constitute an unlawful delegation of judicial power to an executive department of government. Department of Banking v. Hedges, 136 Neb. 382, 286 N.W. 277 (1939).

8-1,113 Insolvent banks; liquidation expenses; allocation; certification.

The director shall from time to time allocate to the various banks in liquidation the expenses of the department by reason of such liquidation, other than the compensation and expense of the special deputy or assistant in charge and the fees for legal services directly incident to the bank in liquidation. The director shall certify to the various district courts of the counties in which the banks in process of liquidation are located the amount of the expenses allocated, which shall be taxed and paid as costs in the liquidation.

Source: Laws 1933, c. 18, § 57, p. 164; C.S.Supp.,1941, § 8-1,128; R.S. 1943, § 8-199; Laws 1963, c. 29, § 113, p. 181; Laws 2017, LB140, § 110.

8-1,114 Repealed. Laws 1973, LB 164, § 25.

8-1,115 Insolvent banks; liquidation; reports to district court; dissolution of bank; cancellation of charter.

The director shall from time to time make and file with the clerk of the district court of the county in which the main office of the insolvent bank is

located a report of his or her acts of liquidation of each insolvent bank. He or she shall, upon the completion of the liquidation, file a final report, notice of which shall be given as the court may direct, and on hearing thereon and approval thereof by the court such liquidation shall be declared closed and the corporation dissolved. The director shall then cancel the charter issued to such bank pursuant to section 8-122.

Source: Laws 1933, c. 18, § 68, p. 170; C.S.Supp.,1941, § 8-1,132; R.S. 1943, § 8-1,101; Laws 1963, c. 29, § 115, p. 182; Laws 2017, LB140, § 111.

This section does not constitute an unlawful delegation of judicial power to an executive department of government. Department of Banking v. Hedges, 136 Neb. 382, 286 N.W. 277 (1939).

8-1,116 Insolvent banks; stockholders; restoration of solvency; conditions.

After the department has taken possession of any bank under the Nebraska Banking Act, the stockholders of the bank may repair its credit, restore or substitute its reserves, and otherwise place it in safe condition. Such bank shall not be permitted to reopen its business until the director, after careful investigation of its affairs, is of the opinion that its stockholders have complied with the law, that the bank's credit and funds are in all respects repaired, that its reserves are restored or are sufficiently substituted, and that it should be permitted again to reopen for business, at which time the director may issue written permission for resumption of business under its charter.

Source: Laws 1909, c. 10, § 50, p. 91; R.S.1913, § 330; Laws 1919, c. 190, tit. V, art. XVI, § 51, p. 706; Laws 1921, c. 297, § 5, p. 951; C.S.1922, § 8031; C.S.1929, § 8-197; Laws 1931, c. 20, § 1, p. 92; Laws 1933, c. 18, § 61, p. 166; Laws 1941, c. 14, § 2, p. 93; C.S.Supp.,1941, § 8-197; R.S.1943, § 8-1,102; Laws 1963, c. 29, § 116, p. 182; Laws 1987, LB 2, § 18; Laws 1998, LB 1321, § 24; Laws 2017, LB140, § 112.

Under this section, power to assess fully paid-up capital stock of a state bank to recoup losses or to restore depleted capital was committed to the directors of the bank upon authority from the stockholders, and fund voluntarily raised by stockholders and used by a holding company in eliminating bad paper and maintaining reserve is not an assessment. State ex rel. Spillman v. Citizens State Bank of Chadron, 115 Neb. 776, 214 N.W. 933 (1927).

Directors are not empowered to levy assessment where bank not taken over by Department of Banking, and stockholders have not authorized same. McMillan v. Chadron State Bank, 115 Neb. 767, 214 N.W. 931 (1927).

Directors have power to levy assessment only where stockholders have exercised their option to repair capital, restore reserves, and continue business, rather than to liquidate. Citizens State Bank of Stratton v. Strayer, 114 Neb. 567, 208 N.W. 662 (1926).

8-1,117 Banks; impaired capital; assessments on stock to restore; preferred stock excepted.

If the capital of a bank becomes impaired, whether the department has taken possession of the bank or not, and if stockholders representing eighty-five percent or more of the common capital stock of the bank, with a view of restoring the impaired capital, shall, with the approval of the department, authorize the board of directors of the bank to levy and collect assessments on the common capital stock in such amount as the board of directors may determine necessary for such purpose, the board of directors shall levy the assessments so authorized and shall notify all common stockholders of record of the assessments by either registered or certified mail. If any common stockholder fails to pay his or her assessment within three weeks from the date of mailing such notice, the pro rata amount of such assessment shall be a lien

upon his or her common capital stock and the board of directors shall immediately sell such shares of common capital stock at public or private sale without further notice and apply the proceeds of the sale to the payment of such assessment. Any balance shall be paid to the delinquent shareholder. Nothing in this section shall be construed to authorize the levy and collections of assessments on the preferred capital stock of the bank.

Source: Laws 1909, c. 10, § 50, p. 91; R.S.1913, § 330; Laws 1919, c. 190, tit. V, art. XVI, § 51, p. 706; Laws 1921, c. 297, § 5, p. 951; C.S.1922, § 8031; C.S.1929, § 8-197; Laws 1931, c. 20, § 1, p. 92; Laws 1933, c. 18, § 61, p. 166; Laws 1941, c. 14, § 2, p. 93; C.S.Supp.,1941, § 8-197; R.S.1943, § 8-1,103; Laws 1963, c. 29, § 117, p. 182; Laws 2017, LB140, § 113.

8-1,118 Insolvent banks; restoration of solvency; reopening for limited business; conditions; costs; new deposits treated as a trust fund; expenses.

If the director, with a view to restoring the solvency of any bank which the department has taken possession of pursuant to law, approves a contract or plan whereby the bank is permitted to receive deposits and pay checks and do a limited banking business, entered into between the unsecured depositors and unsecured creditors representing eighty-five percent or more of the total amount of deposits and unsecured claims of such bank on the one hand and the bank or its board of directors on the other, all other depositors and unsecured creditors shall be held subject to such agreement to the same extent and with the same effect as if they had joined in the execution of the agreement, and their claims shall be treated in all other respects as if they had joined in the execution of such agreement in the event such bank is permitted to reopen for business as limited by such contract. All deposits received after the adoption of such plan and the assets of the bank created thereby, and before the restoration of the bank to solvency, shall be a trust fund for the security and the repayment of the deposits so received and shall not be subject to the payment of any deposit, debt, claim, or demand of the bank previously created. Such money and assets shall be kept and invested in the manner directed by the director. Section 8-138 does not apply to banks operating under this section. Any county, city, village, township, or school district through its governing body, and the state through the Governor, may enter into such contract except when the funds of such county, city, village, township, or school district are adequately secured. Whenever a bank is permitted to operate under the provisions of this section, such bank shall pay all costs incurred by the department in the approval of such plan, including examiners' expenses, attorneys' fees, and clerk hire, and incurred in special examinations required by the director.

Source: Laws 1933, c. 16, § 1, p. 128; C.S.Supp.,1941, § 8-1,121; R.S. 1943, § 8-1,110; Laws 1963, c. 29, § 118, p. 183; Laws 2003, LB 217, § 8; Laws 2017, LB140, § 114.

Judicial notice taken of general condition existing which, by this act, was sought to be remedied. State ex rel. Nebraska State Bar Assn. v. Bachelor, 139 Neb. 253, 297 N.W. 138 (1941).

Approval of plan of restricted operation does not restrict right of Department of Banking to liquidate insolvent bank. Farmers State Bank of Clarks v. Luikart, 131 Neb. 692, 269 N.W. 627 (1936).

Status of claim of sureties for village deposit made in bank prior to being allowed to reopen for a limited banking business under this section discussed. Shumway v. Department of Banking, 131 Neb. 246, 267 N.W. 469 (1936).

8-1,119 Violations; general penalty.

Where no other punishment is provided in the Nebraska Banking Act, any person violating any provision of the act is guilty of a Class III misdemeanor.

Source: Laws 1909, c. 10, § 61, p. 95; R.S.1913, § 341; Laws 1919, c. 190, tit. V, art. XVI, § 61, p. 710; C.S.1922, § 8041; C.S.1929, § 8-1,104; R.S.1943, § 8-1,107; Laws 1963, c. 29, § 119, p. 184; Laws 1977, LB 40, § 53; Laws 1987, LB 2, § 19; Laws 1998, LB 1321, § 25; Laws 2017, LB140, § 115.

8-1,120 Repealed. Laws 2017, LB140, § 163.

8-1,121 Repealed. Laws 2017, LB140, § 163.

8-1,122 Repealed. Laws 1987, LB 2, § 22.

8-1,123 Repealed. Laws 2007, LB 124, § 77.

8-1,124 Emergencies; terms, defined.

As used in sections 8-1,124 to 8-1,129, unless the context otherwise requires:

(1) Emergency means any condition or occurrence, actual or threatened, which interferes physically with the conduct of normal business operations at one or more or all of the offices of a financial institution, or which poses an imminent or existing threat to the safety or security of persons or property, or both, including, but not limited to, fire, flood, earthquake, hurricane, wind, rain, snow storm, labor dispute and strike, power failure, transportation failure, interruption of a communication facility, shortage of fuel, housing, food, transportation, or labor, robbery or attempted robbery, actual or threatened enemy attack, epidemic or other catastrophe, riot, civil commotion, and any other act of lawlessness or violence, actual or threatened;

(2) Financial institution means a bank, savings bank, building and loan association, savings and loan association, credit union, or trust company, or any office thereof, chartered by the department;

(3) Office means any place at which a financial institution transacts its business or conducts operations related to its business; and

(4) Officers means the person or persons designated by the board of directors, supervisory committee, or other governing body of a financial institution, to act for such financial institution in an emergency or, in the absence of any such designation or of such officer or officers, the president or any other officer in charge of such financial institution or of such office or offices.

Source: Laws 1971, LB 523, § 1; Laws 2017, LB140, § 116.

8-1,125 Emergencies; proclamation; director; effect; temporary office.

(1) Whenever the director is of the opinion that an emergency exists, or is impending, he or she may, by proclamation, authorize any financial institution located in the affected area to close any or all of its offices. In addition, if the director is of the opinion that an emergency exists, or is impending, which affects, or may affect, a particular financial institution, or a particular office of such financial institution, but not banks located in the area generally, he or she may authorize the particular financial institution or office of the financial institution affected to close. Any office so closed shall remain closed until the director proclaims that the emergency has ended or until such time as the officers of the financial institution determine that one or more offices closed

because of the emergency should reopen, whichever occurs first, and, in either event, for such further time thereafter as may reasonably be required to reopen.

(2)(a) Whenever the director authorizes a financial institution to close pursuant to subsection (1) of this section or to remain closed pursuant to section 8-1,126, he or she, in writing, may further authorize the financial institution to open a temporary office at a designated location for the period of time during which the financial institution or office is to remain closed, subject to extensions requested by the financial institution and authorized by the director, except that in no event may the director authorize a temporary office to operate for a total period of longer than thirty months.

(b) The director may authorize a financial institution to open a temporary office after consideration of (i) the ability of the financial institution to conduct its business in the area where the financial institution or the office of the financial institution was closed without opening a temporary office and (ii) the proximity of the financial institution or office of the financial institution to the proposed temporary office.

(c) The director may authorize a mobile branch to operate as a temporary office for any closed office of a financial institution other than its main office.

(d) The director may orally authorize a financial institution to open a temporary office to operate for a period no longer than four business days.

Source: Laws 1971, LB 523, § 2; Laws 2017, LB140, § 117.

8-1,126 Emergencies; officers; powers.

Whenever the officers of a financial institution are of the opinion that an emergency exists, or is impending, which affects, or may affect, one or more or all of a financial institution's offices, they shall have the authority, in the reasonable and proper exercise of their discretion, to determine not to open any one or more or all of such offices on any business or banking day or, if having opened, to close any one or more or all of such offices during the continuation of such emergency, even if the director has not issued and does not issue a proclamation of emergency. Any such closed office may remain closed until such time as the officers determine that the emergency has ended, and for such further time thereafter as may reasonably be required to reopen. In no case shall such office remain closed for more than forty-eight consecutive hours, excluding other legal holidays, without requesting the approval of the director pursuant to section 8-1,125.

Source: Laws 1971, LB 523, § 3; Laws 2017, LB140, § 118.

8-1,127 Emergency; proclamation; President of United States; Governor; effect.

The officers of a financial institution may close any one or all of the financial institution's offices on any day, designated by proclamation of the President of the United States or the Governor, as a day or days of mourning, rejoicing, or other special observance.

Source: Laws 1971, LB 523, § 4; Laws 2017, LB140, § 119.

8-1,128 Emergency; closing; notice; contents.

A financial institution closing an office pursuant to the authority granted under section 8-1,126 shall give as prompt notice of its action as conditions will permit and by any means available, to the director.

Source: Laws 1971, LB 523, § 5; Laws 2017, LB140, § 120.

8-1,129 Emergencies; laws applicable.

(1) Any day on which a financial institution, or any one or more of its offices, is closed during all or any part of its normal business hours pursuant to the authorization granted under sections 8-1,124 to 8-1,129 shall be, with respect to such financial institution or, if not all of its offices are closed, with respect to any office or offices which are closed, a legal holiday for all purposes with respect to any financial institution business of any character. No liability, or loss of rights of any kind, on the part of any financial institution, or director, officer, or employee thereof, shall accrue or result by virtue of any closing authorized by sections 8-1,124 to 8-1,129.

(2) Sections 8-1,124 to 8-1,129 shall be construed and applied as being in addition to, and not in substitution for or limitation of, any other law of this state or of the United States authorizing the closing of a financial institution or excusing delay by a financial institution in the performance of its duties and obligations because of emergencies or conditions beyond its control or otherwise.

Source: Laws 1971, LB 523, § 6; Laws 2017, LB140, § 121.

Cross References

Bank holidays, see sections 62-301 and 62-301.01.

8-1,130 Investments in savings accounts in name of fiduciary; open account; withdrawal; death of fiduciary; effect.

Any bank, building and loan association, or savings and loan association may accept investments in savings accounts or shares in the name of any administrator, personal representative, custodian, conservator, guardian, trustee, or other fiduciary for a named beneficiary or beneficiaries. Any such fiduciary shall have the power to open, make additions to, and withdraw any such account, in whole or in part, or to purchase such shares, purchase additional shares, or sell all or any part of such shares, and any such fiduciary who is the owner of shares shall have power to vote as a member as if the membership were held absolutely. The withdrawal value of any such account or shares, and earnings thereon, or other rights relating thereto may be paid or delivered, in whole or in part, to such fiduciary without regard to any notice to the contrary as long as such fiduciary is living. The payment or delivery to any such fiduciary or a receipt or acquittance signed by any such fiduciary to whom any such payment or any such delivery of right is made shall be a valid and sufficient release and discharge of the bank or association for the payment or delivery so made. Whenever a person holding an account or shares in a fiduciary capacity dies and no written notice of the revocation or termination of the fiduciary relationship has been given to the bank or association and the bank or association has no written notice of any other disposition of the beneficial estate, the withdrawal value of such account or shares, and earnings thereon, or other rights relating thereto may, at the option of the bank or association, be paid or delivered, in whole or in part, to the beneficiary or beneficiaries. Whenever an account or share shall be designated by any person

describing himself or herself in opening such account or acquiring such share as trustee for another and no other or further notice of the existence and terms of a legal and valid trust than such description has been given in writing to the bank or association, or whenever an account is opened or shares are acquired specifically designated as a trust account or share held in trust and which contains a trust agreement as a part thereof, in the event of the death of the person so described as trustee, the withdrawal value of such account or shares or any part thereof, together with the earnings thereon, may be paid to the person for whom the account or shares are so described. The payment or delivery to any such beneficiary, beneficiaries, or designated person or a receipt or acquittance signed by any such beneficiary, beneficiaries, or designated person for any such payment or delivery shall be a valid and sufficient release and discharge of the bank or association for the payment or delivery so made. No bank or association paying any such fiduciary, beneficiary, or designated person in accordance with this section shall thereby be liable for any estate, inheritance, or succession taxes which may be due this state.

Source: Laws 1974, LB 912, § 1; Laws 1986, LB 909, § 2.

8-1,131 Retirement plan, medical savings account, or health savings account, investments; bank as trustee or custodian; powers and duties; account, how treated.

(1) All banks are qualified to act as trustee or custodian under the federal Self-Employed Individuals Tax Retirement Act of 1962, as amended, or under the terms and provisions of section 408(a) of the Internal Revenue Code, if the provisions of such retirement plan require the funds of such trust or custodianship to be invested exclusively in shares or accounts in the bank or in other banks. If any such retirement plan, within the judgment of the bank, constitutes a qualified plan under the federal Self-Employed Individuals Tax Retirement Act of 1962, or under the terms and provisions of section 408(a) of the Internal Revenue Code and the regulations promulgated thereunder at the time the trust was established and accepted by the bank, and is subsequently determined not to be such a qualified plan or subsequently ceases to be such a qualified plan, in whole or in part, the bank may continue to act as trustee of any deposits theretofore made under such plan and to dispose of the same in accordance with the directions of the member and beneficiaries thereof. No bank, in respect to savings made under this subsection, shall be required to segregate such savings from other liabilities of the bank. The bank shall keep appropriate records showing in proper detail all transactions engaged in under the authority of this subsection.

(2)(a) All banks are qualified to act as trustee or custodian of a medical savings account created within the provisions of section 220 of the Internal Revenue Code and a health savings account created within the provisions of section 223 of the Internal Revenue Code. If any such medical savings account or health savings account, within the judgment of the bank, constitutes a medical savings account under section 220 of the Internal Revenue Code or a health savings account under section 223 of the Internal Revenue Code and the regulations promulgated thereunder at the time the trust was established and accepted by the bank, and is subsequently determined not to be such a medical savings account or health savings account, in whole or in part, the bank may continue to act as trustee of any deposits theretofore made under such plan and to dispose of the same in accordance with the directions of the account holder.

No bank, in respect to savings made under this subsection, shall be required to segregate such savings from other liabilities of the bank. The bank shall keep appropriate records showing in proper detail all transactions engaged in under the authority of this subsection.

(b) Except for judgments against the medical savings account holder or health savings account holder or his or her dependents for qualified medical expenses as defined under section 223(d)(2) of the Internal Revenue Code, funds credited to a medical savings account or health savings account below twenty-five thousand dollars are not susceptible to levy, execution, judgment, or other operation of law, garnishment, or other judicial enforcement and are not an asset or property of the account holder for purposes of bankruptcy law.

Source: Laws 1975, LB 208, § 1; Laws 1995, LB 574, § 2; Laws 1997, LB 753, § 1; Laws 1999, LB 396, § 11; Laws 2005, LB 465, § 1; Laws 2017, LB140, § 122.

8-1,132 Repealed. Laws 1987, LB 2, § 22.

8-1,133 Bank; business of leasing personal property; subject to rules and regulations.

Any bank may engage, directly or indirectly, in the business of leasing personal property subject to rules and regulations as may be adopted and promulgated by the director.

Source: Laws 1977, LB 506, § 1; Laws 2017, LB140, § 123.

8-1,134 Violations; director; powers; fines; notice; hearing; closure; emergency powers; service; procedures.

(1) Whenever the director has reason to believe that a violation of any provision of Chapter 8 or of the Credit Union Act or any rule and regulation or order of the director has occurred, he or she may cause a written complaint to be served upon the alleged violator. The complaint shall specify the statutory provision or rule and regulation or order alleged to have been violated and the facts alleged to constitute a violation thereof and shall order that necessary corrective action be taken within a reasonable time to be prescribed in such order. Any such order shall become final as to any person named in the order unless such person requests, in writing, a hearing before the director no later than ten days after the date such order is served. In lieu of such order, the director may require that the alleged violator appear before the director at a time and place specified in the notice and answer the charge complained of. The notice shall be delivered to the alleged violator or violators in accordance with subsection (4) of this section not less than ten days before the time set for the hearing.

(2) The director shall provide an opportunity for a fair hearing to the alleged violator at the time and place specified in the notice or any modification of the notice. On the basis of the evidence produced at the hearing, the director shall make findings of fact and conclusions of law and enter such order as in his or her opinion will best further the purposes of Chapter 8 or the Credit Union Act and the rules and regulations and orders of the director. Written notice of such order shall be given to the alleged violator and to any other person who appeared at the hearing and made written request for notice of the order. If the hearing is held before any person other than the director, such person shall

transmit a record of the hearing together with findings of fact and conclusions of law to the director. The director, prior to entering his or her order on the basis of such record, shall provide opportunity to the parties to submit for his or her consideration exceptions to the findings or conclusions and supporting reasons for such exceptions. The order of the director shall become final and binding on all parties unless appealed to the district court of Lancaster County as provided in section 8-1,135. As part of such order, the director may impose a fine, in addition to the costs of the investigation, upon a person found to have violated any provision of Chapter 8, the Credit Union Act, or the rules and regulations or orders of the director. The fine shall not exceed ten thousand dollars per violation for the first offense and twenty-five thousand dollars per violation for a second or subsequent offense involving a violation of the same provision of Chapter 8, the Credit Union Act, the rules and regulations of the director, or the same order of the director. The fines and costs shall be in addition to all other penalties imposed by the laws of this state. The director shall collect the fines and costs and remit them to the State Treasurer. The State Treasurer shall credit the costs to the Financial Institution Assessment Cash Fund and distribute the fines in accordance with Article VII, section 5, of the Constitution of Nebraska. If a person fails to pay the fine or costs of the investigation, a lien in the amount of the fine and costs shall be imposed upon all of the assets and property of such person in this state and may be recovered by an action by the director. The lien shall attach to the real property of such person when notice of the lien is filed and indexed against the real property in the office of the register of deeds in the county where the real property is located. The lien shall attach to any other property of such person when notice of the lien is filed against the property in the manner prescribed by law.

(3) Whenever the director finds that an emergency exists requiring immediate action to protect the safety and soundness of the financial institutions chartered by the department, the director may, without notice or hearing, issue an order reciting the existence of an emergency and requiring that such action be taken as the director deems necessary to meet the emergency. Notwithstanding the provisions of subsection (2) of this section, the order shall be effective immediately. Any person to whom such order is directed shall comply immediately, but on application to the director shall be afforded a hearing as soon as possible and not later than ten days after such application by the affected person. On the basis of the hearing, the director shall continue the order in effect, revoke it, or modify it. This subsection shall not apply to a determination of necessary acquisition made by the department pursuant to sections 8-1506 to 8-1510.

(4) Except as otherwise expressly provided, any notice, order, or other instrument issued by or under authority of the director shall be served on any person affected thereby either personally or by certified mail, return receipt requested. Proof of service shall be filed with the office of the director.

Every certificate or affidavit of service made and filed as provided in this subsection shall be prima facie evidence of the facts stated in the certificate or affidavit, and a certified copy shall have the same force and effect as the original.

(5) Any hearing provided for in this section may be conducted by the director, or by any member of the department acting on behalf of the director, or the director may designate hearing officers who shall have the power and authority to conduct such hearings in the name of the director at any time and place. A verbatim record of the proceedings of such hearings shall be taken and filed

with the director, together with findings of fact and conclusions of law made by the director or hearing officer. The director may subpoena witnesses, and any witness who is subpoenaed shall receive the same fees as in civil actions in the district court and mileage as provided in section 81-1176. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under this section, the district court of Lancaster County shall have jurisdiction, upon application of the director, to issue an order requiring such person to appear and testify or produce evidence as the case may require. Failure to obey such order of the court may be punished by such court as contempt.

If requested to do so by any party concerned with such hearing, the full stenographic notes, or tapes of an electronic transcribing device, of the testimony presented at such hearing shall be taken and filed. The stenographer shall, upon the payment of the stenographer's fee allowed by the court, furnish a certified transcript of all or any part of the stenographer's notes to any party to the action requiring and requesting such notes.

(6) The director may close to the public the hearing, or any portion of the hearing, provided for in this section when he or she finds that the closure is (a) necessary to protect any person against unwarranted injury or (b) in the public interest. The director shall close no more of the public hearing than is necessary to attain the objectives of this subsection.

Source: Laws 1984, LB 1039, § 1; Laws 1986, LB 908, § 1; Laws 1996, LB 948, § 118; Laws 1996, LB 1053, § 6; Laws 1997, LB 137, § 8; Laws 2017, LB140, § 124.

Cross References

Credit Union Act, see section 21-1701.
Financial Institution Assessment Cash Fund, purposes, see sections 8-601 and 8-604.

8-1,135 Appeal; procedure.

Any person aggrieved by a final order of the director made pursuant to section 8-1,134 may appeal the order, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1984, LB 1039, § 2; Laws 1988, LB 352, § 10; Laws 2017, LB140, § 125.

Cross References

Administrative Procedure Act, see section 84-920.

8-1,136 Action to enjoin and enforce compliance.

Whenever it appears to the director that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of Chapter 8 or the Credit Union Act, he or she may bring an action in the name of the director and the department in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with the provisions of Chapter 8 or the Credit Union Act. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant's assets. The director shall not be required to post a bond.

Source: Laws 1984, LB 1039, § 3; Laws 1986, LB 908, § 2; Laws 1996, LB 948, § 119; Laws 2017, LB140, § 126.

Cross References

Credit Union Act, see section 21-1701.

8-1,137 Evidence of violation; refer to prosecuting attorney.

The director may refer such evidence as may be available concerning violations of the Nebraska Criminal Code or of any rule and regulation or order under Chapter 8 or under the Credit Union Act to the Attorney General or the proper county attorney. It shall be the duty of each county attorney or the Attorney General to whom the director reports a violation to cause appropriate proceedings to be instituted, if appropriate, without delay.

Source: Laws 1984, LB 1039, § 4; Laws 1986, LB 908, § 3; Laws 1996, LB 948, § 120; Laws 2017, LB140, § 127.

Cross References

Credit Union Act, see section 21-1701.
Nebraska Criminal Code, see section 28-101.

8-1,138 Violation of final order; liability; penalty.

(1) Any person who violates any of the provisions of a final order issued by the director shall be liable to any person or entity who suffers damage proximately caused by such violation.

(2) Any person who knowingly violates any final order issued by the director pursuant to section 8-1,134 is guilty of a Class I misdemeanor.

Source: Laws 1984, LB 1039, § 5; Laws 2017, LB140, § 128.

8-1,139 Misapplication of funds or assets; penalty.

An officer, director, agent, or employee of a bank, trust company, building and loan association, savings and loan association, credit union, or other similar entity which is chartered, licensed, regulated, or examined by the department who willfully misapplies any of the money, funds, or credits of any such entity or any money, funds, assets, or securities entrusted to the care or custody of such entity or the custody or care of any such officer, director, agent, or employee is guilty of a Class IV felony.

Source: Laws 1984, LB 1039, § 6; Laws 2003, LB 131, § 5; Laws 2017, LB140, § 129.

8-1,140 Federally chartered bank; bank organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.

Notwithstanding any of the other provisions of the Nebraska Banking Act or any other Nebraska statute, any bank incorporated under the laws of this state and organized under the provisions of the act, or under the laws of this state as they existed prior to May 9, 1933, shall directly, or indirectly through a department, a subsidiary, or subsidiaries, have all the rights, powers, privileges, benefits, and immunities which may be exercised as of January 1, 2022, by a federally chartered bank doing business in Nebraska, including the exercise of all powers and activities that are permitted for a financial subsidiary of a federally chartered bank. Such rights, powers, privileges, benefits, and immuni-

ties shall not relieve such bank from payment of state taxes assessed under any applicable laws of this state.

Source: Laws 1999, LB 396, § 5; Laws 2000, LB 932, § 4; Laws 2001, LB 53, § 2; Laws 2002, LB 957, § 7; Laws 2003, LB 217, § 9; Laws 2004, LB 999, § 3; Laws 2005, LB 533, § 11; Laws 2006, LB 876, § 12; Laws 2007, LB124, § 6; Laws 2008, LB851, § 7; Laws 2009, LB327, § 6; Laws 2010, LB890, § 6; Laws 2011, LB74, § 1; Laws 2012, LB963, § 4; Laws 2013, LB213, § 5; Laws 2014, LB712, § 1; Laws 2015, LB286, § 1; Laws 2016, LB676, § 1; Laws 2017, LB140, § 130; Laws 2018, LB812, § 6; Laws 2019, LB258, § 6; Laws 2020, LB909, § 8; Laws 2021, LB363, § 7; Laws 2021, LB649, § 38; Laws 2022, LB707, § 17.
Operative date April 19, 2022.

8-1,141 Controllable electronic record custody; qualified custodian; requirements.

(1) The provisions of this section are cumulative and not exclusive as an optional framework for enhanced supervision of controllable electronic record custody.

(2) If a financial institution is authorized to provide digital asset services under this section, it shall comply with all provisions of this section.

(3) A financial institution may serve as a qualified custodian, as specified by the United States Securities and Exchange Commission in 17 C.F.R. 275.206(4)-2 or any other federal rule or regulation. In performing custodial services under this section, a financial institution shall:

(a) Implement all accounting, account statement, internal control, notice, and other standards specified by applicable state or federal law and rules for custodial services;

(b) Maintain information technology best practices relating to controllable electronic records held in custody. The director may specify required best practices by rule and regulation;

(c) Fully comply with applicable federal anti-money laundering, customer identification, and beneficial ownership requirements; and

(d) Take other actions necessary to carry out this section, which may include exercising fiduciary powers similar to those permitted to national banks and ensuring compliance with federal law governing controllable electronic records classified as commodities.

(4) A financial institution providing custodial services shall enter into an agreement with an independent public accountant to conduct an examination conforming to the requirements of 17 C.F.R. 275.206(4)-2(a)(4) and (6), at the cost of the financial institution. The accountant shall transmit the results of the examination to the director within ninety days of the examination and may file the results with the United States Securities and Exchange Commission as its rules may provide. Material discrepancies in an examination shall be reported to the director within one day. The director shall review examination results upon receipt within a reasonable time and during any regular examination conducted under section 8-108.

(5) Controllable electronic records held in custody under this section are not depository liabilities or assets of the financial institution. A financial institution

or a subsidiary may register as an investment adviser, investment company, or broker dealer as necessary. A financial institution shall maintain control over a controllable electronic record while in custody. A customer shall elect, pursuant to a written agreement with the financial institution, one of the following relationships for each controllable electronic record held in custody:

(a) Custody under a bailment as a nonfungible or fungible asset. Assets held under this subdivision shall be strictly segregated from other assets; or

(b) Custody under a bailment pursuant to subsection (6) of this section.

(6) If a customer makes an election under subdivision (5)(b) of this section, the financial institution may, based only on customer instructions, undertake transactions with the controllable electronic record. A financial institution maintains control pursuant to subsection (5) of this section by entering into an agreement with the counterparty to a transaction which contains a time for return of the asset. The financial institution shall not be liable for any loss suffered with respect to a transaction under this subsection, except for liability consistent with fiduciary and trust powers as a custodian under this section.

(7) A financial institution and a customer shall agree in writing regarding the source code version the financial institution will use for each controllable electronic record and the treatment of each record under the Uniform Commercial Code, if necessary. Any ambiguity under this subsection shall be resolved in favor of the customer.

(8) A financial institution shall provide clear, written notice to each customer and require written acknowledgment of the following:

(a) Prior to the implementation of any updates, material source code updates relating to controllable electronic records held in custody, except in emergencies which may include security vulnerabilities;

(b) The heightened risk of loss from transactions under subsection (6) of this section;

(c) That some risk of loss as a pro rata creditor exists as the result of custody as a fungible asset or custody under subdivision (5)(b) of this section;

(d) That custody under subdivision (5)(b) of this section may not result in the controllable electronic records of the customer being strictly segregated from other customer assets; and

(e) That the financial institution is not liable for losses suffered under subsection (6) of this section, except for liability consistent with fiduciary and trust powers as a custodian under this section.

(9) A financial institution and a customer shall agree in writing to a time period within which the financial institution must return a controllable electronic record held in custody under this section. If a customer makes an election under subdivision (5)(b) of this section, the financial institution and the customer may also agree in writing to the form in which the controllable electronic record shall be returned.

(10) All ancillary or subsidiary proceeds relating to controllable electronic records held in custody under this section shall accrue to the benefit of the customer, except as specified by a written agreement with the customer. The financial institution may elect not to collect certain ancillary or subsidiary proceeds, as long as the election is disclosed in writing. A customer who makes an election under subdivision (5)(a) of this section may withdraw the controlla-

ble electronic record in a form that permits the collection of the ancillary or subsidiary proceeds.

(11) A financial institution shall not authorize or permit rehypothecation of controllable electronic records under this section and shall not engage in any activity to use or exercise discretionary authority relating to a controllable electronic record except based on customer instructions.

(12) A financial institution shall not take any action under this section which would likely impair the solvency or the safety and soundness of the financial institution, as determined by the director after considering the nature of custodial services customary in the banking industry.

(13) To offset the costs of supervision and administration of this section, a financial institution which provides custodial services under this section shall pay the assessment as provided for in sections 8-601 and 8-605, which assessment shall not be less than two thousand dollars, and the costs of any examination or investigation as provided in sections 8-108 and 8-606.

(14) For purposes of this section, financial institution means a bank, savings bank, building and loan association, savings and loan association, whether chartered by the United States, the department, or a foreign state agency; or a trust company.

Source: Laws 2021, LB649, § 40.

8-1,142 Controllable electronic record custody; rules and regulations.

The director may adopt and promulgate rules and regulations to implement sections 8-1,141 to 8-1,143.

Source: Laws 2021, LB649, § 41.

8-1,143 Controllable electronic records; courts; jurisdiction.

The courts of Nebraska shall have jurisdiction to hear claims in both law and equity relating to controllable electronic records, including those arising under sections 8-1,141 to 8-1,143 and the Uniform Commercial Code.

Source: Laws 2021, LB649, § 42.

ARTICLE 2

TRUST COMPANIES

Cross References

Charitable Gift Annuity Act, see section 59-1801.
For provisions relating to disclosure of confidential information, see section 8-1401.

Section

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8-233. Trust company; substituted as fiduciary; accounting; transfer of assets.
8-234. Branch trust offices authorized; procedure.
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8-201 Charter required; exception; powers of Department of Banking and Finance; rules and regulations; fee.

The Director of Banking and Finance shall have the power to issue to corporations desiring to transact business as trust companies charters of authority to transact trust company business as defined in the Nebraska Trust Company Act. He or she shall have general supervision and control over such trust companies. Any three or more persons may adopt articles of incorporation and become a body corporate for the purpose of engaging in and conducting the business of a trust company, upon complying with the requirements of the act and the general laws of this state relating to the organization of corporations and upon obtaining a charter to transact business as a trust company from the director.

Every corporation organized for and desiring to transact a trust company business shall, before commencing such business, make under oath and transmit to the Department of Banking and Finance a complete statement including:

(1) The name of the proposed trust company;

(2) A certified copy of the articles of incorporation;

(3) The names of the stockholders;

(4) The names of the proposed members of the board of directors of the trust company, who shall be approved by the department in accordance with section 8-204;

(5) The name of the county, city, or village in which the trust company is located;

(6) The amount of paid-up capital stock; and

(7) A statement sworn to by the president and secretary, each of whom have been selected in accordance with section 8-204, that the capital stock has been paid in as provided for.

The corporation shall also pay the fee prescribed by section 8-602 for investigation of such statement.

If upon investigation the department is satisfied that the parties requesting the charter are parties of integrity and responsibility, that the corporation will apply safe and sound methods for the purpose of carrying out trust company duties, and that the public necessity, convenience, and advantage will be promoted by permitting the corporation to transact business as a trust company, the department shall issue to the corporation a charter entitling it to transact the business provided for in the act. Upon payment of the required fees, the pledging of assets required by section 8-209, and the receipt of the charter, the corporation may begin to transact business as a trust company. It shall be unlawful for any corporation, except a foreign corporate trustee to the extent authorized under section 30-3820, to engage in business as a trust company or to act in any other fiduciary capacity unless it has first obtained from the Department of Banking and Finance a charter of authority to do business.

The Department of Banking and Finance may adopt and promulgate rules and regulations to carry out the governance of trust companies under its supervision.

Source: Laws 1911, c. 31, § 1, p. 187; R.S.1913, § 738; Laws 1919, c. 190, tit. V, art. XVIII, § 1, p. 718; C.S.1922, § 8063; Laws 1927, c. 35, § 1, p. 159; C.S.1929, § 8-201; Laws 1933, c. 18, § 73, p. 171; Laws 1937, c. 20, § 3, p. 130; C.S.Supp.,1941, § 8-201; R.S.1943, § 8-201; Laws 1957, c. 10, § 2, p. 129; Laws 1975, LB 481, § 1; Laws 1993, LB 81, § 14; Laws 1998, LB 1321, § 33; Laws 2003, LB 130, § 111; Laws 2021, LB363, § 8.

Corporations organized under this article were empowered to accept and execute trusts and to discharge the duties imposed thereby. First Trust Company v. Airedale Ranch & Cattle Company, 136 Neb. 521, 286 N.W. 766 (1939).

The officers of a trust company are responsible for the fraudulent acts of the corporation in which they participate. Wells v. Carlsen, 130 Neb. 773, 266 N.W. 618 (1936).

Contract of trust company for handling and payment of life insurance premiums did not create trust relationship. Crancer v. Reichenbach, 130 Neb. 645, 266 N.W. 57 (1936).

Individuals who are permitted to create trust companies to handle other people's money must use the same fidelity that one uses in his own business to see that the trust company does not defraud the public. Masonic Bldg. Corporation v. Carlsen, 128 Neb. 108, 258 N.W. 44 (1934).

Trust company organized under state law is not "banking corporation" within meaning of state law or of bankruptcy law, and is subject to bankruptcy. Gamble v. Daniel, 39 F.2d 447 (8th Cir. 1930), appeal dismissed 281 U.S. 705 (1930).

8-201.01 Act, how cited.

Sections 8-201 to 8-235 shall be known and may be cited as the Nebraska Trust Company Act.

Source: Laws 1998, LB 1321, § 34.

8-202 Articles of incorporation; filing.

The articles of incorporation shall be filed in the office of the Secretary of State, and a certified copy shall be filed and recorded in the office of the county clerk of the county in which the corporation has its principal office. Articles of incorporation and other records relating to the corporate existence of the trust company shall be maintained as a permanent record of the trust company.

Source: Laws 1911, c. 31, § 2, p. 188; R.S.1913, p. 739; Laws 1919, c. 190, tit. V, art. XVIII, § 2, p. 718; C.S.1922, § 8064; C.S.1929, § 8-202; R.S.1943, § 8-202; Laws 1993, LB 81, § 15.

8-203 General powers.

The trust company shall have power:

(1) To have a corporate name;

(2) To have a corporate seal;

(3) To sue and be sued and complain and defend in all courts of law and equity;

(4) To receive reasonable compensation for all services performed by it under the Nebraska Trust Company Act;

(5) To make bylaws not inconsistent with the act or its articles of incorporation for the management of its affairs; and

(6) To appoint or elect such officers and agents as the business of the corporation may require.

Source: Laws 1911, c. 31, § 2, p. 188; R.S.1913, § 740; Laws 1919, c. 190, tit. V, art. XVIII, § 4, p. 718; C.S.1922, § 8065; C.S.1929, § 8-203; R.S.1943, § 8-203; Laws 1993, LB 81, § 16; Laws 1998, LB 1321, § 35.

8-204 Directors; qualifications; duties; vacancies.

(1) The control of the business affairs of a trust company shall be vested in a board of directors of not less than five persons who shall be selected at such time and in such manner as may be provided by the articles of incorporation of the trust company and in conformity with the Nebraska Trust Company Act. Any vacancy on the board shall be filled within ninety days by appointment by the remaining directors, and any director so appointed shall serve until the next election of directors, except that if the vacancy leaves a minimum of five directors, appointment shall be optional. The person appointed to fill the vacancy shall not serve as a director until the trust company obtains approval from the Department of Banking and Finance in accordance with subsection (6) of this section.

(2) The board of directors shall select a president and secretary and shall appoint trust officers and committees as it deems necessary. No person shall act as president if such person is not a member of the board of directors. The

officers and committee members shall hold their positions at the discretion of the board of directors.

(3) The board of directors shall hold at least one regular meeting in each calendar quarter and shall prepare and maintain complete and accurate minutes of the proceedings at such meetings.

(4) The board of directors shall make or cause to be made each year a thorough examination of the books, records, funds, and securities held for the trust company and customer accounts. The examination may be conducted by the members of the board of directors or the board may accept an annual audit by an accountant or accounting firm approved by the Department of Banking and Finance. Any such examination or audit must comply in scope with minimum standards established by the department.

(5) Unless the department otherwise approves, a majority of the members of the board of directors of any trust company shall be residents of this state. Reasonable efforts shall be made to acquire members of the board of directors from the county in which the trust company is located. Directors of trust companies shall be persons of good moral character and known integrity, business experience, and responsibility.

(6) No person shall act as such member of the board of directors of any trust company until the corporation applies for and obtains approval from the Department of Banking and Finance.

Source: Laws 1911, c. 31, § 4, p. 188; R.S.1913, § 741; Laws 1919, c. 190, tit. V, art. XVIII, § 4, p. 718; C.S.1922, § 8065; C.S.1929, § 8-203; R.S.1943, § 8-204; Laws 1993, LB 81, § 17; Laws 2013, LB213, § 6; Laws 2021, LB363, § 9.

Control of business of a trust company is vested under this section in the board of directors. First Trust Company v. Airedale Ranch & Cattle Company, 136 Neb. 521, 286 N.W. 766 (1939).

8-205 Capital stock; amount required; exception; impairment of capital stock; department; powers.

(1) No corporation, except a bank authorized by the Director of Banking and Finance to operate a trust department, shall be authorized to transact business as a trust company under the Nebraska Trust Company Act on or after August 1, 2000, unless it has capital stock of at least five hundred thousand dollars, all of which shall be fully paid up in cash before the corporation is authorized to commence business.

(2)(a) Corporations, except a bank authorized to operate a trust department, authorized to transact business as a trust company under the act before August 1, 2000, shall, on or after such date, maintain a capital stock of at least two hundred thousand dollars in cities of at least one hundred thousand or more inhabitants, one hundred thousand dollars in cities of at least fifty thousand inhabitants but fewer than one hundred thousand inhabitants, fifty thousand dollars in cities of at least ten thousand inhabitants but fewer than fifty thousand inhabitants, and twenty-five thousand dollars in cities and villages of fewer than ten thousand inhabitants. The population of a city for purposes of this subsection shall be the population as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census.

(b) A corporation, except a bank authorized to operate a trust department, authorized to transact business as a trust company under the act before August

1, 2000, subject to the capital stock requirement of subdivision (2)(a) of this section, which complies with the capital stock requirement of subsection (1) of this section, shall be subject to the capital stock requirement of subsection (1) of this section and shall maintain a capital stock of at least the minimum amount required by subsection (1) of this section.

(c) A corporation, except a bank authorized to operate a trust department, authorized to transact business as a trust company under the act before August 1, 2000, subject to the capital stock requirement of subdivision (2)(a) of this section, which complies with the capital stock requirement of a corporation located in a larger city pursuant to subdivision (2)(a) of this section, shall be subject to the capital stock requirement of such a corporation located in a larger city pursuant to subdivision (2)(a) of this section and shall maintain a capital stock of at least the minimum amount required for such a corporation located in a larger city pursuant to subdivision (2)(a) of this section.

(d) A capital stock requirement once attained by a corporation pursuant to either this subsection or subsection (1) of this section shall not be reduced.

(3) If at any time the department determines that the capital stock of a trust company is impaired, it may require the shareholders of the trust company to make up the capital stock impairment.

Source: Laws 1911, c. 31, § 5, p. 188; R.S.1913, § 742; Laws 1919, c. 190, tit. V, art. XVIII, § 5, p. 719; C.S.1922, § 8067; C.S.1929, § 8-205; R.S.1943, § 8-205; Laws 1959, c. 19, § 5, p. 144; Laws 1961, c. 14, § 8, p. 109; Laws 1993, LB 81, § 18; Laws 1998, LB 1321, § 36; Laws 2000, LB 932, § 5; Laws 2019, LB67, § 1.

8-205.01 Fidelity bond; requirements; director; powers and duties.

Each trust company doing business under the Nebraska Trust Company Act shall obtain a fidelity bond, naming the trust company as obligee, in an amount to be fixed by the department. The bond shall be issued by an authorized insurer and shall be conditioned to protect and indemnify the trust company from loss of money or other personal property, including that for which the trust company is responsible, which it may sustain through or by reason of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction, misapplication, misappropriation, or other dishonest or criminal act of or by any of its officers or employees. The bond may contain a deductible clause in an amount to be approved by the Director of Banking and Finance. An executed copy of the bond shall be filed with and approved by the director and shall remain a part of the records of the department. If the premium of the bond is not paid, the bond shall not be canceled or subject to cancellation unless at least ten days' advance notice, in writing, is filed with the department. No bond which is current with respect to premium payments shall be canceled or subject to cancellation unless at least forty-five days' advance notice, in writing, is filed with the department. The bond shall always be open to public inspection during the office hours of the department. In the event a bond is canceled, the department may take whatever action it deems appropriate in connection with the continued operation of the trust company involved.

Source: Laws 1990, LB 956, § 5; Laws 1993, LB 81, § 19; Laws 1998, LB 1321, § 37.

8-206 Specific powers.

A trust company created under the Nebraska Trust Company Act shall have power:

(1) To receive trust funds for investment or in trust upon such terms and conditions as may be agreed upon and to purchase, hold, and lease fireproof and burglar-proof and other vaults and safes from which revenue may be derived;

(2) To accept and execute all such trusts as may be committed to it by any corporation, person, or persons, act as assignee, receiver, trustee, and depositor, and accept and execute all such trusts as may be committed or referred to it by order, judgment, or decree of any court of record;

(3) To take, accept, and hold by the order, judgment, or decree of any such court or by gift, grant, assignment, transfer, devise, or bequest any real or personal property in trust, to care for, manage, and convey the same in accordance with such trusts, and to execute and perform any and all such trusts;

(4) To act as attorney in fact for any person or corporation, public or private;

(5) To act either by itself or jointly with any natural person or persons or with any other trust company or state or national bank doing business in this state as administrator of the estate of any deceased person, as personal representative, or as conservator or guardian of the estate of any incapacitated person;

(6) To act as trustee for any person or of the estate of any deceased person under the appointment of any court of record having jurisdiction of the estate of such person;

(7) To act as agent or in an agency capacity for any person or entity, public or private;

(8) To loan money upon real estate and upon collateral security when the collateral would of itself be a legal investment for such corporation;

(9) To buy, hold, own, and sell securities issued or guaranteed by the United States Government or any authorized agency thereof, including any corporation or enterprise wholly owned directly or indirectly by the United States, or with the authority to borrow directly from the United States Treasury, or securities secured by obligations of any of the foregoing, securities of any state or political subdivision thereof which possesses general powers of taxation, stock, warrants, bills of exchange, notes, mortgages, banker's acceptances, certificates of deposit in institutions whose accounts are insured by the Federal Deposit Insurance Corporation, securities issued pursuant to the Nebraska Business Development Corporation Act, and other investment securities, negotiable and nonnegotiable, except stock or other securities of any corporation organized under the Nebraska Trust Company Act;

(10) To purchase, own, or rent real estate needed in the conduct of the business and to erect thereon buildings deemed expedient and necessary, the cost of such real estate and buildings not to exceed one hundred percent of the paid-up capital stock, except as otherwise approved in writing by the director, and to purchase, own, and improve such other real estate as it may be required to bid in under foreclosure or in payment of other debts;

(11) To borrow money, to execute and issue its notes payable at a future date, and to pledge its real estate, mortgages, or other securities therefor. With the approval of the Director of Banking and Finance, any trust company may at any time, through action of its board of directors and without requiring any

action of its stockholders, issue and sell its capital notes or debentures. Such capital notes or debentures shall be subordinate and subject to the claims of trustors and beneficiaries of estates and trusts and may be subordinated and subject to the claims of other creditors. The holders of such capital notes or debentures shall not be held individually responsible as such holders for any debts, contracts, or engagements of the trust company and shall not be held liable for assessments to restore impairments in the capital of the trust company as may be from time to time determined by the director; and

(12) To perform all acts and exercise all powers connected with, belonging to or incident to, or necessary for the full and complete exercise and discharge of the rights, powers, and responsibilities granted in the Nebraska Trust Company Act, and all provisions of the act shall be liberally construed. None of the powers hereby granted shall extend to or be construed to authorize any such corporation to accept deposits or conduct the business of banking as defined in the Nebraska Banking Act.

Source: Laws 1911, c. 31, § 6, p. 189; R.S.1913, § 743; Laws 1919, c. 190, tit. V, art. XVIII, § 6, p. 719; C.S.1922, § 8068; Laws 1927, c. 35, § 2, p. 160; C.S.1929, § 8-206; Laws 1933, c. 18, § 74, p. 172; C.S.Supp.,1941, § 8-206; R.S.1943, § 8-206; Laws 1959, c. 263, § 1, p. 919; Laws 1967, c. 22, § 1, p. 124; Laws 1986, LB 909, § 3; Laws 1986, LB 1177, § 1; Laws 1993, LB 81, § 20; Laws 1998, LB 1321, § 38; Laws 2005, LB 533, § 12; Laws 2017, LB140, § 131.

Cross References

Nebraska Banking Act, see section 8-101.02.
Nebraska Business Development Corporation Act, see section 21-2101.

A loan by a trust company to one of its managing officers is prohibited by this section. Burke v. Munger, 138 Neb. 74, 292 N.W. 53 (1940).

Under this section, trust companies organized under this article were empowered to accept and execute trusts and to discharge the duties imposed thereby. First Trust Company v. Airedale Ranch & Cattle Company, 136 Neb. 521, 286 N.W. 766 (1939).

In criminal prosecution of officer of trust company for embezzlement of trust funds, court properly instructed jury that trust company had no power to assent to a loan to one of its officers. Buckley v. State, 131 Neb. 752, 269 N.W. 892 (1936).

Power of petitioner as trustee, upon the death of the insured, to accept and receive the proceeds of the life insurance policy payable to it as trustee, plainly conferred hereunder. Federal Trust Co. v. Damron, 124 Neb. 655, 247 N.W. 589 (1933).

Under terms of debenture, trust company empowered, under subdivision 7 hereof, to substitute, for farm mortgages originally deposited with it, stocks, bonds, etc., and obligation fulfilled by safely holding same. Myers v. Union Nat. Bank of Fremont, 115 Neb. 49, 211 N.W. 343 (1926).

Where the next of kin disagree as to who shall be appointed, county court has power to appoint duly authorized trust company as administrator. In re Estate of Anderson, 102 Neb. 170, 166 N.W. 261 (1918).

8-207 Appointment as fiduciary, authorized; oath.

Courts of this state may appoint a trust company receiver, assignee, trustee, guardian, conservator, personal representative, custodian, or special administrator. When a trust company is so appointed and an oath is required to be made, whether in order to qualify or for any other purpose, the president, vice president, secretary, or trust officer may, on behalf of the trust company, make and subscribe the required oath.

Source: Laws 1911, c. 31, § 7, p. 191; R.S.1913, § 744; Laws 1919, c. 190, tit. V, art. XVIII, § 7, p. 720; C.S.1922, § 8069; C.S.1929, § 8-207; R.S.1943, § 8-207; Laws 1947, c. 13, § 4, p. 78; Laws 1986, LB 909, § 4; Laws 1993, LB 81, § 21; Laws 2017, LB140, § 132.

8-207.01 Repealed. Laws 1988, LB 795, § 8.

8-208 Conveyances; execution.

All conveyance of or other instruments affecting real estate owned or held in trust by a trust company shall be authorized, prior to or within ninety days after the conveyance or execution of an instrument affecting real estate owned or held in trust, by a resolution of the board of directors or a committee appointed by the board of directors and signed in the name of the trust company by its president or vice president.

Source: Laws 1911, c. 31, § 8, p. 192; R.S.1913, § 745; Laws 1919, c. 190, tit. V, art. XVIII, § 8, p. 721; C.S.1922, § 8070; C.S.1929, § 8-208; R.S.1943, § 8-208; Laws 1993, LB 81, § 22; Laws 2001, LB 53, § 3.

8-209 Pledge of securities with Department of Banking and Finance; amount required.

(1) Any corporation organized to do business as a trust company under the Nebraska Trust Company Act shall make a pledge with the Department of Banking and Finance of approved securities.

(2) The amount of securities required to be pledged shall be based on the market value of trust assets held by the trust company as follows:

(a) Trust companies with trust assets with a market value of less than twenty-five million dollars shall pledge securities in the amount of one hundred thousand dollars in par value;

(b) Trust companies with trust assets with a market value of at least twenty-five million dollars but less than two hundred fifty million dollars shall pledge securities in the amount of two hundred thousand dollars in par value;

(c) Trust companies with trust assets with a market value of at least two hundred fifty million dollars but less than two billion five hundred million dollars shall pledge securities in the amount of three hundred thousand dollars in par value;

(d) Trust companies with trust assets with a market value of at least two billion five hundred million dollars but less than five billion dollars shall pledge securities in the amount of four hundred thousand dollars in par value; and

(e) Trust companies with trust assets with a market value of five billion dollars or more shall pledge securities in the amount of five hundred thousand dollars in par value.

(3) A trust company shall determine the market value of its trust assets at the end of each calendar year. If such valuation shows that the pledge of securities is less than is required by subsection (2) of this section, the trust company shall increase the amount of the securities pledged with the department within sixty days following the end of the calendar year.

(4) If at any time the market value of pledged assets is determined to have depreciated to less than ninety percent of par value or the trust company has trust funds deposited with itself or its supporting commercial bank in excess of those deposits referred to by section 8-212, the Director of Banking and Finance may require additional pledges in amounts deemed necessary to fully secure pledging requirements or excessive trust fund depository balances.

(5) Any national bank authorized by the Office of the Comptroller of the Currency or the Board of Governors of the Federal Reserve System to act in a fiduciary capacity in this state, any out-of-state bank authorized by its home state regulator to act in a fiduciary capacity in this state, any federal savings

association authorized by the Office of the Comptroller of the Currency to act in a fiduciary capacity in this state, any federally chartered trust company, any out-of-state trust company authorized under the Interstate Trust Company Office Act or otherwise doing business in this state, and any out-of-state entity acting in a fiduciary capacity in this state shall make similar pledges with the department, and all such deposits held by the department shall be considered as having been lawfully so pledged and subject to the Nebraska Trust Company Act.

Source: Laws 1911, c. 31, § 9, p. 192; R.S.1913, § 746; Laws 1919, c. 190, tit. V, art. XVIII, § 9, p. 721; C.S.1922, § 8071; C.S.1929, § 8-209; Laws 1933, c. 18, § 75, p. 174; Laws 1939, c. 3, § 1, p. 59; C.S.Supp.,1941, § 8-209; R.S.1943, § 8-209; Laws 1993, LB 81, § 23; Laws 1998, LB 1321, § 39; Laws 2009, LB327, § 7; Laws 2012, LB963, § 5; Laws 2019, LB258, § 7.

Cross References

Interstate Trust Company Office Act, see section 8-2301.

8-210 Securities; kinds authorized; pledge with Department of Banking and Finance.

Securities pledged pursuant to section 8-209 shall consist of any securities which constitute a legal investment for the trust company except for bills of exchange, notes, mortgages, banker's acceptances, or certificates of deposit. State, county, municipal, and corporate bond issues must be of investment quality and be rated in the three top categories of investment by at least one nationally recognized rating service, except that all issues of counties and municipalities of Nebraska shall be acceptable.

Such securities shall not be accepted for purpose of pledge at a rate above par value and if their market value is less than par value they shall not be accepted for such purpose above their actual market value. The safekeeping of such securities and all other expenses incidental to the pledging of such securities shall be at the expense of the trust company.

Source: Laws 1919, c. 190, tit. V, art. XVIII, § 10, p. 721; C.S.1922, § 8072; C.S.1929, § 8-210; Laws 1933, c. 18, § 76, p. 175; C.S.Supp.,1941, § 8-210; R.S.1943, § 8-210; Laws 1957, c. 13, § 1, p. 136; Laws 1959, c. 263, § 2, p. 922; Laws 1967, c. 23, § 1, p. 127; Laws 1993, LB 81, § 24; Laws 2009, LB327, § 8.

8-211 Pledge of securities with Department of Banking and Finance; certificate of compliance; effect on obligation to furnish bond as fiduciary.

The required pledges having been made, the Department of Banking and Finance shall issue a receipt and a certificate showing that the trust company has complied with the Nebraska Trust Company Act. Having thus qualified, the trust company may be permitted to act as assignee, receiver, trustee, either by appointment of court or under will, or depository of money in court without bond. Upon presentation of the certificate that the trust company has complied with the act and has made a pledge as provided in section 8-209, the court or other officer charged with the duty of making such appointment or of approving bonds may, in his or her discretion, make the appointment and permit the

trust company to qualify without bond or require such bond as is required from natural persons.

Source: Laws 1919, c. 190, tit. V, art. XVIII, § 11, p. 721; C.S.1922, § 8073; C.S.1929, § 8-211; Laws 1933, c. 18, § 77, p. 175; C.S.Supp.,1941, § 8-211; R.S.1943, § 8-211; Laws 1993, LB 81, § 25; Laws 1998, LB 1321, § 40.

The fact that trust company has given general bond does not prevent county court from requiring another bond as testamentary trustee. In re Estate of Grainger, 151 Neb. 555, 38 N.W.2d 435 (1949).

8-212 Pledged securities; primarily liable for trust or fiduciary obligations and losses.

Securities pledged as provided in section 8-209 shall be primarily liable for the obligations of the trust company, state or national bank, federal savings association, federally chartered trust company, out-of-state trust company authorized under the Interstate Trust Company Office Act or otherwise doing business in this state, or an out-of-state entity acting in a fiduciary capacity in this state, incurred while acting in any fiduciary capacity, for depository of money in court, and for losses arising from trust funds deposited with failed financial institutions in excess of deposit insurance limits and shall not be liable for any other debt or obligation of the financial institution or out-of-state entity until all such trust liabilities have been discharged.

Source: Laws 1919, c. 190, tit. V, art. XVIII, § 12, p. 722; C.S.1922, § 8074; C.S.1929, § 8-212; Laws 1933, c. 20, § 1, p. 190; Laws 1933, c. 18, § 78, p. 176; Laws 1939, c. 3, § 2, p. 60; C.S.Supp.,1941, § 8-212; R.S.1943, § 8-212; Laws 1993, LB 81, § 26; Laws 1998, LB 1321, § 41; Laws 2012, LB963, § 6.

Cross References

Interstate Trust Company Office Act, see section 8-2301.

8-213 Pledged securities of insolvent trust companies or out-of-state entity acting in fiduciary capacity; transfer to fiduciary; conditions.

In the case of national banks and federal savings associations doing business as trust companies, trust companies, federally chartered trust companies, out-of-state trust companies authorized under the Interstate Trust Company Office Act or otherwise doing business in this state, and out-of-state entities acting in a fiduciary capacity in this state, which upon insolvency are not liquidated by the Department of Banking and Finance, upon the appointment of a receiver, trustee in bankruptcy, or other liquidating agent, the department shall turn over to the receiver, trustee in bankruptcy, or other liquidating agent any securities pledged to it by the national bank, federal savings association, trust company, federally chartered trust company, out-of-state trust company authorized under the Interstate Trust Company Office Act or otherwise doing business in this state, or any out-of-state entity acting in a fiduciary capacity in this state, upon:

(1) The entry of an order by a court having jurisdiction over a receiver, trustee in bankruptcy, or other liquidating agent of the national bank, federal savings association, trust company, federally chartered trust company, out-of-state trust company authorized under the Interstate Trust Company Office Act or otherwise doing business in this state, or any out-of-state entity acting in a fiduciary capacity in this state, ordering the department to turn over to a

receiver, trustee in bankruptcy, or other liquidating agent the securities pledged to the department; and

(2) The publication of a notice for three successive weeks in some legal newspaper published in the county or, if none is published in the county, in a legal newspaper of general circulation in the county in which the principal place of business of the national bank, federal savings association, trust company, federally chartered trust company, out-of-state trust company authorized under the Interstate Trust Company Office Act or otherwise doing business in this state, or any out-of-state entity acting in a fiduciary capacity in this state, is located that all claims for the trust liabilities must be filed with the receiver, trustee in bankruptcy, or other liquidating agent within thirty days. In the case of national banks the notice provided for in 12 U.S.C. 193, and in the case of trust companies liquidated in bankruptcy court, the notice provided for in 11 U.S.C. 342, shall be sufficient without further notice being given and shall be in lieu of the notice required in this subdivision. In the case of out-of-state trust companies authorized under the Interstate Trust Company Office Act or otherwise doing business in this state, or in the case of any out-of-state entity acting in a fiduciary capacity in this state, an additional notice shall be published in each county in Nebraska where the out-of-state trust company or out-of-state entity maintains an office, does business, or acts in a fiduciary capacity, or maintained an office, conducted business, or acted in a fiduciary capacity, within one year prior to the insolvency.

Source: Laws 1933, c. 20, § 1, p. 190; Laws 1939, c. 3, § 2, p. 60; C.S.Supp.,1941, § 8-212; R.S.1943, § 8-213; Laws 1986, LB 960, § 2; Laws 1993, LB 81, § 27; Laws 1998, LB 1321, § 42; Laws 2005, LB 533, § 13; Laws 2012, LB963, § 7; Laws 2013, LB213, § 7.

Cross References

Interstate Trust Company Office Act, see section 8-2301.

8-214 Pledged securities; release upon surrender of fiduciary powers; conditions.

Any national bank, federal savings association, federally chartered trust company, or out-of-state trust company authorized under the Interstate Trust Company Office Act or otherwise doing business in this state, which has surrendered its right to exercise such fiduciary powers in this state may have its pledged securities released to it upon furnishing to the Department of Banking and Finance a certificate by its primary financial institution regulator that such financial institution is no longer authorized to exercise such powers and has been relieved, in accordance with the laws of this state, of all duties and obligations as assignee, receiver, or trustee, either by appointment of court or under will, and for depository of money in court. Any out-of-state entity acting in a fiduciary capacity in this state which has surrendered its right to exercise such fiduciary powers in this state may have its pledged securities released to it upon furnishing to the department such proof as the department may require to show that such out-of-state entity is no longer acting as a fiduciary in this state.

Source: Laws 1939, c. 3, § 2, p. 60; C.S.Supp.,1941, § 8-212; R.S.1943, § 8-214; Laws 1993, LB 81, § 28; Laws 1998, LB 1321, § 43; Laws 2012, LB963, § 8.

Cross References

Interstate Trust Company Office Act, see section 8-2301.

8-215 Pledged securities; release upon liquidation; conditions.

Any trust company, state or national bank or federal savings association with a trust department, federally chartered trust company, out-of-state trust company authorized under the Interstate Trust Company Office Act or otherwise doing business in this state, or out-of-state entity acting in a fiduciary capacity in this state, upon liquidating its business and affairs for reasons other than insolvency, may have its pledged securities released to it upon satisfying the Department of Banking and Finance that it has been lawfully relieved of all its duties and obligations as assignee, receiver, or trustee, either by appointment of court or under will, and for depository of money in court, after first having published notice three successive weeks in some legal newspaper published in the county or, if none is published in the county, in a legal newspaper of general circulation in the county in which the principal place of business of the trust company, trust department of a state or national bank or federal savings association, or federally chartered trust company is located that all claims against such securities, whether absolute or contingent, must be filed with the department by a day certain, not less than thirty days after the last publication of such notice. In the case of an out-of-state trust company authorized under the Interstate Trust Company Office Act or otherwise doing business in this state, or in the case of any out-of-state entity acting in a fiduciary capacity in this state, the notice shall be published in each county in Nebraska where the out-of-state trust company or out-of-state entity maintains an office, does business, or acts in a fiduciary capacity, or maintained an office, conducted business, or acted in a fiduciary capacity, within one year prior to the liquidation of its affairs.

Source: Laws 1939, c. 3, § 2, p. 61; C.S.Supp.,1941, § 8-212; R.S.1943, § 8-215; Laws 1986, LB 960, § 3; Laws 1993, LB 81, § 29; Laws 1998, LB 1321, § 44; Laws 2012, LB963, § 9.

Cross References

Interstate Trust Company Office Act, see section 8-2301.

Department of Banking, as liquidating agent for trust company by proceedings hereunder, is not ''adverse holder'', and is required to obey summary order to turn over property to bankruptcy receiver. Gamble v. Daniel, 39 F.2d 447 (8th Cir. 1930), appeal dismissed 281 U.S. 705 (1930).

8-216 Pledged securities; interest; company's right to collect.

The trust company may collect and retain the interest of all securities pledged as provided in section 8-209.

Source: Laws 1919, c. 190, tit. V, art. XVIII, § 13, p. 722; C.S.1922, § 8075; C.S.1929, § 8-213; Laws 1933, c. 18, § 79, p. 176; C.S.Supp.,1941, § 8-213; R.S.1943, § 8-216; Laws 1993, LB 81, § 30.

8-217 Pledged securities; substitute; when required.

If the interest on any security pledged as provided in section 8-209 remains unpaid for thirty days after maturity, the trust company shall substitute other securities therefor.

Source: Laws 1919, c. 190, tit. V, art. XVIII, § 14, p. 722; C.S.1922, § 8076; C.S.1929, § 8-214; Laws 1933, c. 18, § 80, p. 176; C.S.Supp.,1941, § 8-214; R.S.1943, § 8-217; Laws 1993, LB 81, § 31.

8-218 Examination; powers and duties of Department of Banking and Finance.

The Department of Banking and Finance or any duly appointed examiner authorized by it may make a full examination into all the books, papers, and affairs of any trust company doing business under the Nebraska Trust Company Act as often as deemed necessary. In so doing, the department shall have power to administer oaths and affirmations and to examine on oath or affirmation the officers, agents, and clerks of the trust company, touching the matter which they may be authorized to inquire into and examine, and to summon and by subpoena compel the attendance of any person or persons in this state to testify under oath in relation to the affairs of the trust company. In lieu of any examination authorized by the laws of this state, the Director of Banking and Finance may accept, in his or her discretion, a report of an examination made of a trust company by the Federal Deposit Insurance Corporation, the Federal Reserve Bank, or the Office of the Comptroller of the Currency or he or she may examine any such trust company jointly with any such federal agency.

Source: Laws 1911, c. 31, § 9, p. 193; R.S.1913, § 747; Laws 1919, c. 190, tit. V, art. XVIII, § 15, p. 722; C.S.1922, § 8077; Laws 1927, c. 35, § 3, p. 162; Laws 1929, c. 38, § 6, p. 158; C.S.1929, § 8-215; Laws 1933, c. 18, § 81, p. 176; C.S.Supp.,1941, § 8-215; R.S. 1943, § 8-218; Laws 1993, LB 81, § 32; Laws 1998, LB 1321, § 45; Laws 2019, LB258, § 8.

8-218.01 Inactive company; charter revoked; when; release of assets.

Any trust company which fails to exercise trust powers for three years or which voluntarily surrenders duties associated with fiduciary accounts so that no activity is reported for a period of three years, as determined by the consecutive annual reports submitted to the Department of Banking and Finance, shall be deemed inactive. Trust charters determined to be inactive as described in this section shall be revoked and the pledged assets released in accordance with section 8-215.

Source: Laws 1993, LB 81, § 33.

8-219 Liquidation; reorganization; adjudication of insolvency; grounds; powers and duties of Department of Banking and Finance.

Whenever (1) it appears to the Department of Banking and Finance from any examination or report provided for by the Nebraska Trust Company Act that the capital stock of any trust company transacting business under the act is impaired, or that the trust company is conducting its business in an unsafe or unauthorized manner, or that the trust company is endangering the interest of the beneficiaries for whom it holds property in trust, (2) the officers or employees of the trust company refuse to submit its books, papers, and affairs

to the inspection of any examiner, (3) any officer thereof refuses to be examined upon oath touching the affairs of the trust company, or (4) from any examination or report provided for by law, the department has reason to conclude that the trust company is in an unsafe or unsound condition to transact the business for which it is organized or that it is unsafe and inexpedient for it to continue its business, the department shall take charge of the trust company and proceed to reorganize or to liquidate the trust company in the manner provided for the liquidation of insolvent banks. If the trust company neglects or refuses to observe any lawful order of the department, then the department may cause a suit to be brought in the name of the State of Nebraska upon the relation of the Department of Banking and Finance against the trust company in the district court of the county in which the trust company is chartered for the purpose of having the trust company adjudged insolvent and its business wound up.

Source: Laws 1927, c. 35, § 3, p. 163; Laws 1929, c. 38, § 6, p. 159; C.S.1929, § 8-215; Laws 1933, c. 18, § 81, p. 177; C.S.Supp.,1941, § 8-215; R.S.1943, § 8-219; Laws 1993, LB 81, § 34; Laws 1998, LB 1321, § 46.

8-220 Liquidation; adjudication of insolvency; procedure; powers of district court; liens dissolved.

The suit referred to in section 8-219 shall be conducted as a civil action under the laws of Nebraska. If in the suit the court finds that the trust company is insolvent, it shall enter a judgment of insolvency and order that the business of the trust company shall be wound up. The court or any judge thereof may, after notice to the trust company, enjoin the trust company from continuing to transact business pending the hearing and entry of a judgment in the case. If the court finds and adjudges that the trust company is insolvent, the Department of Banking and Finance shall thereupon become the liquidating agent to wind up the business of the trust company, and the department shall be vested with the title to all of the assets and the property of the trust company wherever such property may be situated and whatever the kind and character of the assets and property may be, as of the date of the filing of the petition in court. Any attachment lien against the property of the trust company, acquired within sixty days next preceding the filing of the suit, shall be thereby released and dissolved.

Source: Laws 1927, c. 35, § 3, p. 163; Laws 1929, c. 38, § 6, p. 159; C.S.1929, § 8-215; Laws 1933, c. 18, § 81, p. 177; C.S.Supp.,1941, § 8-215; R.S.1943, § 8-220; Laws 1993, LB 81, § 35.

8-221 Liquidation; insolvency; injunction to prevent transaction of business.

If the judge of the district court of the county where the suit is filed is absent therefrom, any judge of the Court of Appeals or Supreme Court may grant the injunction as provided in section 8-220 with the same force and effect as if it had been granted by the district judge. All the proceedings for the conduct of the suit and an entry of judgment shall be conducted in the district court of the county where the trust company was chartered. If the trust company is adjudged insolvent, its affairs shall be wound up by the Department of Banking

and Finance under and subject to the order of the district court in the manner provided in the case of insolvent banks.

Source: Laws 1927, c. 35, § 3, p. 164; Laws 1929, c. 38, § 6, p. 160; C.S.1929, § 8-215; Laws 1933, c. 18, § 81, p. 178; C.S.Supp.,1941, § 8-215; R.S.1943, § 8-221; Laws 1991, LB 732, § 14; Laws 1993, LB 81, § 36.

8-222 Maximum liability.

The maximum liability which may be incurred by any trust company organized under the Nebraska Trust Company Act, exclusive of money or properties held in trust and exclusive of money borrowed for investment and actually invested in real estate mortgages and other securities in which trust companies are authorized to invest under the act, shall not exceed one hundred percent of the paid-up capital stock.

Source: Laws 1911, c. 31, § 10, p. 194; R.S.1913, § 748; Laws 1919, c. 190, tit. V, art. XVIII, § 16, p. 723; C.S.1922, § 8078; Laws 1923, c. 32, § 1, p. 142; C.S.1929, § 8-217; R.S.1943, § 8-222; Laws 1993, LB 81, § 37; Laws 1998, LB 1321, § 47.

8-223 Statements required; when; annual report, defined; penalty.

(1) The trust company shall file with the Department of Banking and Finance during the months of January and July of each year a statement under oath of the condition of the trust company on the last business day of the preceding December and June in the manner and form required by the department. For purposes of the Nebraska Trust Company Act, the trust company's annual report shall be deemed to be the report filed with the Department of Banking and Finance during the month of January.

(2) Any trust company that fails, neglects, or refuses to make or furnish any report or any published statement required by the Nebraska Trust Company Act shall pay to the department fifty dollars for each day such failure continues, unless the department extends the time for filing such report.

(3) The filing requirements of this section shall not apply to the trust department of a bank if the report of condition of the trust department is included in the reports of the bank required by the Nebraska Banking Act.

Source: Laws 1911, c. 31, § 11, p. 194; R.S.1913, § 749; Laws 1919, c. 190, tit. V, art. XVIII, § 17, p. 723; C.S.1922, § 8079; C.S.1929, § 8-218; Laws 1933, c. 18, § 82, p. 178; C.S.Supp.,1941, § 8-218; R.S.1943, § 8-223; Laws 1993, LB 81, § 38; Laws 1998, LB 1321, § 48; Laws 2000, LB 932, § 6; Laws 2008, LB851, § 8.

Cross References

Nebraska Banking Act, see section 8-101.02.

8-224 Reports; form; publication; trust company; disclosure statement.

(1) The reports required by section 8-223 shall be verified by one of the managing officers, and a summary of the annual report, in a form prescribed by the Department of Banking and Finance, shall, within thirty days after the filing of the statement with the department, be published in a newspaper of general circulation in the county where the trust company is chartered.

(2) The publication required by this section shall not apply to any trust company that makes an annual disclosure statement available to any member of the general public upon request in accordance with the following provisions:

(a) The annual disclosure statement shall be in a form prescribed by the department;

(b) In the lobby of its main office, in every branch trust office, and in every representative trust office, the trust company shall at all times display a notice that the annual disclosure statement may be obtained from the trust company;

(c) If the trust company maintains an Internet website, the home page of the website shall at all times contain a notice that the annual disclosure statement may be obtained from the trust company;

(d) The notice described in subdivisions (b) and (c) of this subsection shall include, at a minimum, an address and telephone number to which requests for an annual disclosure statement may be made;

(e) The first requested copy of the annual disclosure statement shall be provided to a requester free of charge; and

(f) A trust company shall make its annual disclosure statement available to the public beginning not later than the following March 31 or, if the trust company mails an annual disclosure statement to its shareholders, beginning not later than five days after the mailing of the disclosure statement, whichever occurs first. A trust company shall make its annual disclosure statement available continuously until (i) the annual disclosure statement for the succeeding year becomes available or (ii) a summary of its annual report is published for the succeeding year in accordance with this section.

(3) The publication required by this section shall not apply to reports of the trust department of a bank if the report of condition of the trust department is included in the reports of the bank required by the Nebraska Banking Act.

Source: Laws 1911, c. 31, § 12, p. 194; R.S.1913, § 750; Laws 1919, c. 190, tit. V, art. XVIII, § 18, p. 723; C.S.1922, § 8080; C.S.1929, § 8-219; Laws 1933, c. 18, § 83, p. 178; C.S.Supp.,1941, § 8-219; R.S.1943, § 8-224; Laws 1993, LB 81, § 39; Laws 1997, LB 137, § 9; Laws 2008, LB851, § 9.

Cross References

Nebraska Banking Act, see section 8-101.02.

8-224.01 Prohibited acts; violation; penalties; applicability.

(1) No charge shall be allowed against an estate or trust for legal services performed by an attorney who is a salaried employee of the trust company or when a portion of the charge for legal service is retained by the trust company. Any officer or employee of the trust company causing or consenting to such division of fee for legal service shall be guilty of a Class I misdemeanor. No investments of an estate or trust shall be made in the capital stock or securities of the trust company, in the stock or securities of its affiliated companies, or in obligations, either direct or indirect, of any director, officer, or employee of the trust company. The trust company shall not substitute any of the assets of an estate or trust under its control for securities of the trust company. A trust company may administer, in a fiduciary capacity, an estate or trust which contains such capital stock, securities, or obligations as part of its assets if such assets are received in kind from the grantor of the estate or trust and retention

of such capital stock, securities, or obligations is properly authorized by the terms of the governing document. Any officer or employee of the trust company making such an investment or consenting to such an investment or causing such substitution or consenting to such substitution shall be guilty of a Class III felony.

(2) No loan of the assets of the trust company shall be made to any officer or director of such corporation. No trust company shall cause or allow funds of any account entrusted to the trust company to be loaned, directly or indirectly, to any director, officer, or employee of the trust company except when the director, officer, or employee has a specific beneficial interest in the account and such loans are allowed in governing account documents and are not prohibited by other state or federal law. Any director, officer, or employee of the trust company causing, consenting to, or receiving funds from a loan made in violation of this section shall be guilty of a Class III felony.

(3) This section shall not apply to:

(a) Investments authorized in section 30-3205; or

(b) Investments for which the will or trust states that the stock of the trust company or securities of a company or companies affiliated with the trust company may be acquired for the estate or trust.

Source: Laws 1993, LB 81, § 40; Laws 1993, LB 423, § 3; Laws 2020, LB909, § 9.

8-225 False statement or book entry; destruction or secretion of records; penalty.

Any person who swears to any of the statements required by the Nebraska Trust Company Act, knowing them to be false, who subscribes to, makes, or causes to be made any false statement or false entry in the books of any trust company transacting a business under the act, who subscribes to or exhibits false papers or fails to make true and correct entry in the books and records of the trust company of its business and transactions in the manner and form prescribed by the Department of Banking and Finance, who mutilates, alters, destroys, secretes, or removes any of the books or records of the trust company without the written consent of the Director of Banking and Finance, or who makes, states, or publishes any false statement of the amount of the assets or liabilities of the trust company shall be guilty of a Class IV felony.

Source: Laws 1911, c. 31, § 13, p. 195; R.S.1913, § 751; Laws 1919, c. 190, tit. V, art. XVIII, § 19, p. 723; C.S.1922, § 8081; C.S.1929, § 8-220; Laws 1933, c. 18, § 84, p. 179; C.S.Supp.,1941, § 8-220; R.S.1943, § 8-225; Laws 1977, LB 40, § 54; Laws 1993, LB 81, § 41; Laws 1998, LB 1321, § 49.

8-226 Trust terms; use restricted; penalty.

(1) No individual, firm, corporation, or association doing business directly or indirectly in the State of Nebraska shall use the words trust, trust company, trust association, or trust fund as any part of its title except:

(a) A trust company as defined in section 8-230;

(b) A trust company chartered and supervised under the laws of the United States or any other state;

(c) A bank or savings association chartered and supervised under the laws of the United States or any other state, if such bank or savings association has been further chartered to conduct a trust company business;

(d) A limited partnership to the extent authorized by subdivision (5) of section 67-234;

(e) An entity required by any other law to use such words; or

(f) Except as provided in subsection (2) of this section.

(2) Notwithstanding the provisions of subsection (1) of this section:

(a) An organization described in section 501(c)(3) of the Internal Revenue Code and exempt from taxation under section 501(a) of the code may use the words trust or trust fund;

(b) A trust created by a testamentary or fiduciary document may use the word trust; and

(c) An account in a financial institution established by or on behalf of trusts referenced in subdivision (b) of this subsection may use the words trust or trust fund.

(3) A violation of this section is a Class V misdemeanor.

Source: Laws 1911, c. 31, § 13, p. 195; R.S.1913, § 752; Laws 1919, c. 190, tit. V, art. XVIII, § 20, p. 723; C.S.1922, § 8082; C.S.1929, § 8-221; R.S.1943, § 8-226; Laws 1977, LB 40, § 55; Laws 1993, LB 81, § 42; Laws 1996, LB 1268, § 1; Laws 1997, LB 44, § 1.

8-227 State trust company; merger or consolidation with national banking association; procedure.

Any state trust company, with the approval of the Department of Banking and Finance, may, upon a vote of the holders of at least two-thirds of its capital stock, merge or consolidate with a national banking association, as provided by federal law, by causing a certificate to be filed with the Department of Banking and Finance setting forth the resolution of the stockholders of the state trust company and that the resolution has been duly adopted by the holders of at least two-thirds of the capital stock of the trust company.

Source: Laws 1959, c. 20, § 1, p. 145; Laws 1993, LB 81, § 43.

8-228 State trust company; merger or consolidation with a national bank; effect.

When a state trust company has merged or consolidated with a national bank, the resulting national bank and trust company shall be considered the same business and corporate entity as the former national bank and the former trust company and as a continuation thereof and the ownership and title to all properties, assets, obligations, and liabilities of the merging or consolidating trust company shall automatically pass to and become the properties, assets, obligations, and liabilities of the resulting national bank and trust company and shall be deemed to be transferred to and vested in the resulting national bank and trust company without any deed or other transfer. The resulting national bank and trust company, by virtue of such consolidation or merger and without any order or other action on the part of any court or otherwise, shall hold and enjoy the same and all rights of property, franchises, and interests, including appointments, designations, and nominations and all other rights and interests

as trustee, personal representative, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, and in every other fiduciary capacity, in the same manner and to the same extent as such rights, franchises, and interests were held or enjoyed by any such merging or consolidating trust company at the time of such merger or consolidation. Upon the merger or consolidation, the state charter of the merging or consolidating state trust company shall automatically terminate and the charter shall be returned to the Department of Banking and Finance. Securities pledged to the department in accordance with section 8-209 shall be transferred to the name of the resulting national bank and trust company.

Source: Laws 1959, c. 20, § 2, p. 146; Laws 1986, LB 909, § 6; Laws 1993, LB 81, § 44.

8-229 State trust company; merger or consolidation with a national bank; redemption of stock; when; value, how determined.

When the merger or consolidation becomes effective, the owner of shares of a state trust company which were voted against a merger or consolidation with a national bank shall be entitled to receive the value of the stock in cash from the assets of the state trust company when the merger or consolidation becomes effective, upon written demand made to the resulting national bank and trust company at any time within thirty days after the effective date of the merger or consolidation, accompanied by the surrender of the stock certificates. The value of the shares shall be determined as of the date of the shareholders' meeting approving the merger or consolidation, by three appraisers, one to be selected by the owners of two-thirds of the shares voting against the merger or consolidation, one by the board of directors of the resulting national bank and trust company, and the third by the two so chosen. If the appraisal is not completed within sixty days after the merger or consolidation becomes effective, the Department of Banking and Finance may cause an appraisal to be made and the resulting appraisal shall then govern. The expenses of the appraisal caused to be made by the department shall be paid by the resulting national bank and trust company.

Source: Laws 1959, c. 20, § 3, p. 146; Laws 1993, LB 81, § 45.

8-229.01 State trust company; merger or consolidation with state bank; procedure.

Any state trust company, with the approval of the Department of Banking and Finance, may, upon a vote of the holders of at least two-thirds of its capital stock, merge or consolidate with any state bank which has obtained powers to conduct a trust business pursuant to the Nebraska Trust Company Act. The merging trust company must file with the department a certificate of the stockholders of the trust company that the resolution to merge or consolidate has been duly adopted by the holders of at least two-thirds of the capital stock of the trust company.

Source: Laws 1993, LB 81, § 46; Laws 1998, LB 1321, § 50.

8-229.02 State trust company; merger or consolidation with a state bank; effect.

When a state trust company has merged or consolidated with a state bank, the resulting state bank and trust company shall be considered the same

business and corporate entity as the former state bank and the former trust company and as a continuation thereof. The ownership and title to all properties, assets, obligations, and liabilities of the merging or consolidating trust company shall automatically pass to and become the properties, assets, obligations, and liabilities of the resulting state bank and trust company and shall be deemed to be transferred to and vested in the resulting state bank and trust company without any deed or other transfer. The resulting state bank and trust company, by virtue of such consolidation or merger and without any order or other action on the part of any court or otherwise, shall hold and enjoy the same and all right of property, franchises, and interests, including appointments, designations, and nominations and all other rights and interests as trustee, personal representative, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, and in every other fiduciary capacity, in the same manner and to the same extent as such rights, franchises, and interests were held or enjoyed by any such merging or consolidating trust company at the time of such merger or consolidation. Upon the merger or consolidation, the state charter of the merging or consolidating state trust company shall automatically be transferred to the resulting state bank and trust company.

Source: Laws 1993, LB 81, § 47.

8-229.03 State trust company; merger or consolidation with a state bank; redemption of stock; when; value, how determined.

When the merger or consolidation becomes effective, the owner of shares of a trust company which were voted against a merger or consolidation with a state bank shall be entitled to receive the value of the stock in cash from the assets of the state trust company upon written demand made to the resulting state bank and trust company at any time within thirty days after the effective date of the merger or consolidation accompanied by the surrender of the stock certificates. The value of the shares shall be determined as of the date of the shareholders' meeting approving the merger or consolidation. An appraisal shall be conducted by three appraisers, one to be selected by the owners of two-thirds of the shares voting against the merger or consolidation, one by the board of directors of the resulting state bank and trust company, and the third by the two so chosen. If the appraisal is not completed within sixty days after the merger or consolidation becomes effective, the Department of Banking and Finance may cause an appraisal to be made and the resulting appraisal shall then govern. The expenses of the appraisal caused to be made by the department shall be paid by the resulting state bank and trust company.

Source: Laws 1993, LB 81, § 48.

8-230 Terms, defined.

For purposes of the Nebraska Trust Company Act, unless the context otherwise requires:

(1) Agency capacity means a capacity resulting from an undertaking to act alone or jointly with others primarily as agent for another in all matters connected with its undertaking, including the capacities of registrar, paying agent, or transfer agent with respect to stocks, bonds, or other evidences of indebtedness of any corporation, association, municipality, state, or public

authority, escrow agent, or agent for the investment of money or any other similar capacity;

(2) Branch trust office means an office of a trust company, other than the main or principal office of a trust company, at which a trust company may act in any fiduciary capacity or conduct any activity permitted under the Nebraska Trust Company Act;

(3) Fiduciary capacity means a capacity resulting from an undertaking to act alone or jointly with others primarily for the benefit of another in all matters connected with the undertaking and includes the capacities of trustee, including trustee of a common trust fund, administrator, personal representative, guardian of an estate, conservator, receiver, attorney in fact, and custodian and any other similar capacity;

(4) Representative trust office means an office at which a trust company does not act in any fiduciary capacity or conduct or engage in any activity related to its fiduciary capacities but may otherwise engage in any other activity permitted under the Nebraska Trust Company Act; and

(5) Trust company means any trust company which is incorporated under the laws of this state, any national banking association having its principal office in this state and authorized to conduct a trust company business as defined in the Nebraska Trust Company Act, any bank authorized to conduct a trust company business in a trust department pursuant to sections 8-159 to 8-162, any federal savings association authorized to conduct a trust company business, and any federally chartered trust company.

Source: Laws 1977, LB 338, § 1; Laws 1986, LB 909, § 7; Laws 1993, LB 81, § 49; Laws 1998, LB 1321, § 51; Laws 2012, LB963, § 10.

8-231 Trust company; substituted in fiduciary capacity for affiliated bank; application; court order; filing.

(1) Any trust company which has been duly authorized to commence the business for which it is organized and which has made the pledge of securities required by sections 8-209 and 8-210 may file an application in the county court of the county in which an affiliated bank is located requesting that it be substituted, except as may be expressly excluded in such application, in every fiduciary capacity for such affiliated bank specified in the application, and such specified affiliated bank shall join in such application. Such application may be made by the trust company seeking substitution and need not list the fiduciary capacities in which substitution is proposed to be made. For purposes of this section, affiliated bank with respect to a trust company shall mean any bank incorporated under the laws of this state and any national banking association having its principal office in this state, more than fifty percent of the voting stock of which is owned directly or indirectly by the same bank holding company as defined in the United States Bank Holding Company Act, as amended, that owns directly or indirectly more than fifty percent of the voting stock of such trust company. The county court may require such notice as it deems necessary.

(2) When the county court finds that such trust company has been duly authorized to commence the business for which it is organized and that it has made a pledge of securities in accordance with sections 8-209 and 8-210, the county court may enter an order substituting such trust company in every

fiduciary capacity for the specified affiliated bank except as may be otherwise specified in the application.

(3) Upon entry of such order, such trust company shall, without further act, be substituted in every such fiduciary capacity, and such application may be evidenced by filing a copy of the order with the clerk of any county court in this state.

Source: Laws 1977, LB 338, § 2; Laws 1993, LB 81, § 50.

8-232 Designation of bank as fiduciary in a will or other instrument; effect.

Each designation in a will or other instrument executed either before, on, or after September 9, 1993, in which a bank is designated as fiduciary shall be deemed a designation of the trust company substituted for the bank pursuant to sections 8-230 to 8-233 except when the will or other instrument is executed after such substitution. Any grant in a will or other instrument of any discretionary power shall be deemed conferred upon the trust company deemed designated as the fiduciary pursuant to this section.

Source: Laws 1977, LB 338, § 3; Laws 1993, LB 81, § 51.

8-233 Trust company; substituted as fiduciary; accounting; transfer of assets.

A bank shall account jointly with the trust company which has been substituted as fiduciary for the bank pursuant to sections 8-230 to 8-233 for the accounting period during which the trust company is initially so substituted. Upon substitution pursuant to sections 8-230 to 8-233, the bank shall deliver to the trust company all assets held by the bank as fiduciary, except assets held for accounts with respect to which there has been no substitution pursuant to sections 8-230 to 8-233, and upon substitution all the assets shall become the property of the trust company without the necessity of any instrument of transfer or conveyance.

Source: Laws 1977, LB 338, § 4; Laws 1993, LB 81, § 52.

8-234 Branch trust offices authorized; procedure.

(1) With the approval of the Director of Banking and Finance, a corporation organized to do business as a trust company under the Nebraska Trust Company Act may establish and maintain branch trust offices within this state and in any other state pursuant to section 8-2303.

(2) A corporation organized to do business as a trust company under the Nebraska Trust Company Act, in order to establish a branch trust office in Nebraska pursuant to subsection (1) of this section, shall apply to the Director of Banking and Finance on a form prescribed by the director. Upon receipt of a substantially complete application, the director shall hold a public hearing on the matter if he or she determines, in his or her discretion, that the condition of the corporation organized to do business as a trust company warrants a hearing. If the director determines that the condition of the corporation organized to do business as a trust company does not warrant a hearing, the director shall (a) publish a notice of the filing of the application in a newspaper of general circulation in the county where the proposed branch trust office would be located and (b) give notice of such application for a branch trust office to all financial institutions within the county where the proposed branch trust office would be located and to such other interested parties as the director

may determine. The director shall send the notice to financial institutions by first-class mail, postage prepaid, or electronic mail. Electronic mail may be used if the financial institution agrees in advance to receive such notices by electronic mail. A financial institution may designate one office for receipt of any such notice if it has more than one office located within the county where such notice is to be sent or a main office in a county other than the county where such notice is to be sent. If the director receives a substantive objection to the proposed branch trust office within fifteen days after publication of such notice, he or she shall hold a hearing on the application. Notice of a hearing held pursuant to this subsection shall be published for two consecutive weeks in a newspaper of general circulation in the county where the proposed branch trust office would be located. The expense of any publication and mailing required by this section shall be paid by the applicant but payment shall not be a condition precedent to approval by the director. The date for hearing the application shall not be more than ninety days after the filing of the application and not less than thirty-one days after the last publication of notice of hearing. The costs of the hearing shall be assessed in accordance with the rules and regulations of the Department of Banking and Finance.

(3) The director shall approve the application for a branch trust office if he or she finds that (a) the establishment of the branch trust office would not adversely affect the financial condition of the corporation organized to do business as a trust company, (b) there is a need in the community for the branch trust office, and (c) establishment of the branch trust office would be in the public interest.

(4) With the approval of the director, a state-chartered bank authorized to conduct a trust business pursuant to sections 8-159 to 8-162 may establish and maintain branch trust offices within this state and in any other state pursuant to section 8-2303. The procedure for the establishment of any branch trust office under this subsection shall be the same as provided in subsections (2) and (3) of this section. The activities at the branch trust office shall be limited to the activities permitted by the Nebraska Trust Company Act, and the general business of banking shall not be conducted at the branch trust office. Nothing in this subsection is intended to prohibit the establishment of a branch pursuant to section 8-157 at which trust business may be conducted.

(5) A branch trust office of a corporation organized to do business as a trust company or of a state-chartered bank shall not be closed without the prior written approval of the director.

Source: Laws 1998, LB 1321, § 52; Laws 2002, LB 1089, § 5; Laws 2003, LB 217, § 10; Laws 2005, LB 533, § 14; Laws 2008, LB851, § 10; Laws 2010, LB890, § 7; Laws 2016, LB751, § 4.

8-235 Representative trust offices authorized; procedure.

(1) With the approval of the Director of Banking and Finance, a corporation organized to do business as a trust company under the Nebraska Trust Company Act may establish and maintain representative trust offices within this state and in any other state pursuant to section 8-2304.

(2) A corporation organized to do business as a trust company under the Nebraska Trust Company Act, in order to establish a representative trust office in Nebraska pursuant to subsection (1) of this section, shall apply to the Director of Banking and Finance on a form prescribed by the director. Within

sixty days after receipt of a substantially complete application, the director shall notify the trust company of his or her decision on the application. If the director does not act on the application, the application shall be deemed approved on the sixty-first day after receipt of a substantially complete application.

(3) The director shall approve the application for a representative trust office if he or she finds that:

(a) The establishment of the representative trust office would not adversely affect the financial condition of the trust company;

(b) The activities at the representative trust office will be limited to nonfiduciary trust activities; and

(c) Establishment of the representative trust office would be in the public interest.

(4) A state-chartered bank authorized to conduct a trust business pursuant to sections 8-159 to 8-162 may establish and maintain representative trust offices within this state and in any other state pursuant to section 8-2304. The procedure for the establishment of any representative trust offices under this subsection shall be the same as provided in subsections (2) and (3) of this section. The activities at the representative trust office shall be limited to the activities permitted by the Nebraska Trust Company Act, except that no fiduciary activities may be conducted at the representative trust offices. The general business of banking shall not be conducted at the representative trust offices.

(5) A representative trust office shall not be closed unless the trust company or state-chartered bank provides sixty days' prior written notice to the director.

Source: Laws 1998, LB 1321, § 53.

ARTICLE 3

BUILDING AND LOAN ASSOCIATIONS

Cross References

For provisions relating to disclosure of confidential information, see section 8-1401.
Penalty for misapplication of funds or assets, see section 8-1,139.

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8-301 Supervision and control; powers of Department of Banking and Finance.

The Department of Banking and Finance shall have power to issue permits to and shall have general supervision and control of all building and loan associations as defined in sections 8-301 to 8-340.01.

Source: Laws 1919, c. 190, tit. V, art. XIX, § 1, p. 723; C.S.1922, § 8083; C.S.1929, § 8-301; R.S.1943, § 8-301; Laws 2000, LB 932, § 7.

Supervision and control extends to branches. First Fed. Sav. & Loan Assn. v. Department of Banking, 187 Neb. 562, 192 N.W.2d 736 (1971).

8-301.01 Repealed. Laws 1984, LB 899, § 7.

8-302 Power to require and receive payments from members; limitations.

Any association of not less than five persons, which shall be organized within this state for the purpose of raising money to be loaned among its members, shall be authorized and empowered to levy, assess and collect from its members

such sums of money by rates of stated dues, fines, interest and premiums on loans, as the corporation may provide in its articles of incorporation or bylaws, and to exercise such other powers as are hereinafter conferred. Every such corporation may, however, receive payments from its members in any amount, which together with the balance, if any, formerly to the credit of the member thus paying, upon the books of the corporation, shall not exceed the par value of the shares of stock held by him.

Source: Laws 1899, c. 17, § 1, p. 84; R.S.1913, § 485; Laws 1919, c. 190, tit. V, art. XIX, § 2, p. 724; C.S.1922, § 8084; C.S.1929, § 8-302; Laws 1937, c. 19, § 1, p. 125; C.S.Supp.,1941, § 8-302; R.S.1943, § 8-302; Laws 1978, LB 717, § 1.

Failure of foreign association to renew its authority to transact business in this state does not invalidate prior contracts. Eastern B. & L. Assn. v. Tonkinson, 76 Neb. 470, 107 N.W. 762 (1906).

A building and loan association may deduct from a loan made to one of its members the premium bid for the right of precedence in taking a loan, provided such loan was made under a system of open competitive bidding. South Omaha L. & B. Assn. v. Wirrick, 63 Neb. 598, 88 N.W. 694 (1902).

Section held constitutional. Nebraska L. & B. Assn. v. Perkins, 61 Neb. 254, 85 N.W. 67 (1901); Livingston L. & B. Assn. v. Drummond, 49 Neb. 200, 68 N.W. 375 (1896).

Stockholder cannot rescind, recover money paid for stock, and repudiate obligations assumed on account of mismanagement of officers. American B. & L. Assn. v. Bear, 48 Neb. 455, 67 N.W. 500 (1896).

Act cannot affect contracts made before its passage. American B. & L. Assn. v. Rainbolt, 48 Neb. 434, 67 N.W. 493 (1896).

Subscribers seeking rescission of contract must return stock as condition to right to rescind. Building & L. Assn. of Dakota v. Cameron, 48 Neb. 124, 66 N.W. 1109 (1896).

Corporations, not building and loan associations, though similar in character, may incorporate under general law. York Park Bldg. Assn. v. Barnes, 39 Neb. 834, 58 N.W. 440 (1894).

Company will be bound by that construction of the contract which it understood and knew the other party placed upon it, by which the other party was induced to enter into contract. People's B. L. & S. Assn. v. Klauber, 1 Neb. Unof. 676, 95 N.W. 1072 (1901).

8-303 Stock; ownership; limit; investment shares; loans.

(1) No person shall hold in his own right, or jointly with others, a total of withdrawal value of investment stock of more than sixty thousand dollars or an amount representing two percent of the total assets of the association, whichever is greater, except that investment shares which, when issued by an association, are within the limits prescribed in this subsection, may continue to be lawfully held irrespective of any shrinkage in the assets of the association.

(2) In any association, borrowing members may hold stock to the amount of sixty thousand dollars or an amount equal to five percent of the assets of the association, whichever amount is greater, except that (a) no borrowing member may hold stock in excess of one hundred thousand dollars unless that association has a reserve fund of at least five percent of the total assets of the association; and (b) if stock held by borrowing members which, when issued by an association, is within the limits prescribed in this subsection, it shall continue to be lawfully held irrespective of any shrinkage in the assets of the association.

(3) Notwithstanding the provision of this section, an association may issue any investment shares and make any loan to borrowing members which is or may be permitted to a federal association doing business in this state.

Source: Laws 1899, c. 17, § 1, p. 84; R.S.1913, § 485; Laws 1919, c. 190, tit. V, art. XIX, § 2, p. 724; C.S.1922, § 8084; C.S.1929, § 8-302; Laws 1937, c. 19, § 1, p. 125; C.S.Supp.,1941, § 8-302; R.S.1943, § 8-303; Laws 1945, c. 9, § 1, p. 106; Laws 1953, c. 8, § 1, p. 72; Laws 1955, c. 10, § 1, p. 76; Laws 1959, c. 21, § 1, p. 147; Laws 1969, c. 37, § 1, p. 244.

8-304 Stockholders; voting; limitations.

Subject to the limitations set forth in section 8-303, each investing member shall be permitted to cast one vote for each hundred dollars of withdrawal value of his stock. Each borrowing member shall be permitted as a borrower to cast one vote, or to cast one vote for each one hundred dollars of the credit value of his stock. Fifteen or more members present at a regular or special meeting of members constitute a quorum. Voting may be by proxy if the instrument authorizing the proxy to vote shall have been executed by a member.

Source: Laws 1899, c. 17, § 1, p. 84; R.S.1913, § 485; Laws 1919, c. 190, tit. V, art. XIX, § 2, p. 724; C.S.1922, § 8084; C.S.1929, § 8-302; Laws 1937, c. 19, § 1, p. 125; C.S.Supp.,1941, § 8-302; R.S.1943, § 8-304; Laws 1945, c. 9, § 2, p. 107; Laws 1953, c. 9, § 1, p. 74.

8-305 Corporate name; requirements; penalty.

The words loan and building association, building association, building and loan association, savings and loan association, or loan and savings association, shall form part of the corporate name of every such corporation. No individual, firm, company, corporation, or association operating in the State of Nebraska, unless (1) organized under authority of the federal government, (2) organized as a building and loan association under the authority of any foreign state and complying with the provisions of the Nebraska statutes, (3) organized and incorporated under and in accordance with the provisions of sections 8-301 to 8-384, or (4) having been in existence and doing business in Nebraska under its present name for a period of ten years prior to January 1, 1949, shall, after August 27, 1949, use in its name the words loan and building association, building and loan association, savings and loan association, loan and savings association, loan and building, building and loan, savings and loan, loan and savings, building and savings, or savings and building, in combination with any other word or words. Any person, firm, company, corporation, or association violating this section shall be guilty of a Class V misdemeanor for each offense. Each day such person, firm, or corporation shall use any such prohibited words shall be deemed a separate and distinct offense in violation of this section.

Source: Laws 1899, c. 17, § 1, p. 84; R.S.1913, § 485; Laws 1919, c. 190, tit. V, art. XIX, § 2, p. 724; C.S.1922, § 8084; C.S.1929, § 8-302; Laws 1937, c. 19, § 1, p. 126; C.S.Supp.,1941, § 8-302; R.S.1943, § 8-305; Laws 1949, c. 9, § 1, p. 69; Laws 1977, LB 40, § 56; Laws 2000, LB 932, § 8; Laws 2005, LB 533, § 15.

8-306 Capital stock; amount; articles of incorporation; filing fees.

The capital stock of an association is not limited and shall consist of the aggregate of payments made by its members and dividends credited thereon, less withdrawals, and shall be represented by shares. It shall not be necessary for any association organized in and operating under the laws of the State of Nebraska to state in its articles of incorporation, or an amendment or amendments thereto, any amount of authorized capital stock. Upon the filing of articles of incorporation, or an amendment or amendments thereto, an association shall pay a filing fee of twenty-five dollars to the Secretary of State.

Source: Laws 1919, c. 190, tit. V, art. XIX, § 2, p. 724; C.S.1922, § 8084; C.S.1929, § 8-302; Laws 1937, c. 19, § 1, p. 126; C.S.Supp., 1941, § 8-302; R.S.1943, § 8-306; Laws 1953, c. 10, § 1, p. 75.

Under prior law, law required building and loan association to file articles with Secretary of State and pay filing fee in advance based upon authorized capital stock. State ex rel. Equitable Bldg. L. & S. Assn. v. Amsberry, 104 Neb. 843, 178 N.W. 828 (1920).

8-307 Repealed. Laws 1978, LB 717, § 7.

8-307.01 Pensions and retirement plans; adoption.

A building and loan association may provide for pensions, retirement plans, and other benefits for its officers and employees, and may contribute to the cost thereof in accordance with the plan adopted by a two-thirds vote of the board of directors, and approved by a vote of a majority of all the stockholders represented at an annual meeting of such association upon written notice mailed ten days prior to the annual meeting to the last-known address of each stockholder as shown by the books of the association that a pension or retirement plan, or other plan for benefits for its officers and employees will be presented at such meeting, and approved by the Department of Banking and Finance.

Source: Laws 1953, c. 14, § 1, p. 80.

8-308 Stock; credit value; right of shareholder to withdraw; conditions; withdrawal notice; exception for liquidation.

Any shareholder of an association shall be permitted to withdraw any or all of the credit value of his or her stock as shown by the books of the association, provided such stock is not pledged as security for a loan, by giving written notice of such intention to the secretary or managing officer of the association, and, at the expiration of thirty days following such notice, the member so withdrawing, or, if deceased, his legal representative, shall be entitled to receive the credit value of the stock at the time such notice was given, together with such proportion of the net profits accruing since the last dividend date, if the bylaws so provide and determine, less the admission fee, if any, or other just and lawful charges; *Provided,* the right to so withdraw shall not apply to shareholders of an association in process of liquidation.

Source: Laws 1899, c. 17, § 3, p. 85; R.S.1913, § 488; Laws 1919, c. 190, tit. V, art. XIX, § 4, p. 724; C.S.1922, § 8086; C.S.1929, § 8-304; Laws 1941, c. 12, § 1, p. 84; C.S.Supp.,1941, § 8-304; R.S.1943, § 8-308.

8-309 Stock; withdrawal; limit; funds applicable.

At no time shall more than one-half of the unloaned funds in the treasury of the association and one-half of the accumulations thereto be applicable to the demands of the withdrawing shareholders without the consent by resolution of the board of directors. If there is delay in meeting payment to withdrawing members due to insufficient funds applicable to such purpose, such members shall be paid, and their stock thus repurchased retired, in the order of the filing of their withdrawal notices as funds applicable therefor are available.

Source: Laws 1899, c. 17, § 3, p. 86; R.S.1913, § 488; Laws 1919, c. 190, tit. V, art. XIX, § 4, p. 725; C.S.1922, § 8086; C.S.1929, § 8-304; Laws 1941, c. 12, § 1, p. 84; C.S.Supp.,1941, § 8-304; R.S.1943, § 8-309.

8-310 Stock; withdrawal; insufficient funds to meet notices; limit of loans; requirements.

So long as any association is delayed in meeting payment to withdrawing members due to insufficient funds applicable to such purpose, any loan made to a member shall be from funds not applicable for payment to withdrawing members, and shall not exceed one-half of the credit value of the member's stock unless secured also by the pledge of real estate. If the only security for such a loan be a pledge of the member's stock, the association shall take from the borrower a note for the payment thereof with interest, payable on demand, and a notice for withdrawal of sufficient of the stock to pay such note and interest unless such notice is already on file, and the association shall not demand payment of such note until it has funds available for the payment of the withdrawal notice in the sequence of its filing.

Source: Laws 1941, c. 12, § 1, p. 84; C.S.Supp.,1941, § 8-304; R.S.1943, § 8-310.

8-311 Stock; withdrawals by borrowing members; funds applicable.

Withdrawals by a borrowing member from credits on stock pledged as security in connection with a real estate loan made by the association shall be permitted only at the discretion of the association, and if the association is delayed in meeting payments to withdrawing members due to insufficient funds applicable to such purpose, withdrawals permitted to such a borrowing member shall be paid only out of the funds of the association available for the making of real estate loans.

Source: Laws 1941, c. 12, § 1, p. 84; C.S.Supp.,1941, § 8-304; R.S.1943, § 8-311.

8-312 Stock; enforcement of withdrawals by directors.

If the association has funds applicable for withdrawals and more than needed to retire the shares of members who have given written notice of an intention to withdraw, the directors may, if in their discretion it shall be for the best interests of the association, retire any unpledged shares by enforcing withdrawals of the same, subject to the approval and consent of the Department of Banking and Finance, and the owner or owners shall be paid the full credit value of such shares, which shall be the total of payments and dividends credited thereon less prior withdrawals, if any.

Source: Laws 1899, c. 17, § 3, p. 86; R.S.1913, § 488; Laws 1919, c. 190, tit. V, art. XIX, § 4, p. 725; C.S.1922, § 8086; C.S.1929, § 8-304; Laws 1941, c. 12, § 1, p. 85; C.S.Supp.,1941, § 8-304; R.S.1943, § 8-312.

8-313 Stock; enforced withdrawal; time; notice of intention.

Such retirements, if made, shall be made immediately after a period fixed by the bylaws of the association for the declaration and payment of dividends of earnings, and the association shall, at least sixty days before so retiring any shares, send written notice to each person shown by the books of the association to be an owner of such shares, mailed to such person's last-known address,

which notice shall inform such persons of the intent of the association to make the retirement on a designated date.

Source: Laws 1941, c. 12, § 1, p. 85; C.S.Supp.,1941, § 8-304; R.S.1943, § 8-313.

8-314 Stock; enforced withdrawal; notice of intention; contents.

The association shall without delay, upon so retiring shares by order of its board of directors, send a written notice to each person shown by the books of the association to be an owner of shares thus retired, mailed to such person's last-known address, which notice shall contain information of the retirement of the shares and of the number of the certificate representing said shares, and of the amount to be paid to such owner upon delivery to the association of said certificate.

Source: Laws 1941, c. 12, § 1, p. 85; C.S.Supp.,1941, § 8-304; R.S.1943, § 8-314.

8-315 Loans; prepayment; required provisions; procedure.

The bylaws shall also contain equitable provisions permitting the payment of loans before maturity, as follows: The borrower shall be charged with the full amount of his loan, together with all arrearages due thereon or on the shares pledged, or appertaining to the security given, and shall thereupon be allowed, as a credit, the withdrawal value of the shares pledged as security together with an equitable share of the premium, if any, paid in advance, and such other credits as may be returnable on account thereof, and the balance shall be received by the association in full settlement and discharge of such loan. The credits on shares pledged in connection with a loan secured by mortgage on real estate, may at any time, and in whole or in part, be appropriated by any association and applied in reduction of such loan. The withdrawal value of shares pledged as a part of a loan transaction, where such loan is secured by mortgage on real estate, shall be the total amount of the payments on such shares as shown by the books of the association, together with such proportionate share of the earnings as the borrower may be entitled to under the bylaws of the association, less the amounts of previous appropriations and applications on the loan and withdrawals, if any. The association shall not directly or indirectly charge any membership, admission, withdrawal, or any other fee or sum of money for the privilege of becoming, remaining, or ceasing to be a member of the association, except charges upon the making or modification of a loan authorized by section 8-330. Except as authorized by this section and section 8-316, the association shall not charge any member any sum of money by way of fine or penalty for any cause. Payments on real estate loans shall be applied first to the payment of interest on the unpaid balance of the loan and the remainder on the reduction of principal. Any delinquent real estate taxes, both regular and special, which become a prior lien to the association's mortgage, may be paid by the association and added to the unpaid balance of the loan.

Source: Laws 1899, c. 17, § 4, p. 86; R.S.1913, § 489; Laws 1919, c. 190, tit. V, art. XIX, § 5, p. 725; C.S.1922, § 8087; C.S.1929, § 8-305; Laws 1935, c. 14, § 1, p. 83; C.S.Supp.,1941, § 8-305; R.S.1943, § 8-315; Laws 1967, c. 24, § 1, p. 129; Laws 1978, LB 717, § 2.

8-316 Loans; delinquency; required provisions; association's rights; computation of balance due.

The bylaws shall further provide that if any member has become delinquent in his payment on any shares pledged for the security of any loan from the association, which delinquency shall include delinquent real estate taxes both regular or special irrespective of whether paid by the association and charged to principal or unpaid and a prior lien on the property, and such delinquency represents more than two monthly payments, such shares may be canceled, and he shall, as to such shares, cease to be a member of the association, and the withdrawal value, if any, of such shares at the date of cancellation, shall be credited on his loan. If, after the aforesaid credits, or other credits, a balance remains due the association on account of said loan, it may recover the balance either by the foreclosure and sale of the security given or by an action at law upon the evidence of indebtedness. The withdrawal value of shares pledged as a part of a loan transaction, where such loan is secured by mortgage on real estate, shall be the total amount of the payments on such shares as shown by the books of the association, together with such proportionate share of earnings as the borrower may be entitled to under the bylaws of the association, less the amounts of previous appropriations and applications on the loan and withdrawals, if any.

Source: Laws 1899, c. 17, § 5, p. 87; R.S.1913, § 490; Laws 1919, c. 190, tit. V, art. XIX, § 6, p. 726; C.S.1922, § 8088; C.S.1929, § 8-306; Laws 1935, c. 14, § 2, p. 83; C.S.Supp.,1941, § 8-306; R.S.1943, § 8-316; Laws 1967, c. 24, § 2, p. 130; Laws 1978, LB 717, § 3.

Receiver of insolvent association can recover from member amount loaned, with interest at legal rate, less amount paid on interest and premium, with interest from date of the several payments. Anselme v. American S. & L. Assn., 63 Neb. 525, 88 N.W. 665 (1902).

Mortgage stipulating that borrower should receive credits for withdrawal value of shares in case of foreclosure, gives right to have same fixed and credited according to contract. Equitable B. & L. Assn. v. Bidwell, 60 Neb. 169, 82 N.W. 384 (1900).

8-317 Certificates of stock; records; payments; matured stock; right to withdraw.

Certificates of stock or other written evidence thereof shall be issued for each account in conformity with sections 8-301 to 8-340.01 and the bylaws. Every stockholder shall receive credit on the books of the association for all amounts paid by the stockholder upon the stockholder's subscription for stock, together with the stockholder's pro rata share of all dividends declared, as hereinafter provided, and when the sum of such payments and dividends, less all fines or other charges, equal the par value of the shares of stock held by the stockholder, the stockholder shall be entitled to receive such par value, with such interest not exceeding the legal rate, as the directors may determine, from the time of maturity until paid. Holders of stock thus matured and members desiring to withdraw before such maturity shall be paid the value of their stock in the order of the maturity of or notice of withdrawal of such stock. At no time shall more than two-thirds of the unloaned funds in the treasury of the association, inclusive of such funds applicable to the demands of withdrawing stockholders, as hereinbefore provided, be applicable to the demands of holders of matured stock without the consent of the board of directors.

Source: Laws 1899, c. 17, § 6, p. 87; R.S.1913, § 491; Laws 1919, c. 190, tit. V, art. XIX, § 7, p. 726; C.S.1922, § 8089; C.S.1929, § 8-307; R.S.1943, § 8-317; Laws 1947, c. 14, § 1, p. 79; Laws 1975, LB 481, § 2; Laws 1975, LB 508, § 1; Laws 1978, LB 717, § 4; Laws 2000, LB 932, § 9.

This section only fixes property rights of persons named; strangers to deposit allowed to establish oral trust in the account. Eden v. Eden, 182 Neb. 768, 157 N.W.2d 543 (1968).

Certificates issued by building and loan association to two or more persons are payable to any one of them. Rose v. Hooper, 175 Neb. 645, 122 N.W.2d 753 (1963).

Joint tenancy as to building and loan shares of stock is controlled by this section. Kindler v. Kindler, 169 Neb. 153, 98 N.W.2d 881 (1959).

When building and loan stock certificate is made to the joint account of two or more persons, the survivor or survivors are entitled to the full title thereto. Tobas v. Mutual Building & Loan Assn., 147 Neb. 676, 24 N.W.2d 870 (1946).

8-318 Stock; share account; deposits; withdrawal methods authorized; investments by fiduciaries; rights; retirement plan, investments; building and loan association as trustee or custodian; powers and duties.

(1)(a) Shares of stock in any association, or in any federal savings and loan association incorporated under the provisions of the federal Home Owners' Loan Act, with its principal office and place of business in this state, may be subscribed for, held, transferred, surrendered, withdrawn, and forfeited and payments thereon received and receipted for by any person, regardless of age, in the same manner and with the same binding effect as though such person were of the age of majority, except that a minor or his or her estate shall not be bound on his or her subscription to stock except to the extent of payments actually made thereon.

(b) Whenever a share account is accepted by any building and loan association in the name of any person, regardless of age, the deposit may be withdrawn by the shareholder by any of the following methods:

(i) Check or other instrument in writing. The check or other instrument in writing constitutes a receipt or acquittance if the check or other instrument in writing is signed by the shareholder and constitutes a valid release in discharge to the building and loan association for all payments so made; or

(ii) Electronic means through:

(A) Preauthorized direct withdrawal;

(B) An automatic teller machine;

(C) A debit card;

(D) A transfer by telephone;

(E) A network, including the Internet; or

(F) Any electronic terminal, computer, magnetic tape, or other electronic means.

(c) This section shall not be construed to affect the rights, liabilities, or responsibilities of participants in an electronic fund transfer under the federal Electronic Fund Transfer Act, 15 U.S.C. 1693 et seq., as it existed on January 1, 2022, and shall not affect the legal relationships between a minor and any person other than the building and loan association.

(2) All trustees, guardians, personal representatives, administrators, and conservators appointed by the courts of this state may invest and reinvest in, acquire, make withdrawals in whole or in part, hold, transfer, or make new or additional investments in or transfers of shares of stock in any (a) building and loan association organized under the laws of the State of Nebraska or (b) federal savings and loan association incorporated under the provisions of the federal Home Owners' Loan Act, having its principal office and place of business in this state, without an order of approval from any court.

(3) Trustees created solely by the terms of a trust instrument may invest in, acquire, hold, and transfer such shares, and make withdrawals, in whole or in

part, therefrom, without any order of court, unless expressly limited, restricted, or prohibited therefrom by the terms of such trust instrument.

(4) All building and loan associations referred to in this section are qualified to act as trustee or custodian within the provisions of the federal Self-Employed Individuals Tax Retirement Act of 1962, as amended, or under the terms and provisions of section 408(a) of the Internal Revenue Code, if the provisions of such retirement plan require the funds of such trust or custodianship to be invested exclusively in shares or accounts in the association or in other associations. If any such retirement plan, within the judgment of the association, constitutes a qualified plan under the federal Self-Employed Individuals Tax Retirement Act of 1962, or under the terms and provisions of section 408(a) of the Internal Revenue Code, and the regulations promulgated thereunder at the time the trust was established and accepted by the association, is subsequently determined not to be such a qualified plan or subsequently ceases to be such a qualified plan, in whole or in part, the association may continue to act as trustee of any deposits theretofore made under such plan and to dispose of the same in accordance with the directions of the member and beneficiaries thereof. No association, in respect to savings made under this section, shall be required to segregate such savings from other assets of the association. The association shall keep appropriate records showing in proper detail all transactions engaged in under the authority of this section.

Source: Laws 1899, c. 17, § 7, p. 88; R.S.1913, § 492; Laws 1919, c. 190, tit. V, art. XIX, § 8, p. 726; C.S.1922, § 8090; C.S.1929, § 8-308; Laws 1939, c. 4, § 1, p. 62; C.S.Supp.,1941, § 8-308; R.S.1943, § 8-318; Laws 1953, c. 11, § 1, p. 76; Laws 1955, c. 11, § 1, p. 77; Laws 1971, LB 375, § 1; Laws 1975, LB 208, § 2; Laws 1986, LB 909, § 8; Laws 1995, LB 574, § 3; Laws 2005, LB 533, § 16; Laws 2016, LB760, § 3; Laws 2017, LB140, § 133; Laws 2018, LB812, § 7; Laws 2019, LB258, § 9; Laws 2020, LB909, § 10; Laws 2021, LB363, § 10; Laws 2022, LB707, § 18.
Operative date April 19, 2022.

8-319 Loans; restricted to members; secured and unsecured; purposes; limit; parity with federal associations; security; participation in other loans; exceptions; educational loans.

(1) No loan shall be made by such association except to its own members, and no loan shall be made to any member for any sum in excess of the par value of his or her stock. The borrower shall pledge to the association, as security for the loan, shares of a maturity value equal to the principal of the loan and, except as otherwise provided in this section, ample security by mortgage or deeds of trust on real estate. For purposes of this section, real property and real estate shall include a leasehold or subleasehold estate in real property under a lease or sublease the term of which does not expire, or which is renewable automatically or at the option of the holder or of the association so as not to expire for at least five years beyond the maturity of the debt. Loans made upon improved real estate, except as otherwise provided in this section, shall not exceed ninety-five percent of the reasonable normal cash value thereof, and all loans made on any other real estate shall not exceed three-fourths of the reasonable normal cash value thereof.

(2) An association may make a loan or loans in an amount exceeding ninety-five percent of the reasonable normal cash value of the real estate security (a) if such loan or loans are made to a veteran in accord with the provisions of 38 U.S.C., as now existing or as hereafter amended, (b) if the proceeds of the loan or loans are to be used in purchasing residential property or in constructing a dwelling on unimproved property owned by such veteran to be occupied as his or her home, used for the purpose of making repairs, alterations, or improvements in or paying delinquent indebtedness, taxes, or special assessments on residential property owned by the veteran and used by him or her as his or her home, or used in purchasing any land and buildings to be used by the applicant in pursuing a gainful occupation other than farming, and (c) if the Secretary of Veterans Affairs guarantees that portion of such loan or loans in excess of ninety-five percent of the reasonable normal cash value of the real estate security.

(3) An association is authorized to obtain insurance of its loans by the Federal Housing Administrator under Title II of the National Housing Act, as amended, and such loans so made upon improved real estate and so insured shall not be subject to the restrictions set forth in this section with reference to the maximum authorized amount of a loan.

(4) An association may make unsecured loans to its members if such loans (a) are insured under Title I and Title II of the National Housing Act, as amended, or (b) are for property alterations, repair, or improvements. The aggregate amount of loans made under subdivisions (a) and (b) of this subsection shall not at any time exceed twenty percent of the association's assets. Each loan made under subdivision (b) of this subsection shall be repayable in regular monthly installments within a period of twenty years and shall be supported by a written property statement on forms to be prescribed by the Department of Banking and Finance. An association may make secured loans to its members and may make loans under 38 U.S.C., as amended, under Chapter V, subchapter C of the Home Owners' Loan Act of 1933, as amended (12 U.S.C.), and on the security of mobile homes.

(5) The stock of such association may be accepted as security for a loan of the amount of the withdrawal value of such stock without other security.

(6) An association when so licensed may make loans to its own members upon the terms and security set forth in the Nebraska Installment Loan Act.

(7) Any provisions of this section to the contrary notwithstanding, an association may make any loan that a federal savings and loan association doing business in this state is or may be authorized to make.

(8) An association may invest in loans, obligations, and advances of credit, all of which are referred to in this subsection as loans, made for the payment of expenses of business school, technical training school, college, or university education, but no association shall make any investment in loans under this subsection if the principal amount of its investment in such loans, exclusive of any investment which is or which at the time of its making was otherwise authorized, would thereupon exceed five percent of its assets. Such loans may be secured, partly secured, or unsecured, and the association may require a comaker or comakers, insurance, guaranty under a governmental student loan guarantee plan, or other protection against contingencies. The borrower shall certify to the association that the proceeds of the loan are to be used by a full-

time student solely for the payment of expenses of business, technical training school, college, or university education.

(9) An association may participate with other lenders in making loans of any type that an association may otherwise make if (a) each of the lenders is either an instrumentality of the United States Government or is insured by the Federal Deposit Insurance Corporation or, in the case of another lender, the interest of the association in such loan is superior to the participating interests of the other participants and (b) an association whose accounts are insured by the Federal Deposit Insurance Corporation which may be a federal association or an association chartered by this state, or another association chartered by this state which is not so insured, has otherwise complied with subsection (1) of this section with respect to loans to members.

(10) An association may sell to or purchase from any institution which is a savings association chartered by this state or the accounts of which are insured by the Federal Deposit Insurance Corporation a participating interest in any loan, whether or not, in the case of a purchase, the security is located within the association's regular lending area.

Source: Laws 1899, c. 17, § 8, p. 88; R.S.1913, § 493; Laws 1917, c. 10, § 3, p. 67; Laws 1919, c. 190, tit. V, art. XIX, § 9, p. 727; C.S.1922, § 8091; C.S.1929, § 8-309; Laws 1933, c. 25, § 1, p. 197; Laws 1935, c. 14, § 3, p. 84; Laws 1937, c. 14, § 1, p. 118; Laws 1941, c. 90, § 32, p. 358; C.S.Supp.,1941, § 8-309; Laws 1943, c. 14, § 1(1), p. 78; R.S.1943, § 8-319; Laws 1945, c. 10, § 1, p. 108; Laws 1951, c. 12, § 1, p. 86; Laws 1955, c. 12, § 1, p. 79; Laws 1959, c. 21, § 2, p. 149; Laws 1965, c. 29, § 1, p. 204; Laws 1967, c. 25, § 1, p. 131; Laws 1971, LB 375, § 2; Laws 1976, LB 219, § 1; Laws 1979, LB 154, § 1; Laws 1980, LB 903, § 1; Laws 1991, LB 2, § 1; Laws 1992, LB 757, § 4; Laws 1997, LB 555, § 1; Laws 2001, LB 53, § 4.

Cross References

Nebraska Installment Loan Act, see section 45-1001.

8-320 Reserve funds; idle funds; investments authorized; deposit of funds in banks.

Any association may invest its reserve fund for the payment of contingent losses, any reserve fund created to protect against any other contingency, and any portion of its idle funds, not immediately needed to carry on its proper functions, as follows:

(1) In bonds, notes, warrants, or other direct obligations of the United States or of any city, village, county, township, or school, road, water, sewer, paving, drainage, or sanitary and improvement district or any other political subdivision of the State of Nebraska;

(2) In any securities and obligations issued by the Federal Home Loan Bank, the Federal National Mortgage Association, or successor corporations, bonds and debentures issued either singly or collectively by any of the twelve federal land banks, the twelve intermediate credit banks, or the thirteen banks for cooperatives under the supervision of the Farm Credit Administration, and securities of any other federal agency corporation; and

(3) In securities issued pursuant to the Nebraska Business Development Corporation Act.

Any provision of this section to the contrary notwithstanding, an association may make any investment that a federal savings and loan association doing business in this state is or may be authorized to make.

Any association may deposit its funds, or any part thereof, in any national or state bank insured by the Federal Deposit Insurance Corporation or any corporation successor thereto and receive therefor certificates of time or savings deposit or the usual bank passbook credit subject to check or in share accounts of any state or federal savings and loan association the accounts of which are insured by the Federal Deposit Insurance Corporation or any corporation successor thereto.

Source: Laws 1917, c. 10, § 3, p. 68; Laws 1919, c. 190, tit. V, art. XIX, § 9, p. 727; C.S.1922, § 8091; C.S.1929, § 8-309; Laws 1933, c. 25, § 1, p. 197; Laws 1935, c. 14, § 3, p. 84; Laws 1937, c. 14, § 1, p. 119; Laws 1941, c. 90, § 32, p. 358; C.S.Supp.,1941, § 8-309; Laws 1943, c. 14, § 1(2), p. 79; R.S.1943, § 8-320; Laws 1955, c. 13, § 1, p. 81; Laws 1959, c. 263, § 3, p. 922; Laws 1963, c. 32, § 1, p. 192; Laws 1992, LB 757, § 5; Laws 2005, LB 533, § 17.

Cross References

Nebraska Business Development Corporation Act, see section 21-2101.

8-320.01 Investments; service corporations.

An association organized under the provisions of Chapter 8, article 3, may purchase, hold, and sell stock in any service corporation organized under the laws of the State of Nebraska whose stock is owned exclusively by building and loan associations whose operations are subject to audit by the Department of Banking and Finance and, if insured, by the Federal Home Loan Bank Board and whose activities are restricted to:

(1) The providing of clerical, bookkeeping, accounting, statistical, and data processing services primarily for building and loan associations;

(2) The purchase, development, and conveyance of real estate for the purpose of renovating and rehabilitating substandard housing including enrollment in state and federal programs in connection therewith, and for other lawful purposes;

(3) The servicing, purchasing, selling, and making of loans upon real estate and participating interests therein; and

(4) The investment in corporations whose principal activities are community development, urban renewal and industrial development.

Source: Laws 1969, c. 44, § 1, p. 256.

8-321 Loans; evidence of indebtedness; form; parity with federal associations.

No evidence of indebtedness taken by said association for the return of any loan shall be negotiable in form, and whatever be its form, every such evidence of indebtedness shall be nonnegotiable in law, except as hereinafter provided, and no such debt or evidence of debt shall be assignable or transferable in any

manner so as to prevent the discharge thereof by payments to the association, except as hereinafter provided, except that bonds and interest-bearing obligations, in which temporary investments may be made as hereinbefore provided, may be converted into cash in due course.

Notwithstanding the provision of this section, an association may sell or purchase such loans, and enter into such participation loans, as are or may be permitted to federal savings and loan associations doing business in this state.

Source: Laws 1899, c. 17, § 8, p. 89; R.S.1913, § 493; Laws 1917, c. 10, § 3, p. 68; Laws 1919, c. 190, tit. V, art. XIX, § 9, p. 728; C.S.1922, § 8091; C.S.1929, § 8-309; Laws 1933, c. 25, § 1, p. 198; Laws 1935, c. 14, § 3, p. 85; Laws 1937, c. 14, § 1, p. 119; Laws 1941, c. 90, § 32, p. 358; C.S.Supp.,1941, § 8-309; Laws 1943, c. 14, § 1(3), p. 79; R.S.1943, § 8-321; Laws 1959, c. 21, § 3, p. 150.

Provision hereof against assigning or transferring evidence of debt was inserted for protection of borrowing member and does not prevent equitable transfer by association. Nebraska Central B. & L. Assn. v. H. J. Hughes & Co., 121 Neb. 266, 236 N.W. 699 (1931).

8-322 Membership in Federal Home Loan Bank authorized; power to utilize federal agencies; power to obtain advances; use of funds.

Any building and loan association is hereby authorized (1) to subscribe for the stock of and to become a member of the Federal Home Loan Bank for the district in which it may be located or for the stock of a Federal Home Loan Bank of an adjoining district if demanded by convenience; (2) to obtain advances from the Federal Home Loan Bank System, under the rules and regulations promulgated by the bank of which the association is a member, to obtain advances from any other corporation or agency established by or under authority of the United States Government, and to assign its mortgages or such other assets as may be required as security therefor; and (3) to do and perform such acts as may be necessary and required to avail to it all the advantages and privileges offered by the Federal Home Loan Bank or offered by any other corporation or agency established under the authority of the United States Government or any instrumentality of the United States Government.

Source: Laws 1933, c. 25, § 1, p. 198; Laws 1935, c. 14, § 3, p. 85; Laws 1937, c. 14, § 1, p. 120; Laws 1941, c. 90, § 32, p. 359; C.S.Supp.,1941, § 8-309; Laws 1943, c. 14, § 1(4), p. 79; R.S. 1943, § 8-322; Laws 1957, c. 14, § 1, p. 137.

8-323 Mortgages; assignment to Home Owners' Loan Corporation authorized; condition.

Any building and loan association is hereby authorized, with the approval of its board of directors, to assign its mortgages and the evidence of debt secured thereby to the Home Owners' Loan Corporation created by act of Congress of the United States under the act cited as the Home Owners' Loan Act of 1933, or such other corporation as may be created by authority of the United States Government, or as an instrumentality of the United States Government, and to accept as consideration for such assignment, cash or bonds of such Home Owners' Loan Corporation or such other corporation as may be created by authority of the United States Government, or as an instrumentality of the United States Government; *Provided,* that no mortgage given by any member of

such association shall be so assigned without the written consent of the borrowing member.

Source: Laws 1933, c. 25, § 1, p. 198; Laws 1935, c. 14, § 3, p. 85; Laws 1937, c. 14, § 1, p. 120; C.S.Supp.,1939, § 8-309; Laws 1941, c. 90, § 32, p. 359; C.S.Supp.,1941, § 8-309; Laws 1943, c. 14, § 1(5), p. 80; R.S.1943, § 8-323.

8-324 Stock; availability for purchase of real estate or payment of loan.

Any association, at the discretion of its officers and directors, and with the consent and approval of the Department of Banking and Finance, may accept its stock at the withdrawal value of such shares, to apply on the purchase at its fair market value, of any real estate owned by such association, or to apply in payment or reduction of any loans or contracts of sale on which, in the judgment of the officers and directors, there may be an eventual loss, whether or not notice for withdrawal of such shares shall have been filed, and such action shall not be considered prejudicial to the rights of any stockholders to whom payment on withdrawal notices is being delayed.

Source: Laws 1933, c. 25, § 1, p. 199; Laws 1935, c. 14, § 3, p. 86; Laws 1937, c. 14, § 1, p. 120; Laws 1941, c. 90, § 32, p. 359; C.S.Supp.,1941, § 8-309; Laws 1943, c. 14, § 1(6), p. 80; R.S. 1943, § 8-324.

8-325 Real estate; acquisition and disposal; powers; limitations.

Such association may purchase, hold, lease and convey real estate or stock for the following purposes and no others:

(1) Such real estate as it may need to occupy as a place of business;

(2) Such as shall in good faith be conveyed to it in satisfaction of debts contracted in the ordinary course of business;

(3) Such as it shall purchase at sales under judgments, decrees or mortgages held by the association, or shall purchase in good faith to secure debts due;

(4) Such as it shall in good faith acquire as a part of the consideration for the sale or exchange of real estate owned by it;

(5) Such as shall be acquired in salvaging the value of property owned by the association; and

(6) Such as is permitted building and loan service corporations under section 8-320.01. Nothing in this section shall be construed to forbid the mortgaging of real estate to such associations.

Source: Laws 1899, c. 17, § 9, p. 89; R.S.1913, § 494; Laws 1919, c. 190, tit. V, art. XIX, § 10, p. 728; C.S.1922, § 8092; C.S.1929, § 8-310; Laws 1935, c. 11, § 1, p. 80; C.S.Supp.,1941, § 8-310; R.S.1943, § 8-325; Laws 1969, c. 38, § 1, p. 246.

Association must dispose of title and possession to property held for five years. State ex rel. Johnson v. Conservative Savings and Loan Assn., 143 Neb. 805, 11 N.W.2d 89 (1943).

8-326 Reserve fund; requirements; replenishment; increase; reduction; division for federal tax purposes; special increase; approval by department.

Every association organized under the laws of this state for the purposes set forth in section 8-302, except such associations as are conducted upon the

serial plan and in which the various series are operated wholly separate and distinct from each other, shall provide a reserve fund for the payment of contingent losses, by setting aside at least five percent of the net earnings for each year to such fund until it reaches at least five percent of the total assets of the association exclusive of cash on hand. Any credit to a reserve account required by any federal agency shall be considered to apply to the reserve fund requirement of this section.

All losses shall be paid out of such fund until the same is exhausted, and whenever the amount in the fund falls below five percent of the total assets, it shall be replenished by annual appropriations of at least five percent of the net earnings until it again reaches the amount. The board of directors shall have power to increase the reserve above five percent, but not to exceed twelve percent, if determined that it is to the best interest of the association and its shareholders. An association may establish such other and additional undivided profits accounts or special reserves as may be ordered by its board of directors. The board of directors may, for federal tax purposes, divide the reserve fund, surplus account, and undivided profits account, in accordance with the provisions of the Internal Revenue Code and regulations adopted pursuant thereto. If, in the opinion of a majority of the board of directors of any such association, a reserve fund of twelve percent is insufficient at any time to cover the probable losses among the assets, or if for other good and sufficient reason they determine it to be for the best interests of the association and its shareholders that the reserve fund be maintained or increased, they shall have power to maintain or increase the fund from the net earnings to an amount not greater than the sum of such probable losses or greater than sufficient to best serve the interest of the association and its shareholders as by them determined. Such special increase of the reserve fund shall first be approved by the Department of Banking and Finance, and if, in the opinion of the department after an examination, such special increase of the reserve fund is deemed necessary or advisable for the protection of stockholders, the department may order such reserve fund increased in like manner and within the same limits as aforesaid. Such reserve fund may at any time, with the consent of the department, be reduced to not less than five percent of the assets.

Source: Laws 1899, c. 17, § 10, p. 89; R.S.1913, § 495; Laws 1919, c. 190, tit. V, art. XIX, § 11, p. 728; C.S.1922, § 8093; C.S.1929, § 8-311; Laws 1937, c. 19, § 2, p. 126; C.S.Supp.,1941, § 8-311; R.S.1943, § 8-326; Laws 1963, c. 33, § 1, p. 193; Laws 1995, LB 574, § 4.

8-327 Dividends; how and when paid.

Every association of the character defined in section 8-326, shall be required, at least annually, to transfer the residue of earnings, after paying expenses and setting aside a sum for the reserve funds as herein provided, as a dividend to members holding share accounts. All such members shall participate in earnings pro rata to the withdrawal value of their respective accounts, except that an association may classify its share accounts according to the character, amount, or duration thereof, or regularity of additions thereto, and may agree in advance to pay an additional rate of earnings, over and above the minimum rate of earnings paid on share accounts, on accounts based on such classifications, and shall regulate such earnings in such manner that each share account in the same classification shall receive the same ratable portion of such additional earnings. Earnings may be declared on the withdrawal value of each

share account at the beginning of the accounting period, plus additions thereto made during the period, less amounts previously withdrawn and amounts covered by notice for withdrawal which for earnings purposes shall be deducted from the latest previous additions thereto, computed at the declared rate for the time the funds have been invested determined as next provided. The date of investment shall be the date of actual receipt by the association of an account or an addition to an account, except that if the board of directors shall so determine, accounts in one or more classifications or additions thereto received by the association on or before a date not later than the twentieth day of the month, unless the day determined is not a business day and in such case it may be the next succeeding business day, shall receive earnings as if invested on the first day of the month in which such payments were received; and if the board shall make such determination, it also shall determine that payments received subsequent to such determination date shall either (1) receive earnings as if invested on the first day of the next succeeding month, or (2) receive earnings from the date of actual receipt by the association. The directors shall determine by resolution the method of calculating the amount of any earnings on share accounts as herein provided, and the time or times when earnings are to be declared, paid, or credited, but the association shall not be required to credit or pay dividends on inactive share accounts of fifty dollars or less.

Source: Laws 1899, c. 17, § 11, p. 90; R.S.1913, § 496; Laws 1919, c. 190, tit. V, art. XIX, § 12, p. 729; C.S.1922, § 8094; C.S.1929, § 8-312; Laws 1941, c. 12, § 2, p. 85; C.S.Supp.,1941, § 8-312; R.S.1943, § 8-327; Laws 1967, c. 26, § 1, p. 135.

8-328 Records; requirements.

(1) Complete and adequate records of all accounts and of all minutes of proceedings of the members, directors and executive committee shall be maintained at all times at the office of the association. Records may be kept by hand, mechanical or electronic means.

(2) Every association shall maintain membership records, which shall show the name and address of the member, whether the member is a share account holder, or a borrower, or a share account holder and borrower, and the date of membership thereof. In the case of account-holding members, the association shall obtain a card containing the signature of the owner of such account or his duly authorized representative and shall preserve such signature card in the records of the association.

(3) Associations shall not be required to preserve or keep their records or files for a longer period than five years next after the first day of January of the year following the payment in full of a mortgage or other loan or the closing of a savings or investment account or the final closing or completion of any other contract or transaction; *Provided*, that ledger sheets showing unpaid accounts in favor of members of such savings and loan associations shall not be destroyed.

(4) No liability shall accrue against any association destroying any such records after the expiration of the time provided in subsection (3) of this section, and in any cause or proceedings in which any such records or files may be called in question or be demanded of the association or any officer or employee thereof, a showing that such records and files have been destroyed in

accordance with the terms of subsection (3) of this section shall be a sufficient excuse for the failure to produce them.

(5) All causes of action against an association based upon a claim or claims inconsistent with an entry or entries in any savings and loan association record or ledger, made in the regular course of business, shall be deemed to have accrued, and shall accrue, one year after the date of such entry or entries; and no action founded upon such a cause may be brought after the expiration of five years from the date of such accrual.

(6) The provisions of this section, so far as applicable, shall apply to the records of federal savings and loan associations.

(7) Any association may cause any or all records kept by such association to be copied or reproduced by any photostatic, photographic or microfilming process which correctly and permanently copies, reproduces or forms a medium for copying or reproducing the original record on a film or other durable material and such association may thereafter dispose of the original record. Any such copy or reproduction shall be deemed to be an original record for all purposes and shall be treated as an original record in all courts or administrative agencies for the purpose of its admissibility in evidence. A facsimile, exemplification or certified copy of any such copy or reproduction reproduced from a film record shall, for all purposes, be deemed a facsimile, exemplification or certified copy of the original.

Source: Laws 1899, c. 17, § 12, p. 91; R.S.1913, § 497; Laws 1919, c. 190, tit. V, art. XIX, § 13, p. 729; C.S.1922, § 8095; C.S.1929, § 8-313; R.S.1943, § 8-328; Laws 1963, c. 34, § 1, p. 195.

8-329 Taxation; real estate.

The real estate of such associations shall be subject to taxation in the same manner as provided by law in the case of other corporations and individuals.

Source: Laws 1899, c. 17, § 14, p. 91; R.S.1913, § 498; Laws 1919, c. 190, tit. V, art. XIX, § 14, p. 730; C.S.1922, § 8096; C.S.1929, § 8-314; R.S.1943, § 8-329; Laws 1959, c. 22, § 1, p. 152; Laws 1971, LB 3, § 1.

8-330 Loans; charges authorized; statement; interest rate.

Every association may require borrowing members to pay all reasonable expenses incurred in connection with the making, closing, disbursing, extending, readjusting, or renewing of real estate loans. Such expenses may include abstract, recording, and registration fees, title examinations, survey, escrow services, and taxes or charges imposed upon or in connection with the making and recording of any mortgage. Such reasonable charges may be collected by the association from the borrower and shall not be considered interest or a charge for the use of the money loaned. A charge not exceeding one percent or that allowed a federally chartered association for the premature prepayment may be made. The rate of interest on any loan of money shall be determined and computed upon the assumption that the debt will be paid according to the agreed terms and in the event the loan is paid or collected by court action prior to the term of the loan, any payment charged, received, or taken as an advance or forbearance which is in the nature of and taken into account in the calculation of interest, shall be spread over the stated term of the loan for the purpose of determining the rate of interest. Any amounts paid or contracted to

be paid by persons other than the borrower shall not be considered interest and shall not be taken into account in the calculation of interest. Interest may be paid on escrow accounts held for the payment of taxes, insurance, and similar payments, if agreed to in writing by the borrower and association. Loans may be made by an association under a license granted it pursuant to the Nebraska Installment Loan Act, to borrowing members whose loans are secured by real estate, to the same extent and in the same amount as such loans may lawfully be made to nonborrowing members. The association shall furnish a loan settlement statement to each borrower, indicating in detail the charges and fees such borrower has paid or obligated himself or herself to pay to the association or to any other person in connection with such loan. A copy of such statement shall be retained in the records of the association.

An association may charge and receive interest, on property improvement loans including loans made under Title I of the National Housing Act, as amended, and unsecured loans authorized in section 5(c) of the Home Owners' Loan Act, as amended.

Source: Laws 1899, c. 17, § 14, p. 91; R.S.1913, § 499; Laws 1919, c. 190, tit. V, art. XIX, § 15, p. 730; C.S.1922, § 8097; C.S.1929, § 8-315; Laws 1933, c. 25, § 2, p. 199; C.S.Supp.,1941, § 8-315; R.S.1943, § 8-330; Laws 1961, c. 17, § 1, p. 117; Laws 1969, c. 39, § 1, p. 247; Laws 1971, LB 374, § 1; Laws 2001, LB 53, § 5.

Cross References

Nebraska Installment Loan Act, see section 45-1001.

Payments contracted for as interest and premium on loan only are to be considered in determining usury. Eastern B. & L. Assn. v. Tonkinson, 76 Neb. 470, 107 N.W. 762 (1906).

Foreign associations doing business in this state are subject to penalties against usury. Anselme v. American S. & L. Assn., 66 Neb. 520, 92 N.W. 745 (1902); People's B. L. & S. Assn. v. Parish, 1 Neb. Unof. 505, 96 N.W. 243 (1901).

Under former act, section was only applicable to domestic associations, and foreign associations were governed by general usury statute. National Mut. B. & L. Assn. of New York v. Keeney, 57 Neb. 94, 77 N.W. 442 (1898).

Interest may be reserved at highest rate permitted by law on face of loan, premiums deducted from that, and difference only paid to borrower. Livingston L. & B. Assn. v. Drummond, 49 Neb. 200, 68 N.W. 375 (1896).

8-331 Articles of incorporation; bylaws; filing; certificate of approval; application; contents; approval by Department of Banking and Finance.

Every association shall adopt articles of incorporation and bylaws. A copy of the articles of incorporation and bylaws of every such association shall be filed in the office of the Department of Banking and Finance, together with an application for a certificate of approval and payment of the examination fee prescribed by section 8-602. The application shall furnish and set forth facts and information desired by the Department of Banking and Finance. The department, upon completion of its investigations and its examination of the articles, bylaws, and application for certificate of approval, shall issue a certificate of approval of the association and articles of incorporation and bylaws, but no such certificate of approval shall be issued unless and until the department has determined:

(1) That the articles of incorporation and bylaws conform to the requirements of sections 8-301 to 8-384 and contain a just and equitable plan for the management of the association's business;

(2) That the persons organizing the association are of good character and responsibility;

(3) That in its judgment a need exists for such an institution in the community to be served;

(4) That there is a reasonable probability of its usefulness and success; and

(5) That the same can be established without undue injury to properly conducted existing local building and loan associations.

No such association shall transact any business, except the execution of its articles of incorporation, the adoption of bylaws, and the election of directors and officers, until it has procured a certificate of approval under this section. No amendment of the articles of incorporation or bylaws of any such association shall become operative until a copy of the amendment has been filed and a certificate of approval obtained under this section in regard to the original articles of incorporation and bylaws.

Source: Laws 1899, c. 17, § 15, p. 92; R.S.1913, § 500; Laws 1919, c. 190, tit. V, art. XIX, § 16, p. 730; C.S.1922, § 8098; C.S.1929, § 8-136; R.S.1943, § 8-331; Laws 1949, c. 11, § 1, p. 72; Laws 1957, c. 10, § 3, p. 130; Laws 1978, LB 717, § 5; Laws 2000, LB 932, § 10; Laws 2005, LB 533, § 18.

Requirements hereof apply to application for branch office. First Fed. Sav. & Loan Assn. v. Department of Banking, 187 Neb. 562, 192 N.W.2d 736 (1971).

8-332 Annual statement; publication; special reports; violation; penalty.

Every such association shall, at the close of business on June 30 of each year and at such other times as required by the Department of Banking and Finance, file in the office of the department, within thirty days after the receipt of a request for a requisition therefor, a statement verified by the oath of its president or secretary and approved by three of its directors in such form as may be prescribed by the department, setting forth its actual financial condition and the amount of its assets and liabilities and furnishing such other information as to its affairs as the department may require. A copy of such annual statement shall be published in a newspaper of general circulation, in the county where such association is located, three consecutive times, and due proof of such publication, by affidavit, shall be filed with the department. The department may call for special reports from any such association whenever in its judgment such reports may be necessary or advisable, but no other or further notice or statement of the amount of the existing debts of such corporation shall be required to be published than that on June 30. Any association failing to comply with this section shall pay to the department fifty dollars for each day such noncompliance continues unless the department extends the filing deadlines for such reports and proofs of publication.

Source: Laws 1899, c. 17, § 16, p. 93; R.S.1913, § 501; Laws 1919, c. 190, tit. V, art. XIX, § 17, p. 731; C.S.1922, § 8099; C.S.1929, § 8-317; R.S.1943, § 8-332; Laws 1988, LB 993, § 1.

A false entry under this section is one that is knowingly made with intent to deceive examiner, and an incorrect entry made to correct a mistake in bookkeeping and to make account more nearly speak the truth is not made criminal. Fricke v. State, 112 Neb. 767, 201 N.W. 667 (1924).

8-333 False statement or book entry; penalty.

Every person who shall willfully or knowingly subscribe, or make, or cause to be made, any false statement or any false entries in any book of any association

organized for the purpose set forth in section 8-302, or exhibit any false paper with the intent to deceive any person authorized to examine into the affairs of such association, or shall make, state or publish any false statement of the financial condition of such association, shall be guilty of a Class IV felony.

Source: Laws 1899, c. 17, § 17, p. 93; R.S.1913, § 502; Laws 1919, c. 190, tit. V, art. XIX, § 18, p. 731; C.S.1922, § 8100; C.S.1929, § 8-318; R.S.1943, § 8-333; Laws 1977, LB 40, § 57.

8-334 Liquidation; insolvency; powers and duties of Department of Banking and Finance; writs of assistance.

Whenever it appears to the Department of Banking and Finance that the assets of any association or corporation organized under the laws of this state for the purpose set forth in section 8-302 do not equal the liabilities, that it is conducting its business in an unsafe or unauthorized manner, that it is jeopardizing the interest of its members, or that it is unsafe for such association or corporation to transact business, the department shall take possession of the books, records, and assets of every description of such association or corporation, and the department shall have full authority to retain such possession as against any mesne or final process issued by any court against such association or corporation whose property has been taken possession of by the department, pending the further proceedings specified in sections 8-301 to 8-340.01. If such possession is refused by the secretary, managing officer, or person in charge of such association or corporation, the department shall communicate such fact to the Attorney General together with a copy of such order of possession and it shall become the duty of the Attorney General to apply to the Court of Appeals or to the district court or county court of the county where such association or corporation is located or to a judge of any such court for a writ of assistance in placing the department in immediate possession of such association or corporation. It shall be sufficient to authorize the issuance of the writ and the taking possession of such association or corporation under the writ if it is made to appear that possession was refused.

Source: Laws 1899, c. 17, § 19a, p. 94; R.S.1913, § 504; Laws 1919, c. 190, tit. V, art. XIX, § 20, p. 732; C.S.1922, § 8102; C.S.1929, § 8-319; R.S.1943, § 8-334; Laws 1991, LB 732, § 15; Laws 2000, LB 932, § 11.

A borrowing member upon insolvency is required to repay what he actually received, with interest, and is entitled, after debts are paid, to a pro rata dividend with nonborrowing member for what he has paid. Saunders v. State Savings & Loan Assn., 121 Neb. 473, 237 N.W. 572 (1931).

Alleged sovereign right of city of Lincoln to priority of payment out of assets of bankrupt trust company is inconsistent with Nebraska legislation and not within the common law of the state. City of Lincoln, Neb. v. Ricketts, 84 F.2d 795 (8th Cir. 1936).

8-335 Liquidation; insolvency; special shareholders' meeting; report of department.

The Department of Banking and Finance shall, within ten days next after acquiring possession of such association, convene a special meeting of the shareholders. Notice of such special meeting shall be given by publication in a newspaper of general circulation in the county where such association is located and by written or printed notice posted in a conspicuous place in the office or place of business of the association. At such meeting the department

shall present a full report of the affairs and condition of such association as found by its examination thereof.

Source: Laws 1899, c. 17, § 19b, p. 95; R.S.1913, § 505; Laws 1919, c. 190, tit. V, art. XIX, § 21, p. 733; C.S.1922, § 8103; C.S.1929, § 8-320; R.S.1943, § 8-335.

8-336 Liquidation; insolvency; inventory; collection of assets; expenses.

The Department of Banking and Finance, or any person authorized by it, shall, after having taken possession of the association under section 8-334, and pending the further proceedings specified in sections 8-301 to 8-340.01, prepare, or have prepared, a full and true exhibit of the affairs, property, and condition of such association, including an itemized statement of all its assets and liabilities. The department shall also receive and collect all debts, dues, and claims belonging to it, pay the immediate and reasonable expense of its trust, receive and receipt for all monthly payments becoming due after the date of coming into possession of the association, and keep the same separate and apart from the other money and effects of such association.

Source: Laws 1899, c. 17, § 19c, p. 96; R.S.1913, § 506; Laws 1919, c. 190, tit. V, art. XIX, § 22, p. 733; C.S.1922, § 8104; C.S.1929, § 8-321; R.S.1943, § 8-336; Laws 2000, LB 932, § 12.

8-337 Insolvency; reorganization; surrender of assets by Department of Banking and Finance.

If at the special meeting of the shareholders they shall vote to reorganize such association, the Department of Banking and Finance, upon the consummation of the reorganization thereof, and the approval of the department, shall turn over to the new management all the books, papers and effects of every description in its hands belonging to such association.

Source: Laws 1899, c. 17, § 19d, p. 96; R.S.1913, § 507; Laws 1919, c. 190, tit. V, art. XIX, § 23, p. 733; C.S.1922, § 8105; C.S.1929, § 8-322; R.S.1943, § 8-337.

8-338 Voluntary liquidation; disposition of payments, other property; duty of Department of Banking and Finance.

If at the special meeting of the shareholders they shall vote to go into voluntary liquidation or to otherwise close up or discontinue the business of such association, the Department of Banking and Finance shall return to the shareholders all monthly payments and other payments on subscriptions for stock received and receipted for by it, and which became due and payable after the date of taking possession. All books, papers and effects of every description in its hands, belonging to such association not so returnable, shall be turned over and delivered to the person or persons entitled thereto.

Source: Laws 1899, c. 17, § 19e, p. 96; R.S.1913, § 508; Laws 1919, c. 190, tit. V, art. XIX, § 24, p. 733; C.S.1922, § 8106; C.S.1929, § 8-323; R.S.1943, § 8-338.

Borrowing member is entitled to pro rata dividend on shares after assets reduced to money and debts paid. Saunders v. State Savings & Loan Assn., 121 Neb. 473, 237 N.W. 572 (1931).

8-339 Involuntary liquidation; duty of Department of Banking and Finance.

If the Department of Banking and Finance after having called a meeting of the shareholders as herein provided, shall find that the association cannot be reorganized or that voluntary liquidation by the shareholders cannot be had or consummated, the department shall take charge of such building and loan association and proceed to liquidate such association in the manner provided for the liquidation of insolvent banks.

Source: Laws 1899, c. 17, § 19f, p. 97; R.S.1913, § 509; Laws 1919, c. 190, tit. V, art. XIX, § 25, p. 734; C.S.1922, § 8107; C.S.1929, § 8-324; Laws 1933, c. 18, § 85, p. 179; C.S.Supp.,1941, § 8-324; R.S.1943, § 8-339.

Alleged sovereign right to city of Lincoln to priority of payment out of assets of bankrupt trust company is inconsistent with Nebraska legislation and not within the common law of the state. City of Lincoln, Neb. v. Ricketts, 84 F.2d 795 (8th Cir. 1936).

8-340 Rules and regulations.

The Department of Banking and Finance has power to make such rules and regulations for the government of all associations of the character defined in sections 8-301 to 8-340.01 as may, in its judgment, seem wise and expedient.

Source: Laws 1899, c. 17, § 20, p. 98; R.S.1913, § 510; Laws 1919, c. 190, tit. V, art. XIX, § 26, p. 734; C.S.1922, § 8108; C.S.1929, § 8-325; R.S.1943, § 8-340; Laws 2000, LB 932, § 13.

Cross References

For adoption and promulgation of administrative rules, see Administrative Procedure Act, section 84-920.

8-340.01 Executive officers and employees; bonding requirements.

Each and every executive officer and such other employees as the Department of Banking and Finance deems necessary of each building and loan association shall execute to such association and to the State of Nebraska, jointly, a corporate surety bond in an amount fixed by the department, said amount to be equal or uniform as to all associations in accordance with their size. In lieu of individual corporate surety bonds, the Director of Banking and Finance may accept a blanket corporate surety bond. All surety bonds shall be conditioned to protect and indemnify the association from any and all pecuniary loss, which the association may sustain, of money or other personal property, including that for which the association is responsible, through or by reason of the fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction, misapplication, misappropriation, or any other dishonest or criminal act, of or by any of said executive officers or employees of the association. Such bond or bonds shall be filed with and approved by the director, remain a part of the records of the department, and be open to public inspection during the office hours of the department.

Source: Laws 1953, c. 13, § 1, p. 79.

8-341 Repealed. Laws 1949, c. 9, § 2.

8-342 Repealed. Laws 2000, LB 932, § 56.

8-343 Repealed. Laws 2000, LB 932, § 56.

8-344 Repealed. Laws 2000, LB 932, § 56.

8-345 Repealed. Laws 2000, LB 932, § 56.

8-345.01 Automatic teller machines; authorized.

Nothing in section 8-157.01 shall prohibit building and loan associations as defined in sections 8-301 to 8-340.01 from establishing and operating new automatic teller machines for the purpose of transmitting savings and loan transactions.

Source: Laws 1975, LB 508, § 2; Laws 1993, LB 81, § 53; Laws 2000, LB 932, § 14; Laws 2003, LB 131, § 6; Laws 2016, LB760, § 4.

8-345.02 New branch; limitation.

No building and loan association organized under the provisions of Chapter 8, article 3, shall establish any new branch on or after March 26, 1992, except to the extent provided for banks in section 8-157.

Source: Laws 1992, LB 470, § 3; Laws 2002, LB 1089, § 6.

8-346 Books; examination.

(1) The Director of Banking and Finance, his or her deputy, or any duly appointed examiner shall have power to make a thorough examination into all the books, records, business, and affairs of every building and loan association organized under the laws of this state as often as deemed necessary. The director may accept in his or her discretion, in lieu of any examination authorized by the laws of this state, a report of an examination made of a building and loan association by the Federal Deposit Insurance Corporation, or the director may examine any such association with that federal agency.

(2) The director may, at his or her discretion, make available to the Federal Deposit Insurance Corporation or the Office of the Comptroller of the Currency copies of reports of any such examination or any information furnished to or obtained by him or her in such examination. The rights, powers, duties, and privileges of the director, his or her deputy, or any duly appointed examiner in connection with such examinations shall be the same as is or may be provided by law in reference to the examinations of banks.

Source: Laws 1935, c. 13, § 1, p. 82; C.S.Supp.,1941, § 8-331; R.S.1943, § 8-346; Laws 1953, c. 12, § 1, p. 78; Laws 1992, LB 757, § 8; Laws 2000, LB 932, § 15; Laws 2019, LB258, § 10.

8-347 State association; conversion into federal savings and loan association; procedure.

Any building and loan association or other home financing organization by whatever name or style it may be designated, eligible to become a federal savings and loan association, may convert itself into a federal savings and loan association by following the procedure hereinafter outlined:

(1) At any regular meeting of the shareholders of any such association or at any special meeting of the shareholders of such association, in either case called to consider such action and held in accordance with the laws governing such association, such shareholders by an affirmative record vote of the shareholders owning and voting two-thirds of the total number of shares outstanding, present in person or by proxy, may declare by resolution the

determination to convert said association into a federal savings and loan association;

(2) A copy of the minutes of such meeting of the shareholders verified by the affidavit of the president or vice president and the secretary of the meeting, shall be filed within ten days after said meeting in the office or department of this state having supervision of such association; and such verified copy of the minutes of such meeting when so filed shall be presumptive evidence of the holding and of the action of such meeting;

(3) Within a reasonable time and without any unnecessary delay after the adjournment of such meeting of shareholders, such association shall take such action as may be necessary to make it a federal savings and loan association, and within ten days after receipt of the federal charter there shall be filed in the office or department of this state having supervision of such association, a copy of the charter issued to such association by the Federal Home Loan Bank Board or a certificate showing the organization of such association as a federal savings and loan association certified by, or on behalf of, the Federal Home Loan Bank Board. Upon the filing of such instrument such association shall cease to be a state association and shall thereafter be a federal savings and loan association.

Source: Laws 1935, c. 15, § 1, p. 86; C.S.Supp.,1941, § 8-332; R.S.1943, § 8-347.

8-348 State association; conversion into federal association; transfer of supervision; status of property owned; continuation of association.

At the time when such conversion becomes effective as provided in section 8-347, such association shall cease to be supervised by this state and all of the property of such association, including all of its right, title and interest in and to all property of every kind and character whether real, personal or mixed, shall immediately by operation of law and without any conveyance or transfer whatsoever and without any further act or deed, continue to be vested in said association under its new name and style as a federal savings and loan association and under its new jurisdiction. Said federal savings and loan association shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held and enjoyed by it as a state association, and said federal savings and loan association at the time of the taking effect of such conversion shall continue responsible for all of the obligations of said state association to the same extent as though said conversion had not taken place. It is hereby expressly declared that the said federal savings and loan association shall be merely a continuation of the said state association under a new name and new jurisdiction and such revision of its corporate structure as may be considered necessary for its proper operation under said new jurisdiction.

Source: Laws 1935, c. 15, § 2, p. 87; C.S.Supp.,1941, § 8-333; R.S.1943, § 8-348.

8-349 State associations; consolidation or merger; procedure; powers and duties of Department of Banking and Finance.

When any savings and loan association or building and loan association organized under the laws of this state shall, by its duly qualified officers and board of directors, propose to consolidate or merge with any other savings and

loan association or building and loan association or associations, each such association shall present the proposed plan of consolidation or merger, together with a statement of the condition of the affairs of such association to the Department of Banking and Finance for its approval. Should the plan be approved by the department, the same shall be submitted to a regular or special meeting of the shareholders of each such association; and notice of such meeting shall be given as the department may direct. Such plan for consolidation or merger may include and provide for a reduction in the capital stock of the association or associations and of the nominal or book value of the shares, thereof, for the issuance of new certificates in lieu thereof, and for the distribution of any part of the assets of such association among its shareholders. If, at such meeting of the shareholders of any such association, not less than one-third of the shareholders vote affirmatively, either in person or by proxy, to adopt the proposed plan, as the same is approved and submitted by the Department of Banking and Finance, the department shall, upon notice of the favorable result of the shareholders meeting, direct each of such associations to put into effect the plan of consolidation or merger so approved; and such plan shall be in force and effect from and after the date of such order; *Provided*, that such consolidation or merger shall not be approved and put into effect unless approved by a majority of those voting on the consolidation or merger. There is hereby vested in the Department of Banking and Finance full power and authority to issue and enforce such orders having to do with carrying out of the plan of consolidation or merger adopted as shall be necessary and requisite for the protection of the shareholders, and distribution of the assets of the associations involved in the consolidation or merger.

Source: Laws 1937, c. 21, § 1, p. 132; C.S.Supp.,1941, § 8-335; R.S.1943, § 8-349; Laws 1969, c. 40, § 1, p. 248.

8-350 Federal savings and loan association; conversion into state association; procedure.

Any federal savings and loan association, having its principal place of business and home office in the State of Nebraska, if permitted by federal law, may convert itself into a state association under Chapter 8, article 3, and amendments thereto, in accordance with the following procedure:

(1) At any regular meeting of the shareholders of any such association, or at any special meeting of the shareholders of such association, in either case called to consider such action and held in accordance with the laws governing such association, such shareholders by an affirmative record vote of the shareholders owning and voting two-thirds of the total number of shares outstanding, present in person or by proxy, may declare by resolution the determination to convert said association into a state association as provided in Chapter 8, article 3, and amendments thereto.

(2) A copy of the minutes of such meeting of the shareholders certified by the president or vice president and the secretary of the meeting, shall be filed within ten days after such meeting in the office of the Department of Banking and Finance, and a copy shall be mailed to the Federal Home Loan Bank Board, Washington, D.C., within ten days after such meeting. Such certified copy of the minutes of such meeting when so filed in the office of the Department of Banking and Finance shall be presumptive evidence that such meeting was held and that it took the action therein set forth.

(3) Within a reasonable time and without any unnecessary delay after the adjournment of such meeting of shareholders, such association shall take all necessary action to comply with requirements of the federal law for conversion to a state association.

(4) At the meeting at which conversion is voted upon, the members shall vote upon and elect in the usual manner the persons who shall be the directors of the state association as provided by sections 8-350 to 8-353; and shall by a majority vote adopt proposed articles of incorporation, constitution, and bylaws to be effective upon conversion into a state-chartered association. The elected directors within a reasonable time and without any unnecessary delay shall sign and acknowledge said proposed articles of incorporation, constitution, and bylaws as subscribers thereto, which shall be filed in the office of the Department of Banking and Finance in compliance with Chapter 8, article 3, and amendments thereto.

(5) The Department of Banking and Finance within a reasonable time following receipt of a verified copy of the minutes of said meeting, and said proposed articles of incorporation, constitution, and bylaws, shall examine the same carefully, and if it finds that the requirements of the provisions of sections 8-350 to 8-353 are satisfied, that said articles of incorporation, constitution, and bylaws conform to the requirements of Chapter 8, article 3, and amendments thereto, and contain a just and equitable plan for the management of the association's business, it shall issue to such association a certificate of its approval of such articles of incorporation, constitution, and bylaws; *Provided*, that no such certificate of approval shall be issued until a thorough examination into all the books, papers, and affairs of such association has been made by the Director of Banking and Finance, his deputies, or duly appointed examiners and the director, after a careful consideration of such examination, has found said association (a) to be in sound condition, (b) to be conducting its business in a manner conforming to the laws of Nebraska governing state-chartered building and loan associations, (c) is not committed to any obligations or liabilities which a similar association chartered under the laws of Nebraska might not properly incur, and (d) does not carry as assets on its books any assets which a similar association chartered under the laws of Nebraska could not properly so carry. The department shall charge such federal savings and loan association for such examination upon the same basis as charges are made for examination of state associations.

Source: Laws 1949, c. 7, § 1, p. 65.

8-351 Federal savings and loan association; conversion into state association; certificate of approval; supervision.

Upon the issuance by the Department of Banking and Finance of a certificate of its approval of said articles of incorporation, constitution, and bylaws, the conversion of any such federal savings and loan association into a state association shall become effective, and said association shall thereupon be subject to the exclusive supervision and control of the department as provided in Chapter 8, article 3, and amendments thereto.

Source: Laws 1949, c. 7, § 2(1), p. 67.

8-352 Federal savings and loan association; conversion into state association; status of property owned; obligation.

All of the property of such association, including all of its right, title, and interest in and to all property of every kind and character whether real, personal, or mixed, shall immediately, by operation of law, without any conveyance or transfer whatsoever, and without any further act or deed, continue to be vested in said association under its new name and style as a state association and under its new jurisdiction. Such state association shall have, hold, and enjoy the same in its own right as fully and to the same extent as the same was possessed, held, and enjoyed by it as a federal savings and loan association. The said state association at the time of the taking effect of such conversion shall continue to be responsible for all the obligations of said federal savings and loan association to the same extent as though said conversion had not taken place.

Source: Laws 1949, c. 7, § 2(2), p. 67.

8-353 Federal savings and loan association; conversion into state association; effect.

It is hereby expressly declared that said state association shall be merely a continuation of said federal savings and loan association under a new name and new jurisdiction, and such revision of its corporate structure as may be considered necessary for its proper operation under said state jurisdiction.

Source: Laws 1949, c. 7, § 2(3), p. 67.

8-354 Repealed. Laws 1975, LB 58, § 1.

8-355 Federal savings and loan; associations organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.

Notwithstanding any of the provisions of Chapter 8, article 3, or any other Nebraska statute, except as provided in section 8-345.02, any association incorporated under the laws of the State of Nebraska and organized under the provisions of such article shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of January 1, 2022, by a federal savings and loan association doing business in Nebraska. Such rights, powers, privileges, benefits, and immunities shall not relieve such association from payment of state taxes assessed under any applicable laws of this state.

Source: Laws 1971, LB 185, § 1; Laws 1972, LB 1288, § 1; Laws 1973, LB 351, § 1; Laws 1974, LB 784, § 1; Laws 1975, LB 201, § 1; Laws 1976, LB 763, § 2; Laws 1977, LB 224, § 1; Laws 1978, LB 717, § 6; Laws 1979, LB 154, § 2; Laws 1980, LB 865, § 1; Laws 1981, LB 71, § 1; Laws 1982, LB 646, § 1; Laws 1983, LB 144, § 1; Laws 1984, LB 923, § 1; Laws 1985, LB 128, § 1; Laws 1986, LB 1052, § 1; Laws 1987, LB 115, § 1; Laws 1988, LB 858, § 1; Laws 1989, LB 207, § 1; Laws 1990, LB 1016, § 1; Laws 1991, LB 98, § 1; Laws 1992, LB 470, § 4; Laws 1992, LB 985, § 1; Laws 1993, LB 288, § 1; Laws 1994, LB 876, § 1; Laws 1995, LB 41, § 1; Laws 1996, LB 949, § 1; Laws 1997, LB 35, § 1; Laws 1998, LB 1321, § 67; Laws 1999, LB 396, § 12; Laws 2000, LB 932, § 16; Laws 2001, LB 53, § 6; Laws 2002, LB 957, § 8; Laws 2003, LB 217, § 11; Laws 2004, LB 999, § 4; Laws 2005, LB 533, § 19; Laws 2006, LB 876, § 13; Laws 2007, LB124, § 7; Laws 2008, LB851, § 11; Laws 2009, LB327, § 9;

Laws 2010, LB890, § 8; Laws 2011, LB74, § 2; Laws 2012, LB963, § 11; Laws 2013, LB213, § 8; Laws 2014, LB712, § 2; Laws 2015, LB286, § 2; Laws 2016, LB676, § 2; Laws 2017, LB140, § 134; Laws 2018, LB812, § 8; Laws 2019, LB258, § 11; Laws 2020, LB909, § 11; Laws 2021, LB363, § 11; Laws 2022, LB707, § 19.
Operative date April 19, 2022.

8-356 Capital stock savings and loan association, defined; capital stock; how treated.

(1) A capital stock savings and loan association, referred to in sections 8-356 to 8-384 as a capital stock association, shall mean a financial institution incorporated under sections 8-356 to 8-384 having for its purposes the encouragement of home financing, the accumulation of capital through the issuance and sale of its stock, the acceptance of such accounts, referred to in sections 8-356 to 8-384 as deposits, as may be authorized for mutual savings and loan associations, and the lending of funds so accumulated in accordance with the powers conveyed to mutual associations by Chapter 8, article 3. A capital stock association shall issue a class of stock known as capital stock. The par value shall be stated in the articles of association and bylaws and approved by the Department of Banking and Finance. The consideration for capital stock which has a par value shall be credited to the capital stock account at its par value and any excess shall be credited to paid-in surplus and both shall be maintained as the fixed and permanent capital of the association. Participation in the management of the association shall be limited to the holders of capital stock.

(2) Capital stock shall be a reserve to absorb losses after all surplus, undivided profits, and other reserves available for losses have been depleted.

(3) Capital stock shall not be subject to redemption except on dissolution and shall then be eligible for redemption only after all accounts, deposits, and other creditors, including the Federal Deposit Insurance Corporation in the case of an insured institution, have been paid in full, together with accrued interest.

Source: Laws 1981, LB 500, § 1; Laws 1992, LB 757, § 9.

8-357 Definitions, sections found.

For purposes of sections 8-356 to 8-384, unless the context otherwise requires, the definitions found in sections 8-358 to 8-370 shall be used.

Source: Laws 1981, LB 500, § 2.

8-358 Association, defined.

Association shall mean a savings and loan association, referred to as a building and loan association, or loan and building association, building association, savings and loan association, or loan and savings association, incorporated and now existing under the laws of this state or incorporated under sections 8-356 to 8-384.

Source: Laws 1981, LB 500, § 3.

8-359 Department, defined.

Department shall mean the Department of Banking and Finance.

Source: Laws 1981, LB 500, § 4.

8-360 Capital accounts, defined.

Capital accounts shall mean capital stock, undivided profits, surplus, and reserves.

Source: Laws 1981, LB 500, § 5.

8-361 Certificate of approval, defined.

Certificate of approval shall mean a certificate issued by the Department of Banking and Finance and approved by the director.

Source: Laws 1981, LB 500, § 6.

8-362 Director, defined.

Director shall mean the Director of Banking and Finance.

Source: Laws 1981, LB 500, § 7.

8-363 Existing mutual association, defined.

Existing mutual association shall mean a mutual association which was authorized to do business in Nebraska on August 30, 1981.

Source: Laws 1981, LB 500, § 8.

8-364 Foreign association, defined.

Foreign association shall mean any firm, company, association, partnership, limited liability company, or corporation actually engaged in the business of a savings and loan association which is not organized under the laws of this state or of the United States.

Source: Laws 1981, LB 500, § 9; Laws 1993, LB 121, § 89.

8-365 Net worth of a stock association, defined.

Net worth of a stock association shall mean the aggregate of the capital stock account, paid-in surplus, earned surplus, legal and federal insurance reserves, and undivided profits.

Source: Laws 1981, LB 500, § 10.

8-366 Capital stock, defined.

Capital stock shall mean that part of the capital or liabilities of an association representing ownership of the association and which is not subject to being withdrawn or the value paid to the holder of such stock until all other liabilities of the association have been fully liquidated and paid.

Source: Laws 1981, LB 500, § 11.

8-367 Savings deposit, defined.

Savings deposit shall mean a savings account in an association qualified to accept deposits and on which the association pays interest or dividends, whether at a fixed or indeterminate rate.

Source: Laws 1981, LB 500, § 12.

8-368 Stockholder, defined.

Stockholder shall mean a person who is a holder of record of shares in a corporation.

Source: Laws 1981, LB 500, § 13.

8-369 Withdrawable account, defined.

Withdrawable account shall mean a savings deposit or other authorized account or deposit of an association which does not represent capital stock.

Source: Laws 1981, LB 500, § 14.

8-370 Withdrawal value, defined.

Withdrawal value shall mean the amount paid to an association on a savings deposit plus earnings credited to such account or deposit less lawful deductions.

Source: Laws 1981, LB 500, § 15.

8-371 Capital stock association; organization; prerequisites.

No capital stock association may be organized unless, prior to the filing of its articles of incorporation and bylaws, such amounts of its capital stock set forth in department rules and regulations or as the director shall deem adequate, shall have been subscribed for and paid into the association. Every stock association shall also obtain insurance of accounts from an agency of the federal government prior to commencing operation.

Source: Laws 1981, LB 500, § 16.

8-372 Capital stock association; application; contents.

Every corporation organized for and desiring to conduct a capital stock association shall make under oath and transmit to the department a complete detailed application, giving the name of the proposed capital stock association, a certified copy of the articles of incorporation, the names of the stockholders, the county, city, or village and the exact location within such city or village where such association is proposed to be located, the nature of the proposed capital stock association business, the proposed amounts of capital stock, surplus, and undivided profits, and the items of actual cash and property, as reported and approved at a meeting of the stockholders.

Source: Laws 1981, LB 500, § 17.

8-373 Capital stock association; articles of incorporation; application; file information with department; examination fee.

A copy of the articles of incorporation and bylaws of every association applying under section 8-372 shall be filed with the department together with an application for a certificate of approval and payment of the examination fee prescribed by section 8-602. The application shall furnish and set forth information as may be required by the department's rules and regulations and the information required by sections 8-356 to 8-384.

Source: Laws 1981, LB 500, § 18; Laws 2003, LB 217, § 12.

8-374 Department; hearing on application; notice; purpose.

(1) Prior to issuing a certificate of approval, the department, upon receiving an application for a stock savings and loan association, shall (a) publish notice of filing of the application for a period of three weeks in a legal newspaper published in or of general circulation in the county where the applicant proposes to operate the savings and loan association and (b) give notice of such application for a stock savings and loan association to all financial institutions within the county where the proposed main office of the stock savings and loan would be located and to such other interested parties as the director may determine. The director shall send the notice to financial institutions by first-class mail, postage prepaid, or electronic mail. Electronic mail may be used if the financial institution agrees in advance to receive such notices by electronic mail. A financial institution may designate one office for receipt of any such notice if it has more than one office located within the county where such notice is to be sent or a main office in a county other than the county where such notice is to be sent.

(2) A public hearing shall be held on each application. The date for hearing the application shall be not more than ninety days after filing the application and not less than thirty days after the last publication of notice. Such hearing shall be held to determine:

(a) Whether the articles of incorporation and bylaws conform to the requirements of sections 8-356 to 8-384 and contain a just and equitable plan for the management of the association's business;

(b) Whether the persons organizing such association are of good character and responsibility;

(c) Whether in the department's judgment a need exists for such an institution in the community to be served;

(d) Whether there is a reasonable probability of its usefulness and success; and

(e) Whether the same can be established without undue injury to properly conducted existing local savings and loan associations, whether mutual or capital stock in formation.

(3) The expense of any publication and mailing required by this section shall be paid by the applicant but payment shall not be a condition precedent to approval by the director.

Source: Laws 1981, LB 500, § 19; Laws 2008, LB851, § 12; Laws 2010, LB890, § 9; Laws 2016, LB751, § 5.

8-375 Department; issue certificate of approval; when.

If the department, upon completion of its investigation and the public hearing of the application, is satisfied that such corporation has complied with the requirements of sections 8-356 to 8-384 and department rules and regulations, it shall issue a certificate of approval stating that such corporation has complied with the laws of this state, and granting such savings and loan association the authority to commence business.

Source: Laws 1981, LB 500, § 20.

8-376 Capital stock association; transaction of business; conditions.

No capital stock association shall transact any business, except the execution of its articles of incorporation, the adoption of the bylaws, and the election of

directors and officers, until such association has been approved by the department and such association has submitted to the department evidence of insurance of accounts by an agency of the federal government. This section shall not apply to existing mutual associations operating without such insurance as of August 30, 1981, if they continue to operate as mutual associations.

Source: Laws 1981, LB 500, § 21.

8-377 Payment to person selling stock prohibited; exception.

No corporation organized for the purpose of conducting a savings and loan association under the laws of this state shall be granted a certificate of approval if there have been any premium, bonus, commission, compensation, reward, salary, or other forms of remuneration paid or promised to be paid, to any person for selling the stock of such corporation, except that reasonable compensation in the form of commissions may be paid to persons or organizations authorized by law to act as brokers of stock for acting in such capacity.

Source: Laws 1981, LB 500, § 22.

8-378 Mutual association; conversion to capital stock association; authorized; plan of conversion; approval required.

(1) Any state or federal mutual association, if substantial business benefit to the applicant will result, and if otherwise permitted by federal law and regulations, may apply to convert to a state or federal capital stock association, in accordance with the provisions set forth in sections 8-356 to 8-384 and in any rules and regulations that may be adopted or promulgated by the Department of Banking and Finance.

(2) Any applicant subject to subsection (1) of this section seeking to convert its corporate form pursuant to this section shall first obtain approval of a plan of conversion by resolution adopted by not less than a two-thirds majority vote of the total number of directors authorized.

(3) Upon approval of a plan of conversion by the board of directors, such plan and the resolution approving it shall be submitted to the department. The department may approve or disapprove the plan of conversion in its discretion, but shall not approve the plan unless a finding is made, after appropriate examination, that substantial business benefit to the applicant will result, that the plan of conversion is fair and equitable, that the interests of the applicant, its members or stockholders, its savings account holders and the public are adequately protected, and that the converting applicant has complied with the requirements of this section. If the department approves the plan of conversion, the approval, which shall be in writing and sent to the home office of the converting applicant, may prescribe terms and conditions to be fulfilled either before or after the conversion to cause the applicant to conform with the requirements of sections 8-356 to 8-384. If the department disapproves the plan of conversion, the objections shall be stated in writing and sent to the home office of the converting applicant, and the applicant afforded an opportunity to amend and resubmit the plan within a reasonable time as prescribed by the department. In the event that the department disapproves the plan after such resubmission, written notice of such final disapproval shall be sent by certified mail to the applicant's home office.

Source: Laws 1981, LB 500, § 23; Laws 2003, LB 217, § 13.

8-379 Mutual association; conversion to capital stock association; plan of conversion; approval of members or stockholders; procedure.

If the department approves a plan to conversion in accordance with section 8-378, such plan shall be submitted for adoption to the members or stockholders of the converting association by vote at an annual or special meeting called to consider such action. At least three weeks prior to such meeting, a copy of the plan, together with an accurate summary plan description explaining the operation of the plan and the rights, duties, obligations, liabilities, conditions, and requirements which may be imposed upon such members or stockholders and the converted association as a result of the adoption of such plan, shall be mailed to each member or stockholder eligible to vote at such meeting. The plan of conversion must be approved by not less than sixty percent of the total outstanding shares, which may be voted by proxy or in person at the meeting called to consider such a conversion. If such plan is so approved, action shall be taken to obtain a charter, articles of incorporation, articles of association, or similar instrument, adopt bylaws, elect directors and officers and take such other action as is prescribed or appropriate for the type of corporation into which the converting applicant will be converted. A certified report of the proceedings at such meeting shall be filed promptly with the department.

Source: Laws 1981, LB 500, § 24.

8-380 Conversion; plan of conversion; requirements.

In any plan of conversion from a capital stock form of organization to a mutual form:

(1) Each savings account holder shall receive without payment a withdrawable account of the same general class in the converted institution equal in amount and equal in time tenure to his or her withdrawable account in the converting capital stock institution;

(2) The plan shall specify how and in what amount the return of capital to each class of stockholder in the form of an exchange of stock for savings accounts shall be effectuated;

(3) The plan shall provide for allocation of voting rights to the holders of savings accounts and the manner of exercise thereof; and

(4) The plan shall provide for evidence of insurance of deposits and other accounts of a withdrawable type by an agency of the federal government.

Source: Laws 1981, LB 500, § 25.

8-381 Mutual association; conversion; certificate of conversion; issuance; when effective.

If the department finds that a conversion proceeding has been completed in accordance with the requirements of sections 8-378 to 8-380 and any other applicable law and regulations, the department shall issue to the applicant a certificate of conversion, attaching as a part of such certificate a copy of the charter, articles of incorporation, articles of association, or similar instrument. Such conversion shall not become effective until the issuance of the certificate as provided in this section.

Source: Laws 1981, LB 500, § 26.

8-382 Mutual association; conversion; effect.

Upon the issuance to any applicant of a certificate of conversion as provided in section 8-381, the corporate existence of the converting association shall not terminate, but such association shall be a continuation of the entity so converted and all property of the converted association, including its rights, titles, and interests in and to all property of whatever kind, whether real, personal, or mixed, things in action, and every right, privilege, interest, and asset of any conceivable value or benefit then existing, or pertaining to it, or which would inure to it, immediately, by operation of law and without any conveyance or transfer and without any further act or deed, shall vest in and remain the property of such converted applicant, and the same shall have, hold, and enjoy the same in its own right as fully and to the same extent as the same was possessed, held, and enjoyed by the converting applicant, and such converted association, upon issuance of the certificate of such conversion, shall continue to have and succeed to all the rights, obligations, and relations of the converting association. All pending actions and other judicial proceedings to which the converting association is a party shall not be abated or discontinued by reason of such conversion, but may be prosecuted to final judgment, order, or decree in the same manner as if such conversion had not been made, and such converted applicant may continue the actions in its new corporate name. Any judgment, order, or decree may be rendered for or against it which might have been rendered for or against the converting applicant theretofore involved in the proceedings.

Source: Laws 1981, LB 500, § 27.

8-383 State associations; consolidation or merger; procedure; proposed plan; approval; department; powers.

When any savings and loan association or building and loan association organized under the laws of this state shall, by its duly qualified officers and board of directors, propose to consolidate or merge with any other savings and loan association or building and loan association or associations, each such association shall present the proposed plan of consolidation or merger, together with a statement of the condition of the affairs of such association to the department for its approval. Should the plan be approved by the department, the same shall be submitted to a regular or special meeting of the shareholders of each such association and notice of such meeting shall be given as the department may direct. If, at such meeting of the shareholders of any such association, not less than fifty-one percent of the shareholders vote affirmatively, either in person or by proxy, to adopt the proposed plan, as the same is approved and submitted by the department, the department shall, upon notice of the favorable result of the shareholders' meeting, direct each of such associations to put into effect the plan of consolidation or merger so approved. Such plan shall be in force and effect from and after the date of such order, except that such consolidation or merger shall not be approved and put into effect unless approved by a majority of those voting on the consolidation or merger. There is hereby vested in the department full power and authority to issue and enforce such orders having to do with carrying out the plan of consolidation or merger adopted as shall be necessary for the protection of the shareholders and distribution of the assets of the associations involved in the consolidation or merger.

Source: Laws 1981, LB 500, § 28.

8-384 Sections, how construed.

In the event of an inconsistency between the provisions of sections 8-356 to 8-384 and the provisions of Chapter 8, article 3, such other provisions shall, to the extent of the inconsistency, be construed to be applicable to mutual associations only and not to the capital stock association.

Source: Laws 1981, LB 500, § 29.

8-385 Repealed. Laws 2005, LB 533, § 70.

ARTICLE 4

INDUSTRIAL LOAN AND INVESTMENT COMPANIES

Section
8-401. Repealed. Laws 2003, LB 131, § 40.
8-401.01. Repealed. Laws 2003, LB 131, § 40.
8-401.02. Repealed. Laws 2003, LB 131, § 40.
8-402. Repealed. Laws 2003, LB 131, § 40.
8-403. Repealed. Laws 2003, LB 131, § 40.
8-403.01. Repealed. Laws 2003, LB 131, § 40.
8-403.02. Repealed. Laws 2003, LB 131, § 40.
8-403.03. Repealed. Laws 2003, LB 131, § 40.
8-403.04. Repealed. Laws 2003, LB 131, § 40.
8-403.05. Repealed. Laws 2003, LB 131, § 40.
8-404. Repealed. Laws 2003, LB 131, § 40.
8-404.01. Repealed. Laws 2003, LB 131, § 40.
8-404.02. Repealed. Laws 2003, LB 131, § 40.
8-405. Transferred to section 8-403.01.
8-406. Repealed. Laws 2003, LB 131, § 40.
8-407. Repealed. Laws 2003, LB 131, § 40.
8-407.01. Repealed. Laws 2003, LB 131, § 40.
8-407.02. Repealed. Laws 2003, LB 131, § 40.
8-407.03. Repealed. Laws 2003, LB 131, § 40.
8-408. Repealed. Laws 2003, LB 131, § 40.
8-408.01. Repealed. Laws 2003, LB 131, § 40.
8-408.02. Repealed. Laws 2003, LB 131, § 40.
8-408.03. Repealed. Laws 2003, LB 131, § 40.
8-409. Repealed. Laws 2003, LB 131, § 40.
8-409.01. Repealed. Laws 2003, LB 131, § 40.
8-409.02. Repealed. Laws 2003, LB 131, § 40.
8-409.03. Repealed. Laws 2003, LB 131, § 40.
8-409.04. Repealed. Laws 2003, LB 131, § 40.
8-409.05. Repealed. Laws 2003, LB 131, § 40.
8-409.06. Repealed. Laws 2003, LB 131, § 40.
8-410. Repealed. Laws 2003, LB 131, § 40.
8-410.01. Repealed. Laws 1974, LB 354, § 316.
8-410.02. Repealed. Laws 2003, LB 131, § 40.
8-410.03. Repealed. Laws 2003, LB 131, § 40.
8-411. Repealed. Laws 2003, LB 131, § 40.
8-412. Repealed. Laws 2003, LB 131, § 40.
8-413. Repealed. Laws 2003, LB 131, § 40.
8-414. Repealed. Laws 2003, LB 131, § 40.
8-415. Repealed. Laws 2003, LB 131, § 40.
8-416. Repealed. Laws 2003, LB 131, § 40.
8-417. Repealed. Laws 2003, LB 131, § 40.
8-417.01. Repealed. Laws 2003, LB 131, § 40.
8-418. Repealed. Laws 1965, c. 30, § 18.
8-419. Repealed. Laws 1965, c. 30, § 18.
8-420. Repealed. Laws 1965, c. 30, § 18.
8-421. Repealed. Laws 1965, c. 30, § 18.

Section
8-422. Repealed. Laws 1965, c. 30, § 18.
8-423. Repealed. Laws 1965, c. 30, § 18.
8-424. Repealed. Laws 1965, c. 30, § 18.
8-425. Repealed. Laws 1965, c. 30, § 18.
8-426. Repealed. Laws 1965, c. 30, § 18.
8-427. Repealed. Laws 1965, c. 30, § 18.
8-428. Repealed. Laws 1965, c. 30, § 18.
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8-432. Repealed. Laws 1965, c. 30, § 18.
8-433. Repealed. Laws 1965, c. 30, § 18.
8-434. Repealed. Laws 1965, c. 30, § 18.
8-435. Repealed. Laws 2003, LB 131, § 40.
8-436. Repealed. Laws 2003, LB 131, § 40.
8-437. Repealed. Laws 2003, LB 131, § 40.
8-438. Repealed. Laws 2003, LB 131, § 40.
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8-443. Repealed. Laws 2003, LB 131, § 40.
8-444. Repealed. Laws 2003, LB 131, § 40.
8-445. Repealed. Laws 2003, LB 131, § 40.
8-446. Repealed. Laws 2003, LB 131, § 40.
8-447. Repealed. Laws 2003, LB 131, § 40.
8-448. Repealed. Laws 2003, LB 131, § 40.
8-449. Repealed. Laws 2003, LB 131, § 40.
8-450. Repealed. Laws 2003, LB 131, § 40.
8-451. Transferred to section 8-410.02.

8-401 Repealed. Laws 2003, LB 131, § 40.

8-401.01 Repealed. Laws 2003, LB 131, § 40.

8-401.02 Repealed. Laws 2003, LB 131, § 40.

8-402 Repealed. Laws 2003, LB 131, § 40.

8-403 Repealed. Laws 2003, LB 131, § 40.

8-403.01 Repealed. Laws 2003, LB 131, § 40.

8-403.02 Repealed. Laws 2003, LB 131, § 40.

8-403.03 Repealed. Laws 2003, LB 131, § 40.

8-403.04 Repealed. Laws 2003, LB 131, § 40.

8-403.05 Repealed. Laws 2003, LB 131, § 40.

8-404 Repealed. Laws 2003, LB 131, § 40.

8-404.01 Repealed. Laws 2003, LB 131, § 40.

8-404.02 Repealed. Laws 2003, LB 131, § 40.

8-405 Transferred to section 8-403.01.

8-406 Repealed. Laws 2003, LB 131, § 40.

8-407 Repealed. Laws 2003, LB 131, § 40.

8-407.01 Repealed. Laws 2003, LB 131, § 40.

8-407.02 Repealed. Laws 2003, LB 131, § 40.

8-407.03 Repealed. Laws 2003, LB 131, § 40.

8-408 Repealed. Laws 2003, LB 131, § 40.

8-408.01 Repealed. Laws 2003, LB 131, § 40.

8-408.02 Repealed. Laws 2003, LB 131, § 40.

8-408.03 Repealed. Laws 2003, LB 131, § 40.

8-409 Repealed. Laws 2003, LB 131, § 40.

8-409.01 Repealed. Laws 2003, LB 131, § 40.

8-409.02 Repealed. Laws 2003, LB 131, § 40.

8-409.03 Repealed. Laws 2003, LB 131, § 40.

8-409.04 Repealed. Laws 2003, LB 131, § 40.

8-409.05 Repealed. Laws 2003, LB 131, § 40.

8-409.06 Repealed. Laws 2003, LB 131, § 40.

8-410 Repealed. Laws 2003, LB 131, § 40.

8-410.01 Repealed. Laws 1974, LB 354, § 316.

8-410.02 Repealed. Laws 2003, LB 131, § 40.

8-410.03 Repealed. Laws 2003, LB 131, § 40.

8-411 Repealed. Laws 2003, LB 131, § 40.

8-412 Repealed. Laws 2003, LB 131, § 40.

8-413 Repealed. Laws 2003, LB 131, § 40.

8-414 Repealed. Laws 2003, LB 131, § 40.

8-415 Repealed. Laws 2003, LB 131, § 40.

8-416 Repealed. Laws 2003, LB 131, § 40.

8-417 Repealed. Laws 2003, LB 131, § 40.

8-417.01 Repealed. Laws 2003, LB 131, § 40.

8-418 Repealed. Laws 1965, c. 30, § 18.

8-419 Repealed. Laws 1965, c. 30, § 18.

8-420 Repealed. Laws 1965, c. 30, § 18.

8-421 Repealed. Laws 1965, c. 30, § 18.

8-422 Repealed. Laws 1965, c. 30, § 18.

8-423 Repealed. Laws 1965, c. 30, § 18.

8-424 Repealed. Laws 1965, c. 30, § 18.

8-425 Repealed. Laws 1965, c. 30, § 18.

8-426 Repealed. Laws 1965, c. 30, § 18.

8-427 Repealed. Laws 1965, c. 30, § 18.

8-428 Repealed. Laws 1965, c. 30, § 18.

8-429 Repealed. Laws 1965, c. 30, § 18.

8-430 Repealed. Laws 1965, c. 30, § 18.

8-431 Repealed. Laws 1965, c. 30, § 18.

8-432 Repealed. Laws 1965, c. 30, § 18.

8-433 Repealed. Laws 1965, c. 30, § 18.

8-434 Repealed. Laws 1965, c. 30, § 18.

8-435 Repealed. Laws 2003, LB 131, § 40.

8-436 Repealed. Laws 2003, LB 131, § 40.

8-437 Repealed. Laws 2003, LB 131, § 40.

8-438 Repealed. Laws 2003, LB 131, § 40.

8-439 Repealed. Laws 2003, LB 131, § 40.

8-440 Repealed. Laws 2003, LB 131, § 40.

8-441 Repealed. Laws 2003, LB 131, § 40.

8-442 Repealed. Laws 2003, LB 131, § 40.

8-443 Repealed. Laws 2003, LB 131, § 40.

8-444 Repealed. Laws 2003, LB 131, § 40.

8-445 Repealed. Laws 2003, LB 131, § 40.

8-446 Repealed. Laws 2003, LB 131, § 40.

8-447 Repealed. Laws 2003, LB 131, § 40.

8-448 Repealed. Laws 2003, LB 131, § 40.

8-449 Repealed. Laws 2003, LB 131, § 40.

8-450 Repealed. Laws 2003, LB 131, § 40.

8-451 Transferred to section 8-410.02.

ARTICLE 5

SAFETY DEPOSIT BOXES

Cross References

Credit union safety deposit box service, see section 21-1741.

Section
8-501. Limitation of liability by contract; lease agreement; limitation of amount; assumption of risk; limitation of use; burden of proof.
8-502. Liability; determination of applicable law.

8-501 Limitation of liability by contract; lease agreement; limitation of amount; assumption of risk; limitation of use; burden of proof.

Any corporation, partnership, limited liability company, or person engaged in the business of maintaining and operating safety deposit boxes for storage or deposit for safekeeping of securities or valuables within this state may, in any written lease or contract governing or regulating the use of any such box or boxes by any user or customer, create either the relationship of lessor and lessee or the relationship of bailor and bailee, and to the relationship so created the general laws of the state applicable thereto shall apply, except that where the relationship of lessor and lessee is created the liability of the lessor may be limited in any or all of the following particulars:

(1) By limitation of liability for any loss to the lessee for and on account of negligence on the part of the lessor, his, her, or its agents or servants, to such maximum amount as may be stipulated, not less, however, than three hundred times the annual rental of such box or boxes;

(2) By limitation of the use of such safety deposit box or boxes to exclude therefrom money, currency, jewelry, or securities payable to bearer and other tangible property of value and choses in action and to provide that if any such money, currency, jewelry, securities payable to bearer, or other tangible property of value or choses in action are placed therein by the lessee, the lessee shall assume the entire risk of loss thereof or damage thereto without any liability on the part of the lessor for any such loss or damage in any event or for any cause whatsoever;

(3) By stipulation by the parties that evidence tending to prove that property left in any such safety deposit box upon the last entry by the lessee or his or her authorized agent or any part thereof was found missing upon subsequent entry shall not raise any presumption that the same was lost by any negligence or wrongdoing on the part of the lessor, his, her, or its agents or servants or to put upon the lessor of such safety deposit box the burden of proof that such alleged loss was not the fault of the lessor.

Source: Laws 1941, c. 8, § 1, p. 77; C.S.Supp.,1941, § 8-801; R.S.1943, § 8-501; Laws 1993, LB 121, § 91.

8-502 Liability; determination of applicable law.

The liabilities of the parties to any such contract shall in all other respects be governed either by the law applicable to lessor and lessee or the law applicable to bailor and bailee, whichever basis is stipulated in the contract between the owner of the safety deposit box and the user or customer thereof.

Source: Laws 1941, c. 8, § 2, p. 78; C.S.Supp.,1941, § 8-802; R.S.1943, § 8-502.

ARTICLE 6
ASSESSMENTS AND FEES

Section

8-601. Director of Banking and Finance; employees; financial institutions; levy of assessment authorized.
8-602. Department of Banking and Finance; services; schedule of fees.
8-603. Assessments, fees, and money collected by Director of Banking and Finance; use.
8-604. Financial Institution Assessment Cash Fund; created; use; investment.
8-605. Director of Banking and Finance; assessment; proration; special assessment.
8-606. Department of Banking and Finance; costs of examination of financial institution or entity; billing; travel costs.
8-607. Failure to pay assessment, fee, or cost; Department of Banking and Finance; collection procedures; suspension or revocation of charter or license.

8-601 Director of Banking and Finance; employees; financial institutions; levy of assessment authorized.

The Director of Banking and Finance may employ deputies, examiners, attorneys, and other assistants as may be necessary for the administration of the provisions and purposes of the Credit Union Act, Delayed Deposit Services Licensing Act, Interstate Branching and Merger Act, Interstate Trust Company Office Act, Nebraska Bank Holding Company Act of 1995, Nebraska Banking Act, Nebraska Financial Innovation Act, Nebraska Installment Loan Act, Nebraska Installment Sales Act, Nebraska Money Transmitters Act, Nebraska Trust Company Act, and Residential Mortgage Licensing Act; Chapter 8, articles 3, 5, 6, 7, 8, 13, 14, 15, 16, 19, 20, 24, and 25; and Chapter 45, articles 1 and 2. The director may levy upon financial institutions, namely, the banks, trust companies, building and loan associations, savings and loan associations, savings banks, digital asset depositories, and credit unions, organized under the laws of this state, and holding companies, if any, of such financial institutions, an assessment each year based upon the asset size of the financial institution, except that in determining the asset size of a holding company or digital asset depository, the assets of any financial institution or holding company otherwise assessed pursuant to this section and the assets of any nationally chartered financial institution shall be excluded. The assessment for digital asset depositories under the Nebraska Financial Innovation Act shall be in an amount to offset the costs of supervision and administration of the Nebraska Financial Innovation Act. The assessment shall be a sum determined by the director in accordance with section 8-606 and approved by the Governor.

Source: Laws 1937, c. 20, § 1, p. 128; C.S.Supp.,1941, § 8-701; R.S.1943, § 8-601; Laws 1955, c. 15, § 1, p. 83; Laws 1973, LB 164, § 20; Laws 1976, LB 561, § 2; Laws 1980, LB 966, § 2; Laws 1986, LB 910, § 1; Laws 2002, LB 1094, § 6; Laws 2003, LB 131, § 7; Laws 2007, LB124, § 8; Laws 2013, LB616, § 49; Laws 2017, LB140, § 135; Laws 2021, LB649, § 43.

Cross References

Credit Union Act, see section 21-1701.
Delayed Deposit Services Licensing Act, see section 45-901.
Interstate Branching and Merger Act, see section 8-2101.
Interstate Trust Company Office Act, see section 8-2301.
Nebraska Bank Holding Company Act of 1995, see section 8-908.
Nebraska Banking Act, see section 8-101.02.
Nebraska Financial Innovation Act, see section 8-3001.

Nebraska Installment Loan Act, see section 45-1001.
Nebraska Installment Sales Act, see section 45-334.
Nebraska Money Transmitters Act, see section 8-2701.
Nebraska Trust Company Act, see section 8-201.01.
Residential Mortgage Licensing Act, see section 45-701.

8-602 Department of Banking and Finance; services; schedule of fees.

The Director of Banking and Finance shall charge and collect fees for certain services rendered by the Department of Banking and Finance according to the following schedule:

(1) For filing and examining articles of incorporation, articles of association, and bylaws, except credit unions, one hundred dollars, and for credit unions, fifty dollars;

(2) For filing and examining an amendment to articles of incorporation, articles of association, and bylaws, except credit unions, fifty dollars, and for credit unions, fifteen dollars;

(3) For issuing to banks, credit card banks, trust companies, and building and loan associations a charter, authority, or license to do business in this state, a sum which shall be determined on the basis of one dollar and fifty cents for each one thousand dollars of authorized capital, except that the minimum fee in each case shall be two hundred twenty-five dollars;

(4) For issuing to digital asset depositories under the Nebraska Financial Innovation Act a charter, an authority, or a license to do business in this state, the sum of fifty thousand dollars;

(5) For issuing an executive officer's or loan officer's license, fifty dollars at the time of the initial license, except credit unions for which the fee shall be twenty-five dollars at the time of the initial license;

(6) For affixing certificate and seal, five dollars;

(7) For making substitution of securities held by it and issuing a receipt, fifteen dollars;

(8) For issuing a certificate of approval to a credit union, ten dollars;

(9) For investigating the applications required by sections 8-117, 8-120, 8-331, and 8-2402 and the documents required by section 8-201, the cost of such examination, investigation, and inspection, including all legal expenses and the cost of any hearing transcript, with a minimum fee under (a) sections 8-117, 8-120, and 8-2402 of two thousand five hundred dollars, (b) section 8-331 of two thousand dollars, and (c) section 8-201 of one thousand dollars. The department may require the applicant to procure and give a surety bond in such principal amount as the department may determine and conditioned for the payment of the fees provided in this subdivision;

(10) For the handling of pledged securities as provided in sections 8-210 and 8-2727 at the time of the initial deposit of such securities, one dollar and fifty cents for each thousand dollars of securities deposited and a like amount on or before January 15 each year thereafter. The fees shall be paid by the entity pledging the securities;

(11) For investigating an application to move its location within the city or village limits of its original license or charter for banks, trust companies, and building and loan associations, two hundred fifty dollars;

(12) For investigating an application under subdivision (6) of section 8-115.01, five hundred dollars;

(13) For investigating an application for approval to establish or acquire a branch pursuant to section 8-157 or 8-2103 or to establish a mobile branch pursuant to section 8-157, two hundred fifty dollars;

(14) For investigating a notice of acquisition of control under subsection (1) of section 8-1502, five hundred dollars;

(15) For investigating an application for a cross-industry merger under section 8-1510, five hundred dollars;

(16) For investigating an application for a merger of two state banks, a merger of a state bank and a national bank in which the state bank is the surviving entity, or an interstate merger application in which the Nebraska state chartered bank is the resulting bank, five hundred dollars;

(17) For investigating an application or a notice to establish a branch trust office, five hundred dollars;

(18) For investigating an application or a notice to establish a representative trust office, five hundred dollars;

(19) For investigating an application to establish a credit union branch under section 21-1725.01, two hundred fifty dollars;

(20) For investigating an applicant under section 8-1513, five thousand dollars;

(21) For investigating a request to extend a conditional bank charter under section 8-117, one thousand dollars; and

(22) For investigating an application to establish a branch office, for a merger or an acquisition of control, or for a request to extend a conditional charter for a digital asset depository, five hundred dollars.

Source: Laws 1937, c. 20, § 2, p. 129; C.S.Supp.,1941, § 8-702; R.S.1943, § 8-602; Laws 1957, c. 10, § 5, p. 132; Laws 1961, c. 15, § 8, p. 113; Laws 1967, c. 23, § 2, p. 127; Laws 1969, c. 43, § 1, p. 252; Laws 1972, LB 1194, § 1; Laws 1973, LB 164, § 21; Laws 1976, LB 561, § 3; Laws 1987, LB 642, § 1; Laws 1992, LB 470, § 5; Laws 1992, LB 757, § 11; Laws 1993, LB 81, § 54; Laws 1995, LB 599, § 4; Laws 1998, LB 1321, § 68; Laws 1999, LB 396, § 13; Laws 2000, LB 932, § 17; Laws 2002, LB 1089, § 7; Laws 2002, LB 1094, § 7; Laws 2003, LB 131, § 8; Laws 2003, LB 217, § 14; Laws 2004, LB 999, § 5; Laws 2005, LB 533, § 20; Laws 2007, LB124, § 9; Laws 2009, LB327, § 10; Laws 2010, LB891, § 3; Laws 2011, LB74, § 3; Laws 2012, LB963, § 12; Laws 2013, LB616, § 50; Laws 2017, LB140, § 136; Laws 2019, LB258, § 12; Laws 2021, LB649, § 44.

Cross References

Nebraska Financial Innovation Act, see section 8-3001.

8-603 Assessments, fees, and money collected by Director of Banking and Finance; use.

The assessments referred to in sections 8-605 and 8-606, examination fees, investigation fees, filing fees, registration fees, licensing fees, and all other fees and money, except fines, collected by or paid to the Director of Banking and Finance under any of the laws specified in section 8-601, shall be remitted to the State Treasurer for credit to the Financial Institution Assessment Cash

Fund. Fines collected by the director under such laws shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2007, LB124, § 10; Laws 2017, LB140, § 137.

8-604 Financial Institution Assessment Cash Fund; created; use; investment.

(1) The Financial Institution Assessment Cash Fund is hereby created. The fund shall be used solely for the purposes of administering and enforcing the laws specified in section 8-601.

(2) Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2007, LB124, § 11.

Cross References

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

8-605 Director of Banking and Finance; assessment; proration; special assessment.

(1) As soon as reasonably possible after June 30 of each year, the Director of Banking and Finance shall estimate the total sum required for the purposes set forth in section 8-604 for the succeeding fiscal year. The director shall also estimate the total sum expected to be collected pursuant to section 8-603. The director shall use the difference between the estimate of the total sum required and the estimate of the total sum to be collected as the basis for the assessment to be levied.

(2) The assessment upon each financial institution shall be based upon the total assets of each financial institution, as reported in each financial institution's report of condition prepared for the period ending June 30 of each year, and, after June 30, 2009, may further be based upon the total amount of fiduciary and related assets and the total amount of off-balance-sheet receivables as reported in each financial institution's report of condition prepared for the period ending June 30 of each year.

(3) The director shall have the authority to prorate the assessment for any financial institution or entity which surrenders its charter or license or receives its charter or license during the assessment period. Proration shall be based on the number of months the financial institution held its charter or license. Any portion of a month shall be counted as one month.

(4) If the estimated sum levied and collected is insufficient to defray the expenditures for the fiscal year for which it was made, a special assessment may be levied and collected in like manner for the balance of the fiscal year.

Source: Laws 2007, LB124, § 12.

8-606 Department of Banking and Finance; costs of examination of financial institution or entity; billing; travel costs.

(1) As soon as reasonably possible following the examination of a financial institution or entity pursuant to the laws specified in section 8-601, the Department of Banking and Finance shall bill the financial institution or entity the costs of the examination. Such costs may include an hourly fee for examiner

time, which shall be determined once each year by the Director of Banking and Finance, with the approval of the Governor, and which shall take into consideration whether the financial institution or entity is subject to the assessment.

(2) In case an extra examination or an investigation of any financial institution or entity becomes necessary and is made pursuant to the laws specified in section 8-601, the costs thereof shall be paid by the financial institution or entity examined or investigated.

(3) In the case of a financial institution or entity organized under the law of a state other than this state or a financial institution or entity organized under the law of this state but which maintains an office in another state or states, travel expenses involved in conducting an examination or investigation may also be billed to the financial institution or entity, if the examination or investigation involves travel outside this state.

Source: Laws 2007, LB124, § 13.

8-607 Failure to pay assessment, fee, or cost; Department of Banking and Finance; collection procedures; suspension or revocation of charter or license.

(1) If a financial institution or entity fails to pay an annual assessment, special assessment, examination fee, examination cost, investigation fee, investigation cost, or travel expense by a date specified by the Department of Banking and Finance, which shall be not less than thirty days from the date of billing, the department may, following notice and opportunity for hearing pursuant to the Administrative Procedure Act, impose a fine in accordance with section 8-1,134 for each day the financial institution or entity is in arrears.

(2) If the financial institution or entity is in arrears for sixty days or more, the department may, in addition to any fine imposed under this section, following notice and opportunity for hearing pursuant to the Administrative Procedure Act, suspend or revoke the charter or license of any financial institution or entity or the license or authority of any person responsible for such failure.

(3) The Director of Banking and Finance may, in his or her discretion and for good cause shown, permit the payment of any annual assessment, special assessment, examination fee, examination cost, investigation fee, investigation cost, travel expense, or fine, in installments.

Source: Laws 2007, LB124, § 14.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 7

STATE-FEDERAL COOPERATION ACTS; CAPITAL NOTES

(a) FEDERAL BANKING ACT OF 1933

Section
8-701. Banking institution; definition.
8-702. Banking institutions; maintain membership in Federal Deposit Insurance Corporation; exception; automatic forfeiture of charter; prohibited acts; penalty.
8-703. Insolvent banks; appointment of Federal Deposit Insurance Corporation as receiver or liquidator.
8-704. Insolvent banks; Federal Deposit Insurance Corporation subrogated to depositors' rights.

Section
8-705. Examinations, reports of other examiners; Director of Banking and Finance may accept.
8-706. Examinations, reports of Director of Banking and Finance; may be furnished to other examiners.
8-707. Insolvent banks; loans from Federal Deposit Insurance Corporation; security; sale of assets to corporation; conditions.
8-708. Insolvent bank; Federal Deposit Insurance Corporation as receiver or liquidator; title to property.
8-709. Insolvent bank; Federal Deposit Insurance Corporation as receiver or liquidator; enforcement of stockholders' liability.
8-710. Transferred to section 8-116.01.

(b) NATIONAL HOUSING ACT

8-711. Banks, trust companies, insurance companies; loans under National Housing Act; authority to make.
8-712. Banks, trust companies, insurance companies, fiduciaries; investments in National Housing Act securities; authority to make.
8-713. Investments in National Housing Act securities; general laws not applicable.

(c) FEDERAL HOME LOAN BANK ACT

8-714. Federal Home Loan Bank; members authorized.
8-715. Federal Home Loan Bank members; powers.
8-716. Federal Home Loan Bank members; tax exemption prohibited.

(a) FEDERAL BANKING ACT OF 1933

8-701 Banking institution; definition.

For purposes of sections 8-701 to 8-709, banking institution means any bank, stock savings bank, mutual savings bank, building and loan association, digital asset depository institution under the Nebraska Financial Innovation Act, or savings and loan association, which is now or may hereafter be organized under the laws of this state.

Source: Laws 1935, c. 8, § 1, p. 72; C.S.Supp.,1941, § 8-401; R.S.1943, § 8-701; Laws 2003, LB 217, § 15; Laws 2005, LB 533, § 21; Laws 2017, LB140, § 138; Laws 2021, LB649, § 45.

Cross References

Nebraska Financial Innovation Act, see section 8-3001.

A state bank which becomes a member of Federal Deposit Insurance Corporation thereby becomes an instrumentality of the United States, and federal statute forbidding embezzlement of funds of member bank applies to officer of such bank. United States v. Doherty, 18 F.Supp. 793 (D. Neb. 1937), affirmed, 94 F.2d 495 (8th Cir. 1938).

8-702 Banking institutions; maintain membership in Federal Deposit Insurance Corporation; exception; automatic forfeiture of charter; prohibited acts; penalty.

(1) Any banking institution, except a digital asset depository institution organized, chartered, and operated pursuant to the Nebraska Financial Innovation Act, organized under the laws of this state shall, before a charter may be issued, enter into such contracts, incur such obligations, and generally do and perform any and all such acts and things whatsoever as may be necessary or appropriate in order to obtain membership in the Federal Deposit Insurance Corporation and provide for insurance of deposits in the banking institution. Any banking institution may take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights, or privileges which may at any time be available or inure to banking institutions or to their depositors, creditors,

stockholders, conservators, receivers, or liquidators by virtue of those provisions of section 8 of the Federal Banking Act of 1933 (section 12B of the Federal Reserve Act, as amended) which establish the Federal Deposit Insurance Corporation and provide for the insurance of deposits or of any other provisions of that or of any other act or resolution of Congress to aid, regulate, or safeguard banking institutions and their depositors, including any amendments of the same or any substitutions therefor. Any banking institution may also subscribe for and acquire any stock, debentures, bonds, or other types of securities of the Federal Deposit Insurance Corporation and comply with the lawful regulations and requirements from time to time issued or made by such corporation.

(2) The charter of any banking institution which fails to maintain membership in the Federal Deposit Insurance Corporation shall be automatically forfeited and such banking institution shall be liquidated and dissolved, either voluntarily by its board of directors under the supervision of the department or involuntarily by the department as in cases of insolvency. Any banking institution whose charter is automatically forfeited under the provisions of this subsection which continues to engage in the business for which it had been chartered after such forfeiture, as well as the directors and officers thereof, is guilty of a Class III felony.

(3) Nothing in this section shall be construed as prohibiting a digital asset depository institution organized, chartered, and operated pursuant to the Nebraska Financial Innovation Act from obtaining Federal Deposit Insurance Corporation insurance.

Source: Laws 1935, c. 8, § 2, p. 73; C.S.Supp.,1941, § 8-402; R.S.1943, § 8-702; Laws 1963, c. 31, § 2, p. 190; Laws 1983, LB 252, § 5; Laws 1984, LB 899, § 3; Laws 2005, LB 533, § 22; Laws 2009, LB328, § 2; Laws 2010, LB892, § 1; Laws 2011, LB75, § 1; Laws 2013, LB213, § 9; Laws 2017, LB140, § 139; Laws 2021, LB649, § 46.

Cross References

Nebraska Financial Innovation Act, see section 8-3001.

8-703 Insolvent banks; appointment of Federal Deposit Insurance Corporation as receiver or liquidator.

The Federal Deposit Insurance Corporation created by section 8 of the Federal Banking Act of 1933 (section 12B of the Federal Reserve Act, as amended) is hereby authorized and empowered to be and act without bond as receiver or liquidator of any banking institution, the deposits in which are to any extent insured by said corporation, and which shall have been closed on account of inability to meet the demands of its depositors. The appropriate state authority, having the right to appoint a receiver or liquidator of a banking institution, may, in the event of such closing, tender to said corporation the appointment as receiver or liquidator of such banking institution, and, if the corporation accepts such appointment, the corporation shall have and possess all the powers and privileges provided by the laws of this state with respect to a receiver or liquidator respectively of a banking institution, its depositors and other creditors, and be subject to all the duties of such receiver or liquidator except insofar as such powers, privileges or duties are in conflict with the

provisions of subsection (1) of section 12B of the Federal Reserve Act, as amended (section 8 of the Banking Act of 1933).

Source: Laws 1935, c. 8, § 3, p. 73; C.S.Supp.,1941, § 8-403; R.S.1943, § 8-703.

Where the FDIC is acting as a receiver of a state-chartered banking institution, in dealing with the rights or obligations of depositors, creditors, or stockholders, its powers, privileges, and duties are controlled by state law. Northern Bank v. Federal Dep. Ins. Corp., 242 Neb. 591, 496 N.W.2d 459 (1993).

8-704 Insolvent banks; Federal Deposit Insurance Corporation subrogated to depositors' rights.

Whenever any banking institution shall have been closed as aforesaid, and the Federal Deposit Insurance Corporation shall pay or make available for payment the insured deposit liabilities of such closed institution, the corporation, whether or not it shall have become receiver or liquidator of such closed banking institution as herein provided, shall be subrogated to all rights against such closed banking institution of the owners of such deposits in the same manner and to the same extent as subrogation of the corporation is provided for in subsection (1) of section 12B of the Federal Reserve Act, as amended (being section 8, of the Banking Act of 1933) in the case of the closing of a national bank; *Provided*, that the rights of depositors and other creditors of such closed institution shall be determined in accordance with the applicable provisions of the laws of this state.

Source: Laws 1935, c. 8, § 4, p. 74; C.S.Supp.,1941, § 8-404; R.S.1943, § 8-704.

8-705 Examinations, reports of other examiners; Director of Banking and Finance may accept.

The Director of Banking and Finance is authorized to accept in his or her discretion, in lieu of any examination authorized by the laws of this state to be conducted by his or her department of a banking institution, the examination that may have been made of such banking institution within a reasonable period by the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, the Consumer Financial Protection Bureau, or a foreign state agency if a copy of the examination is furnished to the director. The director may also in his or her discretion accept any report relative to the condition of a banking institution which may have been obtained by the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, the Consumer Financial Protection Bureau, or a foreign state agency within a reasonable period in lieu of a report authorized by the laws of this state to be required of such institution by his or her department if a copy of such report is furnished to the director.

As used in this section, unless the context otherwise requires, foreign state agency shall mean any duly constituted regulatory or supervisory agency which has authority over financial institutions and which is created under the laws of any other state, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands or which is operating under the code of law for the District of Columbia.

Source: Laws 1935, c. 8, § 5, p. 74; C.S.Supp.,1941, § 8-405; R.S.1943, § 8-705; Laws 1988, LB 375, § 4; Laws 2013, LB213, § 10.

8-706 Examinations, reports of Director of Banking and Finance; may be furnished to other examiners.

The Director of Banking and Finance may furnish to the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, the Consumer Financial Protection Bureau, or a foreign state agency, or to any official or examiner thereof, a copy or copies of any or all examinations made of any such banking institution and of any or all reports made by it and shall give access and disclose to the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Comptroller of the Currency, the Consumer Financial Protection Bureau, or a foreign state agency, or to any official or examiner thereof, any and all information possessed by the office of the director with reference to the conditions or affairs of any such insured institution. Nothing in this section shall be construed to limit the duty of any banking institution in this state, deposits in which are to any extent insured under the provisions of section 8 of the Banking Act of 1933 (section 12B of the Federal Reserve Act, as amended), or of any amendment of or substitution for the same, to comply with the provisions of such act, its amendments or substitutions, or the requirements of the Federal Deposit Insurance Corporation relative to examinations and reports, nor to limit the powers of the director with reference to examinations and reports under existing law.

As used in this section, unless the context otherwise requires, foreign state agency shall mean any duly constituted regulatory or supervisory agency which has authority over financial institutions and which is created under the laws of any other state, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands or which is operating under the code of law for the District of Columbia.

Source: Laws 1935, c. 8, § 6, p. 74; C.S.Supp.,1941, § 8-406; R.S.1943, § 8-706; Laws 1988, LB 375, § 5; Laws 2013, LB213, § 11.

8-707 Insolvent banks; loans from Federal Deposit Insurance Corporation; security; sale of assets to corporation; conditions.

With respect to any banking institution which is now or may hereafter be closed on account of inability to meet the demands of its depositors, or by action of the Director of Banking and Finance, or of a court, or by action of its directors, or in the event of its insolvency or suspension, the Director of Banking and Finance, or the receiver or liquidator of such institution with the permission of the Director of Banking and Finance may borrow from the Federal Deposit Insurance Corporation and furnish any part or all of the assets of said institution to the corporation as security for a loan from the same; *Provided*, that where the corporation is acting as such receiver or liquidator, the order of a court of record of competent jurisdiction shall be first obtained approving such loan. The Director of Banking and Finance, upon the order of a court of record of competent jurisdiction, and upon a like order and with the permission of the Director of Banking and Finance the receiver or liquidator of any such institution, may sell to the corporation any part or all of the assets of such institution. The provisions of this section shall not be construed to limit the power of any banking institution, the Director of Banking and Finance, or receivers or liquidators, to pledge or sell assets in accordance with any existing law.

Source: Laws 1935, c. 8, § 7, p. 75; C.S.Supp.,1941, § 8-407; R.S.1943, § 8-707.

8-708 Insolvent bank; Federal Deposit Insurance Corporation as receiver or liquidator; title to property.

Upon the acceptance of the appointment of receiver or liquidator aforesaid by the Federal Deposit Insurance Corporation, the possession of and title to all the assets, business and property of such banking institution of every kind and nature shall pass to and vest in said corporation and without the execution of any instruments of conveyance, assignment, transfer or endorsement.

Source: Laws 1935, c. 8, § 8, p. 75; C.S.Supp.,1941, § 8-408; R.S.1943, § 8-708.

8-709 Insolvent bank; Federal Deposit Insurance Corporation as receiver or liquidator; enforcement of stockholders' liability.

Among its other powers, the Federal Deposit Insurance Corporation in the performance of its powers and duties as such receiver or liquidator, shall have the right and power upon the order of a court of record of competent jurisdiction to enforce the individual liability of the stockholders and directors of any such banking institution.

Source: Laws 1935, c. 8, § 9, p. 76; C.S.Supp.,1941, § 8-409; R.S.1943, § 8-709.

8-710 Transferred to section 8-116.01.

(b) NATIONAL HOUSING ACT

8-711 Banks, trust companies, insurance companies; loans under National Housing Act; authority to make.

Notwithstanding any more general or special law of the State of Nebraska to the contrary, banks, savings banks, trust companies and insurance companies are authorized (1) to make such loans and advances of credit, and purchases of obligations representing loans and advances of credit, as are eligible for insurance by the Federal Housing Administrator, and to obtain such insurance; and (2) to make such loans, secured by real property or leasehold, as the Federal Housing Administrator insures or makes a commitment to insure, and to obtain such insurance.

Source: Laws 1935, c. 17, § 1, p. 92; Laws 1937, c. 13, § 1, p. 117; C.S.Supp.,1941, § 8-501; R.S.1943, § 8-711.

Insurance company upon becoming member of Federal Home Loan Bank may make loans insured by Federal Housing Administration. Service Life Ins. Co. v. United States, 189 F.Supp. 282 (D. Neb. 1960).

8-712 Banks, trust companies, insurance companies, fiduciaries; investments in National Housing Act securities; authority to make.

It shall be lawful for banks, savings banks, trust companies, insurance companies, personal representatives, administrators, guardians, trustees, and other fiduciaries, the State of Nebraska and its political subdivisions, and institutions and agencies thereof, to invest their funds and the money in their custody or possession, eligible for investment, in bonds or notes secured by mortgages insured by the Federal Housing Administrator, in debentures issued

by the Federal Housing Administrator, and in securities issued by national mortgage associations.

Source: Laws 1935, c. 17, § 2, p. 92; Laws 1937, c. 13, § 2, p. 117; C.S.Supp.,1941, § 8-502; R.S.1943, § 8-712; Laws 1986, LB 909, § 10.

8-713 Investments in National Housing Act securities; general laws not applicable.

No law of this state requiring security upon which loans or investments may be made, or prescribing the nature, amount or form of such security, or prescribing or limiting interest rates upon loans or investments, or prescribing or limiting the periods for which loans or investments may be made, shall be deemed to apply to loans or investments made pursuant to sections 8-711 and 8-712.

Source: Laws 1935, c. 17, § 3, p. 93; C.S.Supp.,1941, § 8-503; R.S.1943, § 8-713.

(c) FEDERAL HOME LOAN BANK ACT

8-714 Federal Home Loan Bank; members authorized.

In addition to all other powers and investments authorized by law, every institution incorporated under the laws of this state and eligible for membership in a Federal Home Loan Bank may become a member of a Federal Home Loan Bank, as permitted by and in accordance with the Federal Home Loan Bank Act.

Source: Laws 1937, c. 51, § 1, p. 214; C.S.Supp.,1941, § 8-601; R.S.1943, § 8-714; Laws 1991, LB 77, § 1.

8-715 Federal Home Loan Bank members; powers.

In addition to all other powers and investments authorized by law, any institution, upon becoming a member of a Federal Home Loan Bank, may (1) purchase stock in, (2) obtain advances from, (3) pledge collateral to, and (4) perform such acts which are necessary and required to make available to it all the advantages and privileges offered by such Federal Home Loan Bank to the extent provided by and in accordance with the Federal Home Loan Bank Act.

Source: Laws 1937, c. 51, § 2, p. 214; C.S.Supp.,1941, § 8-602; R.S.1943, § 8-715; Laws 1991, LB 77, § 2.

8-716 Federal Home Loan Bank members; tax exemption prohibited.

No institution incorporated under the laws of this state which is or becomes a member of a Federal Home Loan Bank shall be exempt from any taxes of this state, including any contributions required to be paid under sections 48-648 to 48-654.

Source: Laws 1937, c. 51, § 3, p. 214; C.S.Supp.,1941, § 8-603; R.S.1943, § 8-716; Laws 1991, LB 77, § 3; Laws 2017, LB172, § 1.

ARTICLE 8

PERSONAL LOANS BY BANKS AND TRUST COMPANIES

Section

8-801. Repealed. Laws 1965, c. 31, § 16, p. 219.
8-802. Repealed. Laws 1965, c. 31, § 16, p. 219.
8-803. Repealed. Laws 1965, c. 31, § 16, p. 219.
8-804. Repealed. Laws 1965, c. 31, § 16, p. 219.
8-805. Repealed. Laws 1965, c. 31, § 16, p. 219.
8-806. Repealed. Laws 1965, c. 31, § 16, p. 219.
8-807. Repealed. Laws 1965, c. 31, § 16, p. 219.
8-808. Repealed. Laws 1965, c. 31, § 16, p. 219.
8-809. Repealed. Laws 1965, c. 31, § 16, p. 219.
8-810. Repealed. Laws 1965, c. 31, § 16, p. 219.
8-811. Repealed. Laws 1965, c. 31, § 16, p. 219.
8-812. Repealed. Laws 1965, c. 31, § 16, p. 219.
8-813. Repealed. Laws 1965, c. 31, § 16, p. 219.
8-814. Repealed. Laws 1965, c. 31, § 16, p. 219.
8-815. Terms, defined.
8-816. Repealed. Laws 2017, LB140, § 163.
8-817. Transferred to section 45-115.
8-818. Personal loans; rate of interest allowed.
8-819. Repealed. Laws 2017, LB140, § 163.
8-820. Personal loans; credit cards; interest; service fee; fee in lieu of interest.
8-820.01. Bank credit cards; federal most-favored-lender doctrine; public policy declaration.
8-821. Personal loans; additional charges.
8-822. Personal loans; method of computation; prepayment; rebates; delinquency charges.
8-823. Personal loans; when repayable; exception; confession of judgment, power of attorney, and agreements; prohibited.
8-824. Repealed. Laws 1969, c. 45, § 3.
8-825. Repealed. Laws 1978, LB 641, § 4.
8-826. Personal loans; duties of department.
8-827. Repealed. Laws 2017, LB140, § 163.
8-828. Personal loans; bank; purchasing and discounting commercial, negotiable, or installment paper.
8-829. Violations; penalty.

8-801 Repealed. Laws 1965, c. 31, § 16, p. 219.

8-802 Repealed. Laws 1965, c. 31, § 16, p. 219.

8-803 Repealed. Laws 1965, c. 31, § 16, p. 219.

8-804 Repealed. Laws 1965, c. 31, § 16, p. 219.

8-805 Repealed. Laws 1965, c. 31, § 16, p. 219.

8-806 Repealed. Laws 1965, c. 31, § 16, p. 219.

8-807 Repealed. Laws 1965, c. 31, § 16, p. 219.

8-808 Repealed. Laws 1965, c. 31, § 16, p. 219.

8-809 Repealed. Laws 1965, c. 31, § 16, p. 219.

8-810 Repealed. Laws 1965, c. 31, § 16, p. 219.

8-811 Repealed. Laws 1965, c. 31, § 16, p. 219.

8-812 Repealed. Laws 1965, c. 31, § 16, p. 219.

8-813 Repealed. Laws 1965, c. 31, § 16, p. 219.

8-814 Repealed. Laws 1965, c. 31, § 16, p. 219.

8-815 Terms, defined.

As used in sections 8-815 to 8-829, unless the context otherwise requires:

(1) Department means the Department of Banking and Finance;

(2) Bank means the banks and trust companies organized under the laws of this state, and national banking associations doing business in this state and shall include national banking associations;

(3) Personal loan means a loan, and the contract evidencing the same, which is repayable, pursuant to a contract or understanding, in two or more equal or unequal installments, and within one hundred forty-five months, but shall not include any loan on which the interest does not exceed sixteen percent per annum. Personal loan includes loans for the purchase of mobile homes even though the loan is not repayable within one hundred forty-five months. Personal loan includes loans or advances initiated by credit card or other type of transaction card, including, but not limited to, those loan transactions initiated through electronic impulse; and

(4) Transaction card means a device or means used to access a prearranged revolving credit plan account.

Source: Laws 1965, c. 31, § 1, p. 213; Laws 1973, LB 141, § 1; Laws 1974, LB 721, § 4; Laws 1980, LB 276, § 3; Laws 1981, LB 214, § 3; Laws 1987, LB 332, § 1; Laws 2002, LB 1094, § 8; Laws 2003, LB 217, § 16; Laws 2017, LB140, § 140.

8-816 Repealed. Laws 2017, LB140, § 163.

8-817 Transferred to section 45-115.

8-818 Personal loans; rate of interest allowed.

Except as provided in section 8-820, no bank shall contract for or receive on or in connection with any personal loan a higher rate of interest than would otherwise be permitted by law, whether such rate is obtained by making charges on discounts without due allowance for partial repayments of principal, by taking deposits in lieu of repayments or by imposing fees or charges pretended to be for investigation, brokerage, service, other subterfuge or by any other device or means.

Source: Laws 1965, c. 31, § 4, p. 214.

8-819 Repealed. Laws 2017, LB140, § 163.

8-820 Personal loans; credit cards; interest; service fee; fee in lieu of interest.

Subject to the provisions of sections 8-815 to 8-829, any bank may contract for and receive, on any personal loan, charges at a rate not exceeding nineteen percent simple interest per year. In the case of loans initiated by credit card or other type of transaction card, the rate may be any amount agreed to by the parties. Any bank acquired pursuant to sections 8-1512 and 8-1513 may also charge commercially reasonable fees for service and use of a credit card or

other type of transaction card on a per transaction and monthly or annual basis. For purposes of this section, section 85 of the National Bank Act, 12 U.S.C. 85, and section 522 of the Depository Institutions Deregulation and Monetary Control Act of 1980, 12 U.S.C. 1831d, all interest, charges, fees, and other amounts permitted under sections 8-815 to 8-829 for loans initiated by credit card or other type of transaction card shall be deemed to be, and may be charged and collected as, interest by the bank, and all other terms and conditions of the agreement between the bank and the borrower that are not prohibited by such sections shall be deemed material to the determination of interest. Notwithstanding the provisions of this section, in the case of loans not initiated by credit card or other type of transaction card, a bank may charge a minimum fee of up to seven dollars and fifty cents in lieu of interest on personal loans and reasonable loan service costs as defined in subdivision (2) of section 45-101.02. Such loan service costs shall not be construed as interest.

Source: Laws 1965, c. 31, § 6, p. 214; Laws 1973, LB 164, § 23; Laws 1980, LB 276, § 4; Laws 1981, LB 150, § 1; Laws 1983, LB 454, § 1; Laws 1984, LB 1076, § 1; Laws 1988, LB 913, § 1; Laws 1993, LB 423, § 4; Laws 2017, LB140, § 141.

Notwithstanding interest rate limits under Nebraska statutes, national bank in Nebraska can legally charge, on credit card transactions, same rates allowed by section 45-114 et seq. Fisher v. First Nat. Bank of Omaha, 548 F.2d 255 (8th Cir. 1977).

8-820.01 Bank credit cards; federal most-favored-lender doctrine; public policy declaration.

It is hereby declared to be the public policy of the State of Nebraska that for purposes of applying the federal most-favored-lender doctrine, the bank credit card rate contained in section 8-820 is not comparable or analogous to the small loan rate found in sections 45-1024 and 45-1025. The Legislature finds that the institutions making small loans and the institutions administering a bank credit card are categorically different. The transactions carried on by these institutions are categorically different. The Legislature finds that small loan borrowers and bank credit card users are not synonymous or comparable. In establishing a small loan rate, the Legislature has recognized a risk factor that is different and greater than other financial transactions and therefor justifies the charging of a higher interest rate than installment loans, personal loans, retail revolving credit plans, or bank credit card interest rates.

Source: Laws 1981, LB 150, § 2; Laws 2001, LB 53, § 7.

8-821 Personal loans; additional charges.

In addition to the charges permitted by section 8-820, no further amount or exaction shall be directly or indirectly contracted for or received, except:

(1) Lawful fees actually and necessarily paid to a public officer for filing, recording, or releasing an instrument securing the loan;

(2) Taxable costs to which the bank is adjudged to be entitled in judicial proceedings instituted to collect the loan;

(3) Premiums paid for insurance policies covering tangible personal property securing the loan. Such insurance shall be only in such amount and nature as is customary and reasonable, having regard to all the circumstances of the loan, and the premium shall not exceed standard rates. If insurance is procured by or through the bank, an executed copy of the insurance policy or certificate of insurance shall be delivered to the borrower within fifteen days;

(4) Premiums paid for insurance policies covering tangible personal property acquired, in whole or in part, with the proceeds of the loan;

(5) The actual costs of nonfiling insurance;

(6) Premiums paid for credit life, health, disability, sickness and accident, or involuntary unemployment or job protection insurance policies or any one or more of them;

(7) Charges permitted by section 8-822;

(8) Fees agreed to by the parties for loan service costs for exceeding authorized limits, replacing lost cards, returning checks, or delinquency on the account; and

(9) In the case of loans initiated by credit card or other type of transaction card, any other fees agreed to by the parties.

Source: Laws 1965, c. 31, § 7, p. 215; Laws 1973, LB 142, § 1; Laws 1974, LB 695, § 1; Laws 1987, LB 332, § 2; Laws 1995, LB 384, § 9; Laws 2000, LB 1125, § 1.

Notwithstanding interest rate limits under Nebraska statutes, national bank in Nebraska can legally charge, on credit card transactions, same rates allowed by section 45-114 et seq. Fisher v. First Nat. Bank of Omaha, 548 F.2d 255 (8th Cir. 1977).

8-822 Personal loans; method of computation; prepayment; rebates; delinquency charges.

(1) Charges under section 8-820 shall be computed by application of the rate charged to the outstanding principal balance for the number of days actually elapsed without adding any additional charges, except that at the time the loan is made charges may be computed as a percentage per month of unpaid principal balances for the number of days elapsed on the assumption that the unpaid principal balance will be reduced, as provided in the loan contract, and such charges may be included in the scheduled installments. In the case of loans initiated by credit card or other type of transaction card, charges may be computed in any other manner agreed to by the parties and may include compounding of fees and charges.

(2) If a loan is prepaid in full by cash, a new loan, or otherwise after the first installment due date, the borrower shall receive a rebate of an amount which shall be not less than the amount obtained by applying to the unpaid principal balances as originally scheduled or, if deferred, as deferred, for the period following prepayment, according to the actuarial method, the annual percentage rate previously stated to the borrower pursuant to the federal Consumer Credit Protection Act. The licensee may round the annual percentage rate to the nearest one-half of one percent if such procedure is not consistently used to obtain a greater yield than would otherwise be permitted. Any default and deferment charges which are due and unpaid may be deducted from any rebate. No rebate shall be required for any partial prepayment. No rebate of less than one dollar need be made. Acceleration of the maturity of the contract shall not in itself require a rebate. If judgment is obtained before the final installment date the contract balance shall be reduced by the rebate which would be required for prepayment in full as of the date judgment is obtained.

(3) The charges retained by the bank may be increased to the extent that delinquency charges are computed on earned charges in accordance with the next succeeding sentence. Delinquency charges on any scheduled installment or portion thereof, if contracted for, may be taken, or in lieu thereof, interest after

maturity on each such installment not exceeding the highest permissible interest rate.

Source: Laws 1965, c. 31, § 8, p. 215; Laws 1973, LB 164, § 24; Laws 1974, LB 626, § 2; Laws 1980, LB 279, § 2; Laws 1981, LB 214, § 4; Laws 1997, LB 137, § 10; Laws 2000, LB 1125, § 2; Laws 2017, LB140, § 142.

8-823 Personal loans; when repayable; exception; confession of judgment, power of attorney, and agreements; prohibited.

The following provisions shall apply to loans made under section 8-820:

(1) With the exception of loans for mobile homes, every such loan shall be repayable within a period of one hundred forty-five months and may be prepaid in whole or in part at any time. One or more of the installments may be accelerated or deferred when the borrower's chief source of income makes such arrangement necessary, if the note or contract so provides;

(2) The bank shall give the borrower a receipt showing the date and amount of each payment made on account of any such loan; and

(3) No bank shall take, in connection with any such loan, any confession of judgment, power of attorney to confess judgment, power of attorney to appear for a borrower in a judicial proceeding, or agreement to pay the costs of collection or the attorney's fees.

Source: Laws 1937, c. 110, § 8, p. 409; C.S.Supp.,1941, § 81-7308; R.S.1943, § 8-823; Laws 1981, LB 214, § 5; Laws 1982, LB 779, § 4.

8-824 Repealed. Laws 1969, c. 45, § 3.

8-825 Repealed. Laws 1978, LB 641, § 4.

8-826 Personal loans; duties of department.

(1) The department shall:

(a) Be responsible for obtaining proper administration of sections 8-815 to 8-829 and take or cause to be taken such lawful steps as may be necessary and appropriate for the enforcement thereof; and

(b) Arrange for investigation and examination of the papers and records, pertaining to loans made under section 8-820, for the purpose of discovering violations of sections 8-815 to 8-829 or securing information lawfully required under it.

(2) The Director of Banking and Finance may adopt and promulgate rules and regulations to carry out and obtain compliance with sections 8-815 to 8-829.

Source: Laws 1965, c. 31, § 12, p. 218; Laws 1978, LB 641, § 3; Laws 2017, LB140, § 143.

8-827 Repealed. Laws 2017, LB140, § 163.

8-828 Personal loans; bank; purchasing and discounting commercial, negotiable, or installment paper.

Nothing contained in sections 8-815 to 8-826 shall be construed as preventing a bank from purchasing or discounting from established business concerns any commercial, negotiable or installment paper, or as preventing any such bank from accepting from, or requiring such persons selling or offering to discount such instruments to execute, contracts guaranteeing the ultimate collection of all of such items so sold or discounted or requiring such persons to assume the burden of making collections of the individual items so sold as agent of the bank.

Source: Laws 1965, c. 31, § 14, p. 218; Laws 2017, LB140, § 144.

8-829 Violations; penalty.

If a bank violates any provision of sections 8-820 to 8-823 in making or collecting any loan made under section 8-820, no charges of any kind shall be collected on such loan. If any charges have been collected, the bank shall forfeit to the borrower all interest collected on the loan involved and a sum equal thereto. The bank so offending shall be guilty of a Class V misdemeanor.

Source: Laws 1965, c. 31, § 15, p. 219; Laws 1977, LB 40, § 62.

ARTICLE 9

BANK HOLDING COMPANIES

Section
8-901. Repealed. Laws 1995, LB 384, § 35.
8-902. Repealed. Laws 1995, LB 384, § 35.
8-902.01. Repealed. Laws 1995, LB 384, § 35.
8-902.02. Repealed. Laws 1995, LB 384, § 35.
8-902.03. Repealed. Laws 1995, LB 384, § 35.
8-902.04. Repealed. Laws 1995, LB 384, § 35.
8-902.05. Repealed. Laws 1995, LB 384, § 35.
8-903. Repealed. Laws 1995, LB 384, § 35.
8-904. Repealed. Laws 1995, LB 384, § 35.
8-905. Transferred to section 8-1512.
8-906. Transferred to section 8-1513.
8-907. Transferred to section 8-1514.
8-908. Act, how cited.
8-909. Terms, defined.
8-910. Unlawful acts; authorized ownership or control of banks; limitation.
8-911. Out-of-state bank holding company; acquisition of banks; conditions.
8-912. Ownership, acquisition, or control of subsidiary in foreign state; when.
8-913. Bank holding company; registration required; when.
8-914. Reports required.
8-915. Examinations; costs; reports in lieu of examination; director; powers.
8-916. Bank subsidiary; powers; depository institution; limitations; agency relationship; limitations.
8-917. Rules and regulations.
8-918. Unsafe or unauthorized activities; powers of department.

8-901 Repealed. Laws 1995, LB 384, § 35.

8-902 Repealed. Laws 1995, LB 384, § 35.

8-902.01 Repealed. Laws 1995, LB 384, § 35.

8-902.02 Repealed. Laws 1995, LB 384, § 35.

8-902.03 Repealed. Laws 1995, LB 384, § 35.

8-902.04 Repealed. Laws 1995, LB 384, § 35.

8-902.05 Repealed. Laws 1995, LB 384, § 35.

8-903 Repealed. Laws 1995, LB 384, § 35.

8-904 Repealed. Laws 1995, LB 384, § 35.

8-905 Transferred to section 8-1512.

8-906 Transferred to section 8-1513.

8-907 Transferred to section 8-1514.

8-908 Act, how cited.

Sections 8-908 to 8-918 shall be known and may be cited as the Nebraska Bank Holding Company Act of 1995.

Source: Laws 1995, LB 384, § 19; Laws 2010, LB890, § 10.

8-909 Terms, defined.

For purposes of the Nebraska Bank Holding Company Act of 1995, unless the context otherwise requires:

(1) Bank means any bank which is chartered to conduct a bank in this state pursuant to the Nebraska Banking Act or any national bank authorized to do business in this state;

(2) Company means any corporation, partnership, limited liability company, business trust, association, or similar organization or entity, but does not include:

(a) An individual; or

(b) Any corporation, the majority of the shares of which are owned by the United States or by any state;

(3)(a) Bank holding company means any company, including an out-of-state bank holding company, which, except as provided in subdivision (b) of this subdivision:

(i) Directly or indirectly owns or controls twenty-five percent or more of the voting shares of any bank;

(ii) Controls in any manner the election of the majority of the directors of any bank; or

(iii) For the benefit of whose shareholders or members twenty-five percent or more of the voting shares of any bank or bank holding company are held by trustees.

(b)(i) No estate, trust, guardianship, or conservatorship or fiduciary thereof shall be a bank holding company by virtue of its ownership or control of a bank or banks if such trust is not a business trust or voting trust. It shall be unlawful for any such estate, trust, guardianship, or conservatorship to acquire, by purchase, ownership, or control, twenty-five percent of the shares of any additional bank;

(ii) No company shall be a bank holding company by virtue of its ownership or control of shares acquired by it in connection with its underwriting of bank

shares and which are held only for such period of time as will permit the sale thereof on a reasonable basis; and

(iii) No company shall be a bank holding company by virtue of its ownership or control of shares acquired and held in the ordinary course of securing or collecting a debt previously contracted in good faith, except that such shares shall be disposed of within a period of two years from the date on which they were acquired, unless the director, upon good cause shown, extends the two-year period. Any extensions granted by the director shall be for no more than one year at a time and, in the aggregate, for no more than three years;

(4) Adequately capitalized means a level of capitalization which meets or exceeds all applicable federal regulatory capital standards;

(5) Department means the Department of Banking and Finance;

(6) Director means the Director of Banking and Finance;

(7) Foreign state means any state of the United States other than Nebraska, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the District of Columbia;

(8) Home state means, with respect to a bank holding company, the state in which the total deposits of all banking subsidiaries of such company are the largest on the later of: (a) July 1, 1966; or (b) the date on which the company becomes a bank holding company under 12 U.S.C. 1842;

(9) Out-of-state bank holding company means a bank holding company whose home state is a foreign state, except an out-of-state bank holding company, as defined in 12 U.S.C. 1842(d) as it existed on August 26, 1983, which owned at least two banks in Nebraska as of March 12, 1963; and

(10) Foreign state agency means any duly constituted regulatory or supervisory agency which has authority over financial institutions and which is created under the laws of any state of the United States other than Nebraska, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands or which is operating under the code of law for the District of Columbia.

Source: Laws 1995, LB 384, § 20; Laws 1998, LB 1321, § 69.

Cross References

Nebraska Banking Act, see section 8-101.02.

8-910 Unlawful acts; authorized ownership or control of banks; limitation.

(1) It shall be unlawful, except as provided in this section, for:

(a) Any action to be taken that causes any company to become a bank holding company;

(b) Any action to be taken that causes a bank to become a subsidiary of a bank holding company;

(c) Any bank holding company to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company will directly or indirectly own or control more than twenty-five percent of the voting shares of such bank;

(d) Any bank holding company or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank; or

(e) Any bank holding company to merge or consolidate with any other bank holding company.

(2) The prohibition set forth in subsection (1) of this section shall not apply if:

(a)(i) The bank holding company is registered with the department as of September 29, 1995, as a bank holding company for any bank or banks; or (ii) the bank holding company registers with the department in accordance with the provisions of section 8-913 as a bank holding company;

(b) The bank holding company does not have a name deceptively similar to an existing unaffiliated bank or bank holding company located in Nebraska;

(c) Upon any action referred to in subsection (1) of this section and subject to subsection (3) of this section, the bank or banks so owned or controlled would have deposits in Nebraska in an amount no greater than twenty-two percent of the total deposits of all banks in Nebraska plus the total deposits, savings accounts, passbook accounts, and shares in savings and loan associations and building and loan associations in Nebraska as determined by the director on the basis of the most recent midyear reports, except as provided in subsections (4), (5), and (6) of this section;

(d) The bank holding company is adequately capitalized and adequately managed;

(e) The bank holding company complies with sections 8-1501 to 8-1505 if the bank or banks to be acquired are chartered in this state under the Nebraska Banking Act; and

(f) The bank holding company, if an out-of-state bank holding company, complies with the limitations of section 8-911.

(3) If any person, association, partnership, limited liability company, or corporation owns or controls twenty-five percent or more of the voting stock of any bank holding company acquiring a bank and any such person, association, partnership, limited liability company, or corporation owns or controls twenty-five percent or more of the voting stock of any other bank or bank holding company in Nebraska, then the total deposits of such other bank or banks and of all banks in Nebraska owned or controlled by such bank holding company shall be included in the computation of the total deposits of a bank holding company acquiring a bank.

(4) A bank or bank holding company which acquires and holds all or substantially all of the voting stock of one credit card bank under sections 8-1512 and 8-1513 shall not have such acquisition count against the limitations set forth in subdivision (2)(c) of this section.

(5) A bank holding company which acquired an institution or which formed a bank which acquired an institution under sections 8-1506 to 8-1510 or which acquired any assets and liabilities from the Resolution Trust Corporation or the Federal Deposit Insurance Corporation prior to January 1, 1994, shall not have such acquisition or formation count against the limitations set forth in subdivision (2)(c) of this section.

(6) A bank which accepts deposits from nonresidents of Nebraska and voluntarily segregates the reporting of such deposits in such a manner as to allow the director to determine the amounts of such deposits shall not have such deposits count against the limitations set forth in subdivision (2)(c) of this

section. The bank shall report the amount of such deposits, if so segregated, to the director prior to October 1 of each year.

Source: Laws 1995, LB 384, § 21; Laws 1998, LB 1321, § 70; Laws 2000, LB 932, § 18; Laws 2002, LB 1089, § 8; Laws 2004, LB 999, § 6; Laws 2008, LB851, § 13.

Cross References

Nebraska Banking Act, see section 8-101.02.

8-911 Out-of-state bank holding company; acquisition of banks; conditions.

(1) Upon compliance with all other provisions of the Nebraska Bank Holding Company Act of 1995 and any other applicable law, an out-of-state bank holding company may acquire a bank or banks under the act only if the bank or banks to be acquired have been chartered for five years or more.

(2) An out-of-state bank holding company shall not, directly or indirectly, form, charter, or establish a bank in Nebraska or cause a bank in Nebraska to be formed, chartered, or established unless (a) the bank is formed, chartered, or established solely for the purpose of acquiring all or substantially all of the assets of a bank which has been chartered for five years or more and (b) the bank does not open for business prior to such acquisition.

Source: Laws 1995, LB 384, § 22; Laws 1998, LB 1321, § 71.

8-912 Ownership, acquisition, or control of subsidiary in foreign state; when.

Upon approval of the Federal Reserve Board and upon compliance with section 8-913, a bank holding company whose home state is Nebraska may own, acquire, or control a depository institution subsidiary in any foreign state.

Source: Laws 1995, LB 384, § 23.

8-913 Bank holding company; registration required; when.

Every bank holding company shall register with the department within thirty days after the consummation of an action set forth in section 8-910 on forms provided by the department. The forms provided by the department shall include such information with respect to the financial condition, operations, management, and intercompany relationship of the bank holding company and its subsidiaries and related matters, as the director may deem necessary or appropriate to carry out the purposes of the Nebraska Bank Holding Company Act of 1995. Upon good cause shown, the director may, in his or her discretion, extend the time within which a bank holding company shall register. A bank holding company shall amend its registration within thirty days after any additional action under section 8-910, 8-911, or 8-912.

Source: Laws 1995, LB 384, § 24.

8-914 Reports required.

The director may require reports made under oath to be filed in the department to keep it informed as to the operation of any bank holding company.

Source: Laws 1995, LB 384, § 25.

8-915 Examinations; costs; reports in lieu of examination; director; powers.

The director may make examinations of any bank holding company with one or more state-chartered bank subsidiaries and each state-chartered bank subsidiary thereof, the cost of which shall be assessed, in the manner set forth in sections 8-605 and 8-606, against and paid for by such bank holding company. The director may accept reports of examination made by the Federal Reserve Board, the Comptroller of the Currency, the Consumer Financial Protection Bureau, the Federal Deposit Insurance Corporation, or a foreign state agency in lieu of making an examination by the department. The director may provide reports of examination conducted by the department or other confidential information to any of such regulatory entities. The director may contract with any of such regulatory entities to conduct and pay for such an examination for the department. The director may contract with any of such regulatory entities to conduct and receive payment for such an examination for any of such regulatory entities. The director may enter into cooperative agreements with any or all of such regulatory entities to foster the purposes of the Nebraska Bank Holding Company Act of 1995.

Source: Laws 1995, LB 384, § 26; Laws 2007, LB124, § 15; Laws 2013, LB213, § 12.

8-916 Bank subsidiary; powers; depository institution; limitations; agency relationship; limitations.

(1) Any bank subsidiary of a bank holding company may receive deposits, renew time deposits, close loans, service loans, and receive payments on loans and other obligations as an agent for a depository institution without regard to the location of the depository institution.

(2) Notwithstanding any other provision of law, a bank acting as an agent in accordance with this section for another depository institution shall not be considered to be a branch of the other depository institution.

(3) A depository institution shall not:

(a) Conduct any activity as an agent under subsection (1) or (6) of this section which such institution is prohibited from conducting as a principal under any applicable law; or

(b) As a principal, have an agent conduct any activity under subsection (1) or (6) of this section which the institution is prohibited from conducting under any applicable law.

(4) No provision of this section shall be construed as affecting:

(a) The authority of any depository institution to act as an agent on behalf of any other depository institution under any other provision of law; or

(b) Whether a depository institution which conducts any activity as an agent on behalf of any other depository institution under any other provision of law shall be considered to be a branch of such other depository institution.

(5) An agency relationship between depository institutions under subsection (1) or (6) of this section shall be on terms that are consistent with safe and sound banking practices and all applicable rules and regulations of the department, any appropriate federal banking regulatory agency, and, if applicable, any foreign state agency.

(6) A savings association insured by the Federal Deposit Insurance Corporation which was an affiliate of a bank on or before July 1, 1994, may conduct activities as an agent on behalf of such bank in the same manner as an insured

bank affiliate of such bank may act as an agent for such bank under this section to the extent such activities are conducted only in:

(a) Nebraska or any foreign state in which:

(i) The bank is not prohibited from operating a branch under any provision of law; and

(ii) The savings association maintained an office or branch and conducted business on or before July 1, 1994; or

(b) Nebraska or any foreign state in which:

(i) The bank is not expressly prohibited from operating a branch under applicable Nebraska or foreign state law; and

(ii) The savings association maintained a main office and conducted business on or before July 1, 1994.

(7) For purposes of this section:

(a) Bank means any bank, in addition to those defined in section 8-909, chartered by the United States or by any foreign state agency and insured by the Federal Deposit Insurance Corporation;

(b) Savings institution means any savings and loan association, building and loan association, capital stock savings association, savings bank, or similar entity, chartered under Chapter 8, article 3, chartered by the United States, or chartered by any foreign state agency and insured by the Federal Deposit Insurance Corporation;

(c) Depository institution means either a bank as defined in subdivision (a) of this subsection or a savings institution as defined in subdivision (b) of this subsection;

(d) Affiliate means any entity that controls, is controlled by, or is under common control with another entity; and

(e) Control means to own directly or indirectly or to control in any manner twenty-five percent of the voting shares of any bank, savings institution, or holding company or to control in any manner the election of the majority of directors of any bank, savings institution, or holding company.

Source: Laws 1995, LB 384, § 27; Laws 2003, LB 217, § 17.

8-917 Rules and regulations.

The department may adopt and promulgate rules and regulations to administer and to carry out the purposes of the Nebraska Bank Holding Company Act of 1995.

Source: Laws 1995, LB 384, § 28.

8-918 Unsafe or unauthorized activities; powers of department.

If the department, upon investigation, determines that any officer or director of a bank holding company which owns or controls a state-chartered bank is conducting the business of the bank holding company or the business of its subsidiary state-chartered bank or banks in an unsafe or unauthorized manner or is endangering the interest of the bank holding company or the interest of its subsidiary state-chartered bank or banks, the department shall have authority, after notice and opportunity for hearing, to do any or all of the following: (1) Remove such officer or director of the bank holding company from acting as an

officer or director of the bank holding company; and (2) impose fines and order any other necessary corrective action against such officer or director pursuant to sections 8-1,134 to 8-1,139. The department may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2010, LB890, § 11.

ARTICLE 10

NEBRASKA SALE OF CHECKS AND FUNDS TRANSMISSION ACT

Section
8-1001. Repealed. Laws 2013, LB 616, § 53.
8-1001.01. Repealed. Laws 2013, LB 616, § 53.
8-1002. Repealed. Laws 2013, LB 616, § 53.
8-1003. Repealed. Laws 2013, LB 616, § 53.
8-1004. Repealed. Laws 2013, LB 616, § 53.
8-1005. Repealed. Laws 2013, LB 616, § 53.
8-1006. Repealed. Laws 2013, LB 616, § 53.
8-1007. Repealed. Laws 2013, LB 616, § 53.
8-1008. Repealed. Laws 2013, LB 616, § 53.
8-1009. Repealed. Laws 2013, LB 616, § 53.
8-1010. Repealed. Laws 2013, LB 616, § 53.
8-1011. Repealed. Laws 2013, LB 616, § 53.
8-1012. Repealed. Laws 2013, LB 616, § 53.
8-1012.01. Repealed. Laws 2013, LB 616, § 53.
8-1013. Repealed. Laws 2013, LB 616, § 53.
8-1014. Repealed. Laws 2013, LB 616, § 53.
8-1015. Transferred to section 8-1001.01.
8-1016. Repealed. Laws 2013, LB 616, § 53.
8-1017. Repealed. Laws 2013, LB 616, § 53.
8-1018. Repealed. Laws 2013, LB 616, § 53.
8-1019. Repealed. Laws 2013, LB 616, § 53.

8-1001 Repealed. Laws 2013, LB 616, § 53.

8-1001.01 Repealed. Laws 2013, LB 616, § 53.

8-1002 Repealed. Laws 2013, LB 616, § 53.

8-1003 Repealed. Laws 2013, LB 616, § 53.

8-1004 Repealed. Laws 2013, LB 616, § 53.

8-1005 Repealed. Laws 2013, LB 616, § 53.

8-1006 Repealed. Laws 2013, LB 616, § 53.

8-1007 Repealed. Laws 2013, LB 616, § 53.

8-1008 Repealed. Laws 2013, LB 616, § 53.

8-1009 Repealed. Laws 2013, LB 616, § 53.

8-1010 Repealed. Laws 2013, LB 616, § 53.

8-1011 Repealed. Laws 2013, LB 616, § 53.

8-1012 Repealed. Laws 2013, LB 616, § 53.

8-1012.01 Repealed. Laws 2013, LB 616, § 53.

8-1013 Repealed. Laws 2013, LB 616, § 53.

8-1014 Repealed. Laws 2013, LB 616, § 53.

8-1015 Transferred to section 8-1001.01.

8-1016 Repealed. Laws 2013, LB 616, § 53.

8-1017 Repealed. Laws 2013, LB 616, § 53.

8-1018 Repealed. Laws 2013, LB 616, § 53.

8-1019 Repealed. Laws 2013, LB 616, § 53.

ARTICLE 11
SECURITIES ACT OF NEBRASKA

Section
8-1101. Terms, defined.
8-1101.01. Federal rules and regulations; fair practice or ethical rules or standards; defined.
8-1102. Fraudulent and other prohibited practices.
8-1103. Broker-dealers, issuer-dealers, agents, investment advisers, and investment adviser representatives; registration; procedure; exceptions; conditions; renewal; fees; accounts and other records; revocation or withdrawal of registration; when; powers of director regarding persons engaged or engaging in securities business.
8-1103.01. Repealed. Laws 2003, LB 217, § 50.
8-1104. Registration of securities; exceptions.
8-1105. Repealed. Laws 2013, LB 214, § 13.
8-1106. Registration by coordination.
8-1107. Registration by qualification.
8-1108. Registration of securities; requirements; fees; effective date; reports; director, powers.
8-1108.01. Securities; sale without registration; cease and desist order; fine; lien; hearing.
8-1108.02. Federal covered security; filing; director; powers; sales; requirements; fees; consent to service of process.
8-1108.03. Federal covered security; filing fee; notice; open-end management company, face-amount certificate company, or unit investment trust; issue indefinite amount of securities; when.
8-1109. Registration of securities; denial, suspension, or revocation; grounds.
8-1109.01. Registration of securities; denial, suspension, or revocation; additional grounds.
8-1109.02. Registration of securities; order of denial, suspension, or revocation; notice; request for hearing; modification of order.
8-1110. Securities exempt from registration.
8-1111. Transactions exempt from registration.
8-1112. Registrant; subject to personal jurisdiction.
8-1113. False or misleading filings; unlawful.
8-1114. Unlawful representation concerning merits of registration or exemption.
8-1115. Investigations; subpoena; director; powers.
8-1115.01. Investigation or other proceeding; prohibited acts.
8-1116. Violations; injunction; receiver; appointment; additional court orders authorized.
8-1117. Violations; penalty.
8-1118. Violations; damages; statute of limitations.
8-1119. Appeal; procedure.
8-1120. Administration of act; Director of Banking and Finance; powers and duties; use of information for personal benefit prohibited; Securities Act Cash Fund; created; use; investment; transfers; document filed, when.

Section
8-1121. Exemption or exception; burden of proof.
8-1122. Act; how construed.
8-1122.01. Federal limits rejected.
8-1123. Act, how cited.
8-1124. Repealed. Laws 1988, LB 795, § 8.

8-1101 Terms, defined.

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

(1) Agent means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities, but agent does not include an individual who represents (a) an issuer in (i) effecting a transaction in a security exempted by subdivision (6), (7), or (8) of section 8-1110, (ii) effecting certain transactions exempted by section 8-1111, (iii) effecting transactions in a federal covered security as described in section 18(b)(3) of the Securities Act of 1933, or (iv) effecting transactions with existing employees, limited liability company members, partners, or directors of the issuer or any of its subsidiaries if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state or (b) a broker-dealer in effecting transactions described in section 15(h)(2) of the Securities Exchange Act of 1934. A partner, limited liability company member, officer, or director of a broker-dealer is an agent only if he or she otherwise comes within this definition;

(2) Broker-dealer means any person engaged in the business of effecting transactions in securities for the account of others or for his or her own account. Broker-dealer does not include (a) an issuer-dealer, agent, bank, savings institution, or trust company, (b) an issuer effecting a transaction in its own security exempted by subdivision (5)(a), (b), (c), (d), (e), or (f) of section 8-1110 or which qualifies as a federal covered security pursuant to section 18(b)(1) of the Securities Act of 1933, (c) a person who has no place of business in this state if he or she effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, credit unions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, (d) a person who has no place of business in this state if during any period of twelve consecutive months he or she does not direct more than five offers to sell or to buy into this state in any manner to persons other than those specified in subdivision (2)(c) of this section, or (e) a person who is a resident of Canada and who has no office or other physical presence in Nebraska if the following conditions are satisfied: (i) The person must be registered with, or be a member of, a securities self-regulatory organization in Canada or a stock exchange in Canada; (ii) the person must maintain, in good standing, its provisional or territorial registration or membership in a securities self-regulatory organization in Canada, or stock exchange in Canada; (iii) the person effects, or attempts to effect, (A) a transaction with or for a Canadian client who is temporarily present in this state and with whom the Canadian broker-dealer had a bona fide customer relationship before the client entered this state or (B) a transaction with or for a Canadian client in a self-directed tax advantaged retirement plan in Canada of which that client is the holder or contributor; and

(iv) the person complies with all provisions of the Securities Act of Nebraska relating to the disclosure of material information in connection with the transaction;

(3) Department means the Department of Banking and Finance. Director means the Director of Banking and Finance of the State of Nebraska except as further provided in section 8-1120;

(4) Federal covered adviser means a person who is registered under section 203 of the Investment Advisers Act of 1940;

(5) Federal covered security means any security described as a covered security under section 18(b) of the Securities Act of 1933 or rules and regulations under the act;

(6) Guaranteed means guaranteed as to payment of principal, interest, or dividends;

(7) Investment adviser means any person who for compensation engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who for compensation and as a part of a regular business issues or promulgates analyses or reports concerning securities. Investment adviser also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. Investment adviser does not include (a) an investment adviser representative, (b) a bank, savings institution, or trust company, (c) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his or her profession, (d) a broker-dealer or its agent whose performance of these services is solely incidental to its business as a broker-dealer and who receives no special compensation for them, (e) an issuer-dealer, (f) a publisher of any bona fide newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, by electronic means, or otherwise which does not consist of the rendering of advice on the basis of the specific investment situation of each client, (g) a person who has no place of business in this state if (i) his or her only clients in this state are other investment advisers, federal covered advisers, broker-dealers, banks, savings institutions, credit unions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (ii) during the preceding twelve-month period, he or she has had five or fewer clients who are residents of this state other than those persons specified in subdivision (g)(i) of this subdivision, (h) any person that is a federal covered adviser or is excluded from the definition of investment adviser under section 202 of the Investment Adviser Act of 1940, or (i) such other persons not within the intent of this subdivision as the director may by rule and regulation or order designate;

(8) Investment adviser representative means any partner, limited liability company member, officer, or director or any person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director or other individual, except clerical or ministerial personnel, who is employed by or associated with an investment adviser that is registered

or required to be registered under the Securities Act of Nebraska or who has a place of business located in this state and is employed by or associated with a federal covered adviser, and who (a) makes any recommendations or otherwise renders advice regarding securities, (b) manages accounts or portfolios of clients, (c) determines which recommendation or advice regarding securities should be given, (d) solicits, offers, or negotiates for the sale of or sells investment advisory services, or (e) supervises employees who perform any of the foregoing;

(9) Issuer means any person who issues or proposes to issue any security, except that (a) with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions, or of the fixed, restricted management, or unit type, the term issuer means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued and (b) with respect to a fractional or pooled interest in a viatical settlement contract, issuer means the person who creates, for the purpose of sale, the fractional or pooled interest. In the case of a viatical settlement contract that is not fractionalized or pooled, issuer means the person effecting a transaction with a purchaser of such contract;

(10) Issuer-dealer means (a) any issuer located in the State of Nebraska or (b) any issuer which registered its securities by qualification who proposes to sell to the public of the State of Nebraska the securities that it issues without the benefit of another registered broker-dealer. Such securities shall have been approved for sale in the State of Nebraska pursuant to section 8-1104;

(11) Nonissuer means not directly or indirectly for the benefit of the issuer;

(12) Person means an individual, a corporation, a partnership, a limited liability company, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;

(13) Sale or sell includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value. Offer or offer to sell includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock shall be considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, shall be considered to include an offer of the other security;

(14) Securities Act of 1933, Securities Exchange Act of 1934, Investment Advisers Act of 1940, Investment Company Act of 1940, Commodity Exchange Act, and the federal Interstate Land Sales Full Disclosure Act means the acts as they existed on January 1, 2022;

(15) Security means any note, stock, treasury stock, bond, debenture, units of beneficial interest in a real estate trust, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certifi-

cate, preorganization certificate or subscription, transferable share, investment contract, viatical settlement contract or any fractional or pooled interest in such contract, membership interest in any limited liability company organized under Nebraska law or any other jurisdiction unless otherwise excluded from this definition, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, in general any interest or instrument commonly known as a security, or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. Security does not include any insurance or endowment policy or annuity contract issued by an insurance company. Security also does not include a membership interest in a limited liability company when all of the following exist: (a) The member enters into a written commitment to be engaged actively and directly in the management of the limited liability company; and (b) all members of the limited liability company are actively engaged in the management of the limited liability company. For the limited purposes of determining professional malpractice insurance premiums, a security issued through a transaction that is exempted pursuant to subdivision (23) of section 8-1111 shall not be considered a security;

(16) State means any state, territory, or possession of the United States as well as the District of Columbia and Puerto Rico; and

(17) Viatical settlement contract means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of all or any portion of the death benefit or ownership of a life insurance policy or contract for consideration which is less than the expected death benefit of the life insurance policy or contract. Viatical settlement contract does not include (a) the assignment, transfer, sale, devise, or bequest of a death benefit of a life insurance policy or contract made by the viator to an insurance company or to a viatical settlement provider or broker licensed pursuant to the Viatical Settlements Act, (b) the assignment of a life insurance policy or contract to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan, or (c) the exercise of accelerated benefits pursuant to the terms of a life insurance policy or contract and consistent with applicable law.

Source: Laws 1965, c. 549, § 1, p. 1763; Laws 1973, LB 167, § 1; Laws 1977, LB 263, § 1; Laws 1978, LB 760, § 1; Laws 1989, LB 60, § 1; Laws 1991, LB 305, § 2; Laws 1993, LB 216, § 1; Laws 1993, LB 121, § 96; Laws 1994, LB 884, § 10; Laws 1995, LB 119, § 1; Laws 1996, LB 1053, § 7; Laws 1997, LB 335, § 1; Laws 2001, LB 52, § 43; Laws 2001, LB 53, § 19; Laws 2011, LB76, § 1; Laws 2013, LB214, § 1; Laws 2017, LB148, § 1; Laws 2019, LB259, § 1; Laws 2020, LB909, § 12; Laws 2021, LB363, § 12; Laws 2022, LB707, § 20.
Operative date April 19, 2022.

Cross References

Viatical Settlements Act, see section 44-1101.

Pursuant to subsection (15) of this section, in order to constitute an ''investment contract'', it is not required that the profits be derived solely from the entrepreneurial or managerial efforts of others. State v. Irons, 254 Neb. 18, 574 N.W.2d 144 (1998).

An ordinary certificate of deposit with a fixed interest rate, issued by a heavily regulated and federally insured bank, which involves little risk of loss and virtually guaranteed payment, does not constitute a ''security'' as defined by subsection (12) (now subsection (15) of this section) of this section. Wrede v.

Exchange Bank of Gibbon, 247 Neb. 907, 531 N.W.2d 523 (1995).

Under subsection (12) of this section (now subsection (15) of this section), ''share'' means a part or definite portion of a thing owned by a number of persons in common, contemplates something owned in common by two or more persons, and has reference to that part of the undivided interest which belongs to some one of them. A share is a unit of stock representing ownership in a corporation. State v. Jones, 235 Neb. 1, 453 N.W.2d 447 (1990).

In suit by customer against brokerage firm for damages from stock speculations, the questions of fraud and arrangement of credit were fact questions for the trial court. Shull v. Dain, Kalman & Quail, Inc., 561 F.2d 152 (8th Cir. 1977).

8-1101.01 Federal rules and regulations; fair practice or ethical rules or standards; defined.

For purposes of the Securities Act of Nebraska:

(1) Federal rules and regulations adopted under the Investment Advisors Act of 1940 or the Securities Act of 1933 means such rules and regulations as they existed on January 1, 2022; and

(2) Fair practice or ethical rules or standards promulgated by the Securities and Exchange Commission, the Financial Industry Regulatory Authority, or a self-regulatory organization approved by the Securities and Exchange Commission means such practice, rules, or standards as they existed on January 1, 2022.

Source: Laws 2017, LB148, § 2; Laws 2019, LB259, § 2; Laws 2020, LB909, § 13; Laws 2021, LB363, § 13; Laws 2022, LB707, § 21. Operative date April 19, 2022.

8-1102 Fraudulent and other prohibited practices.

(1) It shall be unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:

(a) To employ any device, scheme, or artifice to defraud;

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) It shall be unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:

(a) To employ any device, scheme, or artifice to defraud any person;

(b) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

(c) To knowingly sell any security to or purchase any security from a client while acting as principal for his or her own account, act as a broker for a person other than the client, or knowingly effect any sale or purchase of any security for the account of the client, without disclosing to the client in writing before the completion of the transaction the capacity in which he or she is acting and obtaining the consent of the client to the transaction. This subdivision shall not apply to any transaction involving a broker-dealer's client if the broker-dealer is not acting as an investment adviser in the transaction;

(d) To engage in dishonest or unethical practices as the director may define by rule and regulation or order; or

(e) In the solicitation of advisory clients, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

(3) Except as may be permitted by rule and regulation or order of the director, it shall be unlawful for any investment adviser or investment adviser representative to enter into, extend, or renew any investment advisory contract:

(a) Which provides for the compensation of the investment adviser or investment adviser representative on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of any client;

(b) Unless the investment advisory contract prohibits in writing the assignment of the contract by the investment adviser or investment adviser representative without the consent of the other party to the contract; and

(c) Unless the investment advisory contract provides in writing that if the investment adviser is a partnership or a limited liability company, the other party to the contract shall be notified of any change in the membership of the partnership or limited liability company within a reasonable time after the change.

(4) Subdivision (3)(a) of this section shall not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period or as of definite dates or taken as of a definite date. Assignment, as used in subdivision (3)(b) of this section, shall include any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor, except that if the investment adviser is a partnership or a limited liability company, no assignment of an investment advisory contract shall be considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(5) It shall be unlawful for any investment adviser or investment adviser representative to take or have custody of any securities or funds of any client if:

(a) The director by rule and regulation or order prohibits the taking or custody; or

(b) In the absence of any rule and regulation or order by the director, the investment adviser or investment adviser representative fails to notify the director that he or she has or may have custody.

(6) The director may by rule and regulation or order adopt and promulgate exemptions from subdivisions (2)(c), (3)(a), (3)(b), and (3)(c) of this section when the exemptions are consistent with the public interest and are within the purposes fairly intended by the Securities Act of Nebraska.

Source: Laws 1965, c. 549, § 2, p. 1766; Laws 1990, LB 938, § 1; Laws 1993, LB 216, § 2; Laws 1994, LB 884, § 11; Laws 2017, LB148, § 3.

Proof of specific intent, evil motive, or knowledge that the law was being violated is not required to sustain a conviction under the Securities Act of Nebraska. State v. Jones, 235 Neb. 1, 453 N.W.2d 447 (1990).

8-1103 Broker-dealers, issuer-dealers, agents, investment advisers, and investment adviser representatives; registration; procedure; exceptions; conditions; renewal; fees; accounts and other records; revocation or withdrawal of registration; when; powers of director regarding persons engaged or engaging in securities business.

(1) It shall be unlawful for any person to transact business in this state as a broker-dealer, issuer-dealer, or agent, except in certain transactions exempt under section 8-1111, unless he or she is registered under the Securities Act of Nebraska. It shall be unlawful for any broker-dealer to employ an agent for purposes of effecting or attempting to effect transactions in this state unless the agent is registered. It shall be unlawful for an issuer to employ an agent unless the issuer is registered as an issuer-dealer and unless the agent is registered. The registration of an agent shall not be effective unless the agent is employed by a broker-dealer or issuer-dealer registered under the act. When the agent begins or terminates employment with a registered broker-dealer or issuer-dealer, the broker-dealer or issuer-dealer shall promptly notify the director.

(2)(a) It shall be unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless he or she is registered under the act.

(b) Except with respect to federal covered advisers whose only clients are those described in subdivision (7)(g)(i) of section 8-1101, it shall be unlawful for any federal covered adviser to conduct advisory business in this state unless such person files with the director the documents which are filed with the Securities and Exchange Commission, as the director may by rule and regulation or order require, a consent to service of process, and payment of the fee prescribed in subsection (6) of this section prior to acting as a federal covered adviser in this state.

(c)(i) It shall be unlawful for any investment adviser required to be registered under the Securities Act of Nebraska to employ an investment adviser representative unless the investment adviser representative is registered under the act.

(ii) It shall be unlawful for any federal covered adviser to employ, supervise, or associate with an investment adviser representative having a place of business located in this state unless such investment adviser representative is registered under the Securities Act of Nebraska or is exempt from registration.

(d) The registration of an investment adviser representative shall not be effective unless the investment adviser representative is employed by a registered investment adviser or a federal covered adviser. When an investment adviser representative begins or terminates employment with an investment adviser, the investment adviser shall promptly notify the director. When an investment adviser representative begins or terminates employment with a federal covered adviser, the investment adviser representative shall promptly notify the director.

(3) A broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative may apply for registration by filing with the director an application and payment of the fee prescribed in subsection (6) of this section. If the applicant is an individual, the application shall include the applicant's social security number. Registration of a broker-dealer or issuer-dealer shall automatically constitute registration of all partners, limited liability company members, officers, or directors of such broker-dealer or issuer-dealer as agents,

except any partner, limited liability company member, officer, or director whose registration as an agent is denied, suspended, or revoked under subsection (9) of this section, without the filing of applications for registration as agents or the payment of fees for registration as agents. The application shall contain whatever information the director requires concerning such matters as:

(a) The applicant's form and place of organization;

(b) The applicant's proposed method of doing business;

(c) The qualifications and business history of the applicant and, in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, limited liability company member, officer, director, person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director, or person directly or indirectly controlling the broker-dealer or investment adviser;

(d) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;

(e) The applicant's financial condition and history; and

(f) Information to be furnished or disseminated to any client or prospective client if the applicant is an investment adviser.

(4)(a) If no denial order is in effect and no proceeding is pending under subsection (9) of this section, registration shall become effective at noon of the thirtieth day after an application is filed, complete with all amendments. The director may specify an earlier effective date.

(b) The director shall require as conditions of registration:

(i) That the applicant, except for renewal, and, in the case of a corporation, partnership, or limited liability company, the officers, directors, partners, or limited liability company members pass such examination or examinations as the director may prescribe as evidence of knowledge of the securities business;

(ii) That an issuer-dealer and its agents pass an examination prescribed and administered by the department. Such examination shall be administered upon request and upon payment of an examination fee of five dollars. Any applicant for issuer-dealer registration who has satisfactorily passed any other examination approved by the director shall be exempted from this requirement upon furnishing evidence of satisfactory completion of such examination to the director;

(iii) That an issuer-dealer have a minimum net capital of twenty-five thousand dollars. In lieu of a minimum net capital requirement of twenty-five thousand dollars, the director may require an issuer-dealer to post a corporate surety bond with a surety company licensed to do business in Nebraska in an amount equal to such capital requirements. When the director finds that a surety bond with a surety company would cause an undue burden on an issuer-dealer, the director may require the issuer-dealer to post a signature bond. Every such surety or signature bond shall run in favor of Nebraska, shall provide for an action thereon by any person who has a cause of action under section 8-1118, and shall provide that no action may be maintained to enforce any liability on the bond unless brought within the time periods specified by section 8-1118;

(iv) That a broker-dealer have such minimum net capital as the director may by rule and regulation or order require, subject to the limitations provided in section 15 of the Securities Exchange Act of 1934. In lieu of any such minimum

net capital requirement, the director may by rule and regulation or order require a broker-dealer to post a corporate surety bond with a surety company licensed to do business in Nebraska in an amount equal to such capital requirement, subject to the limitations of section 15 of the Securities Exchange Act of 1934. Every such surety bond shall run in favor of Nebraska, shall provide for an action thereon by any person who has a cause of action under section 8-1118, and shall provide that no action may be maintained to enforce any liability on the bond unless brought within the time periods specified by section 8-1118; and

(v) That an investment adviser have such minimum net capital as the director may by rule and regulation or order require, subject to the limitations of section 222 of the Investment Advisers Act of 1940, which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over such funds or securities and those investment advisers who do not. In lieu of any such minimum net capital requirement, the director may require by rule and regulation or order an investment adviser to post a corporate surety bond with a surety company licensed to do business in Nebraska in an amount equal to such capital requirement, subject to the limitations of section 222 of the Investment Advisers Act of 1940. Every such surety bond shall run in favor of Nebraska, shall provide for an action thereon by any person who has a cause of action under section 8-1118, and shall provide that no action may be maintained to enforce any liability on the bond unless brought within the time periods specified by section 8-1118.

(c) The director may waive the requirement of an examination for any applicant who by reason of prior experience can demonstrate his or her knowledge of the securities business. Registration of a broker-dealer, agent, investment adviser, and investment adviser representative shall be effective for a period of not more than one year and shall expire on December 31 unless renewed. Registration of an issuer-dealer shall be effective for a period of not more than one year and may be renewed as provided in this section. Notice filings by a federal covered adviser shall be effective for a period of not more than one year and shall expire on December 31 unless renewed.

(d) The director may restrict or limit an applicant as to any function or activity in this state for which registration is required under the Securities Act of Nebraska.

(5) Registration of a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative may be renewed by filing with the director or with a registration depository designated by the director prior to the expiration date such information as the director by rule and regulation or order may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative previously filed with the director by the applicant, and payment of the prescribed fee. A federal covered adviser may renew its notice filing by filing with the director prior to the expiration thereof the documents filed with the Securities and Exchange Commission, as the director by rule and regulation or order may require, a consent to service of process, and the prescribed fee.

(6) The fee for initial or renewal registration shall be two hundred fifty dollars for a broker-dealer, two hundred dollars for an investment adviser, one

hundred dollars for an issuer-dealer, forty dollars for an agent, and forty dollars for an investment adviser representative. The fee for initial or renewal filings for a federal covered adviser shall be two hundred dollars. When an application is denied or withdrawn, the director shall retain all of the fee.

(7)(a) Every registered broker-dealer, issuer-dealer, and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the director may prescribe by rule and regulation or order, except as provided by section 15 of the Securities Exchange Act of 1934, in connection with broker-dealers, and section 222 of the Investment Advisers Act of 1940, in connection with investment advisers. All records so required shall be preserved for such period as the director may prescribe by rule and regulation or order.

(b) All the records of a registered broker-dealer, issuer-dealer, or investment adviser shall be subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the director, within or without this state, as the director deems necessary or appropriate in the public interest or for the protection of investors and advisory clients. For the purpose of avoiding unnecessary duplication of examinations, the director, insofar as he or she deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934. Costs of such examinations shall be borne by the registrant.

(c) Every registered broker-dealer, except as provided in section 15 of the Securities Exchange Act of 1934, and investment adviser, except as provided by section 222 of the Investment Advisers Act of 1940, shall file such financial reports as the director may prescribe by rule and regulation or order.

(d) If any information contained in any document filed with the director is or becomes inaccurate or incomplete in any material respect, a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative shall promptly file a correcting amendment or a federal covered adviser shall file a correcting amendment when such amendment is required to be filed with the Securities and Exchange Commission.

(8) With respect to investment advisers, the director may require that certain information be furnished or disseminated to clients as necessary or appropriate in the public interest or for the protection of investors and advisory clients. To the extent determined by the director in his or her discretion, information furnished to clients of an investment adviser that would be in compliance with the Investment Advisers Act of 1940 and the rules and regulations under such act may be used in whole or in part to satisfy the information requirement prescribed in this subsection.

(9)(a) The director may by order deny, suspend, or revoke registration of any broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative or bar, censure, or impose a fine pursuant to subsection (4) of section 8-1108.01 on any registrant or any partner, limited liability company member, officer, director, or person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director for a registrant from employment with any broker-dealer, issuer-dealer, or investment adviser if he or she finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer,

issuer-dealer, or investment adviser, any partner, limited liability company member, officer, director, person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director, or person directly or indirectly controlling the broker-dealer, issuer-dealer, or investment adviser:

(i) Has filed an application for registration under this section which, as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(ii) Has willfully violated or willfully failed to comply with any provision of the Securities Act of Nebraska or any rule and regulation or order under the act;

(iii) Has been convicted, within the past ten years, of any misdemeanor involving a security or commodity or any aspect of the securities or commodities business or any felony;

(iv) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities or commodities business;

(v) Is the subject of an order of the director denying, suspending, or revoking registration as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative;

(vi) Is the subject of an adjudication or determination, after notice and opportunity for hearing, within the past ten years by a securities or commodities agency or administrator of another state or a court of competent jurisdiction that the person has willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or the securities or commodities law of any other state;

(vii) Has engaged in dishonest or unethical practices in the securities or commodities business;

(viii) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature, but the director may not enter an order against a broker-dealer, issuer-dealer, or investment adviser under this subdivision without a finding of insolvency as to the broker-dealer, issuer-dealer, or investment adviser;

(ix) Has not complied with a condition imposed by the director under subsection (4) of this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business;

(x) Has failed to pay the proper filing fee, but the director may enter only a denial order under this subdivision, and he or she shall vacate any such order when the deficiency has been corrected;

(xi) Has failed to reasonably supervise his or her agents or employees, if he or she is a broker-dealer or issuer-dealer, or his or her investment adviser representatives or employees, if he or she is an investment adviser, to assure their compliance with the Securities Act of Nebraska;

(xii) Has been denied the right to do business in the securities industry, or the person's respective authority to do business in an investment-related industry has been revoked by any other state, federal, or foreign governmental agency or

self-regulatory organization for cause, or the person has been the subject of a final order in a criminal, civil, injunctive, or administrative action for securities, commodities, or fraud-related violations of the law of any state, federal, or foreign governmental unit; or

(xiii) Has refused to allow or otherwise impedes the department from conducting an examination under subsection (7) of this section or has refused the department access to a registrant's office to conduct an examination under subsection (7) of this section.

(b) The director may by order bar any person from engaging in the securities business in this state if the director finds that the order is in the public interest and that the person has:

(i) Willfully violated or willfully failed to comply with any provision of the Securities Act of Nebraska or any rule and regulation or order under the act; or

(ii) Engaged in dishonest or unethical practices in the securities business, which activity at the time was subject to regulation by the Securities Act of Nebraska.

(c)(i) For purposes of subdivisions (9)(a)(vii) and (9)(b)(ii) of this section, the director may, by rule and regulation or order, determine that a violation of any provision of the fair practice or ethical rules or standards promulgated by the Securities and Exchange Commission, the Financial Industry Regulatory Authority, or a self-regulatory organization approved by the Securities and Exchange Commission constitutes a dishonest or unethical practice in the securities or commodities business.

(ii) The director may not institute a proceeding under this section on the basis of a final judicial or administrative order made known to him or her by the applicant prior to the effective date of the registration unless the proceeding is instituted within the next ninety days following registration. For purposes of this subdivision, a final judicial or administrative order does not include an order that is stayed or subject to further review or appeal. This subdivision shall not apply to renewed registrations.

(iii) The director may by order summarily postpone or suspend registration pending final determination of any proceeding under this subsection. Upon the entry of the order, the director shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, that it has been entered and of the reasons therefor and that within fifteen business days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order. No order may be entered under this section denying or revoking registration without appropriate prior notice to the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or investment adviser representative, and opportunity for hearing.

(10)(a) If the director finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative, is

subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the director may by order cancel the registration or application.

(b) If an applicant for registration does not complete the registration application and fails to respond to a notice or notices from the department to correct the deficiency or deficiencies for a period of one hundred twenty days or more after the date the department sends the initial notice to correct the deficiency, the department may deem the registration application as abandoned and may issue a notice of abandonment of the registration application to the applicant in lieu of proceedings to deny the application.

(c) Withdrawal from registration as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative shall become effective thirty days after receipt of an application to withdraw or within a shorter period of time as the director may determine unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty days after the application is filed. If a revocation or suspension proceeding is pending or instituted, withdrawal shall become effective at such time and upon such conditions as the director shall order.

Source: Laws 1965, c. 549, § 3, p. 1768; Laws 1973, LB 167, § 2; Laws 1977, LB 263, § 2; Laws 1989, LB 60, § 2; Laws 1990, LB 956, § 7; Laws 1991, LB 305, § 3; Laws 1993, LB 216, § 3; Laws 1993, LB 121, § 97; Laws 1994, LB 884, § 12; Laws 1997, LB 335, § 2; Laws 1997, LB 752, § 60; Laws 2000, LB 932, § 19; Laws 2001, LB 53, § 20; Laws 2003, LB 217, § 23; Laws 2017, LB148, § 4; Laws 2019, LB259, § 3; Laws 2020, LB909, § 14.

An agent is no longer registered when the issuer-dealer's registration has been revoked. State v. Fries, 214 Neb. 874, 337 N.W.2d 398 (1983).

8-1103.01 Repealed. Laws 2003, LB 217, § 50.

8-1104 Registration of securities; exceptions.

It shall be unlawful for any person to offer or sell any security in this state unless (1) such security is registered by coordination under section 8-1106 or by qualification under section 8-1107, (2) the security is exempt under section 8-1110 or is sold in a transaction exempt under section 8-1111, or (3) the security is a federal covered security.

Source: Laws 1965, c. 549, § 4, p. 1773; Laws 1997, LB 335, § 3; Laws 2013, LB214, § 2.

It is unlawful to offer or sell unregistered securities which are not exempt from registration or unless the securities are sold in an exempt transaction. Labenz v. Labenz, 198 Neb. 548, 253 N.W.2d 855 (1977).

8-1105 Repealed. Laws 2013, LB 214, § 13.

8-1106 Registration by coordination.

(1) Any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination.

(2) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to

payment of the registration fee prescribed in section 8-1108 and, if required under section 8-1112, a consent to service of process meeting the requirements of that section:

(a) One copy of the prospectus filed under the Securities Act of 1933 together with all amendments thereto;

(b) The amount of securities to be offered in this state;

(c) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(d) Any adverse order, judgment, or decree previously entered in connection with the offering by any court or the Securities and Exchange Commission;

(e) If the director by rule and regulation or order requires, a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(f) If the director requests, any other information or copies of any other documents filed under the Securities Act of 1933; and

(g) An undertaking to forward promptly all amendments to the federal registration statement, other than an amendment which merely delays the effective date.

(3) A registration statement under this section shall automatically become effective at the moment the federal registration statement or qualification becomes effective if all the following conditions are satisfied:

(a) No stop order is in effect and no proceeding is pending under the Securities Act of 1933, as amended, or under section 8-1109;

(b) The registration statement has been on file with the director for at least ten days; and

(c) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been filed and the offering is made within those limitations. The registrant shall promptly notify the director by facsimile transmission or electronic mail of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a posteffective amendment containing the information and documents in the price amendment. Price amendment means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(4) Upon failure to receive the required notification and posteffective amendment with respect to the price amendment, the director may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until there has been compliance with this subsection, if he or she promptly notifies the registrant by telephone or electronic mail and promptly confirms by letter sent postage prepaid when he or she notifies by telephone or electronic mail of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and posteffective amendment, the stop order shall be void as of the time of its entry.

(5) The director may by rule and regulation or order waive either or both of the conditions specified in subsections (2) and (3) of this section. If the federal registration statement or qualification becomes effective before all these conditions have been satisfied and they are not waived, the registration statement shall automatically become effective as soon as all the conditions have been satisfied.

Source: Laws 1965, c. 549, § 6, p. 1776; Laws 1967, c. 29, § 1, p. 142; Laws 1977, LB 263, § 3; Laws 1988, LB 795, § 3; Laws 1993, LB 216, § 4; Laws 2015, LB252, § 1; Laws 2016, LB771, § 1; Laws 2017, LB148, § 5.

8-1107 Registration by qualification.

(1) Any security may be registered by qualification.

(2) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in section 8-1108 and, if required under section 8-1112, a consent to service of process meeting the requirements of that section:

(a) With respect to the issuer and any significant subsidiary, its name, address, and form of organization, the state or foreign jurisdiction and date of its organization, the general character and location of its business, and a description of its physical properties and equipment;

(b) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions, his or her name, address, and principal occupation for the past five years, the amount of securities of the issuer held by him or her as of a specified date within ninety days of the filing of the registration statement, the remuneration paid to all such persons in the aggregate during the past twelve months, and estimated to be paid during the next twelve months, directly or indirectly, by the issuer together with all predecessors, parents and subsidiaries;

(c) With respect to any person not named in subdivision (e) of this subsection, owning of record, or beneficially if known, ten percent or more of the outstanding shares of any class of equity security of the issuer, the information specified in subdivision (b) of this subsection other than his or her occupation;

(d) With respect to every promoter, not named in subdivision (b) of this subsection, if the issuer was organized within the past three years, the information specified in subdivision (b) of this subsection, any amount paid to him or her by the issuer within that period or intended to be paid to him or her, and the consideration for any such payment;

(e) The capitalization and long-term debt, on both a current and a pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration whether in the form of cash, physical assets, services, patents, goodwill, or anything else for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities;

(f) The kind and amount of securities to be offered, the amount to be offered in this state, the proposed offering price and any variation therefrom at which any portion of the offering is to be made to any persons except as underwriting

and selling discounts and commissions, the estimated aggregate underwriting and selling discounts or commissions and finders' fees including separately cash, securities, or anything else of value to accrue to the underwriters in connection with the offering, the estimated amounts of other selling expenses, and legal, engineering, and accounting expenses to be incurred by the issuer in connection with the offering, the name and address of every underwriter and every recipient of a finders' fee, a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined, and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(g) The estimated cash proceeds to be received by the issuer from the offering, the purposes for which the proceeds are to be used by the issuer, the amount to be used for each purpose, the order or priority in which the proceeds will be used for the purposes stated, the amounts of any funds to be raised from other sources to achieve the purposes stated, and the sources of any such funds, and, if any part of the proceeds is to be used to acquire any property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors and the purchase price;

(h) A description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in subdivision (b), (c), (d), (e) or (g) of this subsection and by any person who holds or will hold ten percent or more in the aggregate of any such options;

(i) Any adverse order, judgment or decree previously entered in connection with the offering by any court or the Securities and Exchange Commission, and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets including any such litigation or proceeding known to be contemplated by governmental authorities;

(j) A specimen or copy of the security being registered, a copy of the issuer's articles of incorporation and bylaws, or their substantial equivalent as currently in effect, and a copy of any indenture or other instrument covering the security to be registered;

(k) A signed or conformed copy of an opinion of counsel, if available, as to the legality of the security being registered;

(l) A balance sheet of the issuer as of a date within four months prior to the filing of the registration statement, a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years, and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant;

(m) If a report or valuation, other than an official record that is public, is used in connection with the registration statement, a signed or conformed copy of a consent of any accountant, engineer, appraiser, or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified the report or valuation;

(n) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed; and

(o) A copy of any prospectus or circular intended as of the effective date to be used in connection with the offering.

(3) In the case of a nonissuer distribution, information may not be required under this section unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

(4) A registration statement under this section shall become effective when the director so orders. The director shall require as a condition of registration under this section that a prospectus containing substantially the information specified in subdivisions (a) to (m) of subsection (2) of this section be sent or given to each person to whom an offer is made before or concurrently with the first written offer made to him or her otherwise than by means of a public advertisement by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him or her as a participant in the distribution, the confirmation of any sale made by or for the account of any such person, payment pursuant to any such sale, or delivery of the security pursuant to any such sale, whichever first occurs, but the director shall accept for use under any such requirement a current prospectus or offering circular regarding the same securities filed under the Securities Act of 1933 or rules and regulations under such act.

Source: Laws 1965, c. 549, § 7, p. 1778; Laws 2017, LB148, § 6.

8-1108 Registration of securities; requirements; fees; effective date; reports; director, powers.

(1) A registration statement may be filed by the issuer, by any other person on whose behalf the offering is to be made, or by a registered broker-dealer. Any document filed under the Securities Act of Nebraska within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The director may by rule and regulation or order permit the omission of any item of information or document from any registration statement.

(2) The director may require as a condition of registration by qualification (a) that the proceeds from the sale of the registered security be impounded until the issuer receives a specified amount, (b) that the applicant comply with the Securities Act of 1933 if it appears to the director to be in the public interest or that the registered security is or will be offered in such manner as to be subject to such act, (c) such reasonable conditions, restrictions, or limitations upon the offering as may be in the public interest, or (d) that any security issued within the past three years, or to be issued, to a promoter for a consideration substantially different from the public offering price or to any person for a consideration other than cash, be delivered in escrow to him or her or to some other depository satisfactory to him or her under an escrow agreement that the owners of such securities shall not be entitled to sell or transfer such securities or to withdraw such securities from escrow until all other stockholders who have paid for their stock in cash shall have been paid a dividend or dividends aggregating not less than six percent of the initial offering price shown to the satisfaction of the director to have been actually earned on the investment in any common stock so held. The director shall not reject a depository solely because of location in another state. In case of dissolution or insolvency during

the time such securities are held in escrow, the owners of such securities shall not participate in the assets until after the owners of all other securities shall have been paid in full.

(3) For the registration of securities by coordination or qualification, there shall be paid to the director a registration fee of one-tenth of one percent of the aggregate offering price of the securities which are to be offered in this state, but the fee shall in no case be less than one hundred dollars. When a registration statement is withdrawn before the effective date or a preeffective stop order is entered under section 8-1109, the director shall retain one hundred dollars of the fee. Any issuer who sells securities in this state in excess of the aggregate amount of securities registered may, at the discretion of the director and while such registration is still effective, apply to register the excess securities sold to persons within this state by paying a registration fee of three-tenths of one percent for the difference between the initial fee paid and the fee required in this subsection. Registration of the excess securities, if granted, shall be effective retroactively to the date of the existing registration.

(4) When securities are registered by coordination or qualification, they may be offered and sold by a registered broker-dealer. Every registration shall remain effective for one year or until sooner revoked by the director or sooner terminated upon request of the registrant with the consent of the director. All outstanding securities of the same class as a registered security shall be considered to be registered for the purpose of any nonissuer transaction. A registration statement which has become effective may not be withdrawn for one year from its effective date if any securities of the same class are outstanding.

(5) The director may require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which are being offered and sold directly by or for the account of the issuer.

(6) A registration of securities shall be effective for a period of one year or such shorter period as the director may determine.

Source: Laws 1965, c. 549, § 8, p. 1781; Laws 1988, LB 1157, § 1; Laws 1991, LB 305, § 4; Laws 1997, LB 335, § 4; Laws 2013, LB214, § 3; Laws 2017, LB148, § 7.

8-1108.01 Securities; sale without registration; cease and desist order; fine; lien; hearing.

(1) Whenever it appears to the director that the sale of any security is subject to registration under the Securities Act of Nebraska and is being offered or has been offered for sale without such registration, he or she may order the issuer or offerer of such security to cease and desist from the further offer or sale of such security unless and until it has been registered under the act.

(2) Whenever it appears to the director that any person is acting as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative without registration as such or acting as a federal covered adviser without making a notice filing under the act, he or she may order such person to cease and desist from such activity unless and until he or she has been registered as such or has made the required notice filing under the act.

(3) Whenever it appears to the director that any person is violating section 8-1102, he or she may order the person to cease and desist from such activity.

(4) The director may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed twenty-five thousand dollars per violation, in addition to costs of the investigation, upon a person found to have engaged in any act or practice which would constitute a violation of the act or any rule and regulation or order under the act, except that the director shall not impose a fine upon any person in connection with a transaction made pursuant to subdivision (23) of section 8-1111 for any statement of a material fact made or for an omission of a material fact required to be stated or necessary to make the statement made not misleading unless such statement or omission was made with the intent to defraud or mislead. The fine and costs shall be in addition to all other penalties imposed by the laws of this state. The director shall collect the fines and costs and remit them to the State Treasurer. The State Treasurer shall credit the costs to the Securities Act Cash Fund and distribute the fines in accordance with Article VII, section 5, of the Constitution of Nebraska. Imposition of any fine and payment of costs under this subsection may be appealed pursuant to section 8-1119. If a person fails to pay the fine or costs of the investigation referred to in this subsection, a lien in the amount of the fine and costs shall be imposed upon all of the assets and property of such person in this state and may be recovered by an action by the director and remitted to the State Treasurer. The State Treasurer shall credit the costs to the Securities Act Cash Fund and distribute the fines in accordance with Article VII, section 5, of the Constitution of Nebraska. Failure of the person to pay a fine and costs shall also constitute a forfeiture of his or her right to do business in this state under the Securities Act of Nebraska.

(5) After such an order has been made under subsection (1), (2), (3), or (4) of this section, if a request for a hearing is filed in writing within fifteen business days of the issuance of the order by the person to whom such order was directed, a hearing shall be held by the director within thirty business days after receipt of the request, unless both parties consent to a later date or the director or a hearing officer sets a later date for good cause. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order.

Source: Laws 1974, LB 721, § 5; Laws 1987, LB 650, § 1; Laws 1990, LB 956, § 8; Laws 1993, LB 216, § 5; Laws 1997, LB 335, § 5; Laws 2001, LB 53, § 21; Laws 2013, LB205, § 1; Laws 2017, LB148, § 8.

8-1108.02 Federal covered security; filing; director; powers; sales; requirements; fees; consent to service of process.

(1) The director, by rule and regulation or order, may require the filing of any or all of the following documents with respect to a federal covered security under section 18(b)(2) of the Securities Act of 1933:

(a) Prior to the initial offer of such federal covered security in this state, all documents that are part of a federal registration statement filed with the

Securities and Exchange Commission under the Securities Act of 1933, together with a consent to service of process signed by the issuer and with a filing fee as prescribed by section 8-1108.03;

(b) After the initial offer of such federal covered security in this state, all documents which are part of any amendment to the federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933; and

(c) A sales report of the total amount of such federal covered securities offered or sold in this state, together with the filing fee prescribed by section 8-1108.03.

(2)(a) The director, by rule and regulation or order, may require the filing of any document required to be filed with the Securities and Exchange Commission under the Securities Act of 1933 with respect to a federal covered security under section 18(b)(3) of the Securities Act of 1933 together with a filing fee of two hundred dollars.

(b) The director, by rule and regulation or order, may require the filing of any document required to be filed with the Securities and Exchange Commission under the Securities Act of 1933 with respect to a federal covered security under section 18(b)(4) of the Securities Act of 1933 together with a filing fee of two hundred dollars. In addition, for federal covered securities under section 18(b)(4)(F) of the Securities Act of 1933, the director may also require the submission of a consent to service of process signed by the issuer. Such filing shall be made no later than fifteen days after the first sale of such federal covered security in this state, except that failure to give such notice may be cured by an order issued by the director at the director's discretion and upon the payment of an additional two hundred dollars as a late filing fee.

(c) In connection with filings made pursuant to subdivisions (a) and (b) of this subsection, the director, by rule and regulation or order, may require the filing of all documents which are part of any amendment which the issuer is required to file with the Securities and Exchange Commission.

(3) The director may issue a stop order suspending the offer and sale of a federal covered security, except a federal covered security under section 18(b)(1) of the Securities Act of 1933, if he or she finds that (a) the order is in the public interest and (b) there is a failure to comply with any condition established under this section or with any other applicable provision of the Securities Act of Nebraska.

(4) The director, by rule and regulation or order, may waive any or all of the provisions of this section, except that the director does not have the authority to waive the payment of fees as required by this section.

(5) No person may bring an action pursuant to section 8-1118 based on the failure of an issuer to file any notice or pay any fee required by this section.

(6) All federal covered securities offered or sold in this state must be sold through a registered agent of a broker-dealer registered under the Securities Act of Nebraska or by persons duly exempted or excluded from such registration, except that this subsection shall not apply to the offer or sale of the following, so long as no commission or other remuneration is paid directly or indirectly for soliciting any prospective buyer:

(a) A federal covered security under section 18(b)(4)(F) of the Securities Act of 1933; or

(b) A federal covered security under section 18(b)(3) of the Securities Act of 1933 which is exempt from federal registration pursuant to Tier 2 of federal Regulation A, 17 C.F.R. 230.251(a).

Source: Laws 1997, LB 335, § 9; Laws 2013, LB214, § 4; Laws 2015, LB252, § 2; Laws 2016, LB771, § 2; Laws 2019, LB259, § 4; Laws 2021, LB363, § 14.

8-1108.03 Federal covered security; filing fee; notice; open-end management company, face-amount certificate company, or unit investment trust; issue indefinite amount of securities; when.

(1) Except as provided in subsections (2) and (3) of this section, there shall be paid to the director a filing fee of one-tenth of one percent of the aggregate offering price of the federal covered securities under section 18(b)(2) of the Securities Act of 1933 which are to be offered in this state, but the filing fee shall in no case be less than one hundred dollars. If an issuer of securities covered by section 8-1108.02 sells securities in this state in excess of the aggregate amount of securities for which a filing fee has been paid, the director may allow the issuer to amend its filing to include the excess securities sold to persons within this state if the issuer pays a filing fee of three-tenths of one percent for the difference between the initial filing fee paid and the filing fee required under this section for the total amount of securities sold. Any such amendment of a filing to cover the excess securities, if granted, shall be effective retroactively to the date of the existing filing.

Any notice filed pursuant to this section shall be effective for a period of one year from the date received by the director or from such later date as indicated on the notice unless sooner terminated by the issuer. Notice filings must be renewed annually. Notices may be amended by submitting an amended notice filing indicating any material changes and paying any fees, pursuant to this section, that may be required by an increase in the amount of securities covered by the notice.

(2) An open-end management company or a face-amount certificate company, as those terms are defined in the Investment Company Act of 1940, may choose to issue an indefinite amount of securities, if the following conditions are met:

(a) The filing made pursuant to subsection (1) of section 8-1108.02 states the company intends to issue an indefinite amount of securities in this state and is accompanied by a filing fee of one thousand dollars;

(b) Within ninety calendar days after the expiration of the notice, the company files a sales report containing the actual sales that occurred in this state for the one-year notice period just expired. During such ninety-day period, the notice filing shall be considered continuous;

(c) If the sales report required by subdivision (b) of this subsection shows that the company sold securities in excess of the amount of securities for which the filing fee was paid, the company must pay an additional fee to be calculated as follows: One-tenth of one percent of the aggregate amount of securities sold up to the first ten million dollars; and one-twentieth of one percent of the remainder of the aggregate amount of securities sold. The initial filing fee of one thousand dollars shall be deducted from the fee required to be paid pursuant to such subdivision. If this calculation results in a negative amount,

no payment shall be made and no credit or refund shall be allowed or returned for such negative amount;

(d) A company may continue the effectiveness of its notice to issue an indefinite amount of securities for another notification period if, upon the filing of a sales report required by subdivision (b) of this subsection, the company pays the renewal filing fee of one thousand dollars pursuant to subdivision (a) of this subsection, plus any additional fee which may be owed pursuant to subdivision (c) of this subsection;

(e) The notification shall be effective for a period of one year beginning on the date the notice is received by the director unless a later date is indicated on the notice; and

(f) Failure to file the sales report and pay any additional fees owed shall be cause for the director to issue an order suspending sales of the securities for which the sales report has not been filed and the appropriate fee has not been paid.

(3) A unit investment trust, as that term is defined in the Investment Company Act of 1940, may choose to issue an indefinite amount of securities for a period of one year or less if the following conditions are met:

(a) The unit investment trust issuer electing to offer an indefinite amount of securities files a notice pursuant to subsection (1) of section 8-1108.02, stating that it intends to issue an indefinite amount of securities for a period of one year or less in this state, and pays an initial filing fee of one hundred dollars with the notice filing;

(b) Within ninety calendar days after the occurrence of the earlier of the expiration of the trust's notice filing period, the termination of the offering by the issuer, or the completion of the offering, each trust files a sales report containing the total aggregate offering price of the securities sold in this state for the offering period just expired or terminated;

(c) If the sales report required by subdivision (b) of this subsection shows that the trust sold securities in excess of the amount of securities for which the filing fee was paid, the trust must pay an additional fee of one-tenth of one percent of the aggregate offering price of the excess securities sold. The initial fee of one hundred dollars shall be deducted from the filing fee paid pursuant to this subdivision. If this calculation results in a negative amount, no payment need be made and no credit or refund shall be allowed or returned for that negative amount; and

(d) Failure to file the sales report and pay any additional fees owed shall be cause for the director to issue an order suspending sales of the securities for which the sales report has not been filed and the appropriate fee has not been paid.

Source: Laws 1997, LB 335, § 10.

8-1109 Registration of securities; denial, suspension, or revocation; grounds.

The director may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement to register securities by coordination if he or she finds that the order is in the public interest and that:

(1) Any such registration statement registering securities, as of its effective date or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement which was, in the

light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) Any provision of the Securities Act of Nebraska or any rule and regulation or order, or condition under the act has been violated, in connection with the offering by the person filing the registration statement, the issuer, any partner, limited liability company member, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer or any underwriter;

(3) The security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering. The director may not institute a proceeding against an effective registration statement under this subdivision more than one year from the date of the injunction relied on, and he or she may not enter an order under this subdivision on the basis of an injunction entered under any other state act unless the injunction was based on facts which would currently constitute a ground for a stop order under this section;

(4) When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by subdivision (2)(g) of section 8-1106;

(5) The applicant or registrant has failed to pay the proper registration fee. The director may enter only a denial order under this subdivision and shall vacate any such order when the deficiency has been corrected. The director may not enter an order against an effective registration statement on the basis of a fact or transaction known to him or her when the registration statement became effective;

(6) The authority of the applicant or registrant to do business has been denied or revoked by any other governmental agency;

(7) The issuer's or registrant's literature, circulars, or advertising is misleading, incorrect, incomplete, or calculated to deceive the purchaser or investor;

(8) All or substantially all the enterprise or business of the issuer, promoter, or guarantor has been found to be unlawful by a final order of a court or administrative agency of competent jurisdiction; or

(9) There is a refusal to furnish information required by the director within a reasonable time to be fixed by the director.

Source: Laws 1965, c. 549, § 9, p. 1783; Laws 1967, c. 29, § 2, p. 144; Laws 1973, LB 167, § 4; Laws 1977, LB 263, § 4; Laws 1987, LB 27, § 1; Laws 1993, LB 121, § 98; Laws 1994, LB 884, § 13; Laws 2013, LB214, § 5; Laws 2017, LB148, § 9.

8-1109.01 Registration of securities; denial, suspension, or revocation; additional grounds.

The director may issue an order denying effectiveness to, or suspend or revoke the effectiveness of, a registration statement to register securities by qualification if he or she finds that the conditions in subdivision (1) of section 8-1109, or if he or she finds that any of the following conditions exist:

(1) Such order is in the public interest;

(2) The issuer's plan of business, or the plan of financing is either unfair, unjust, inequitable, dishonest, oppressive, or fraudulent or would tend to work a fraud upon the purchaser;

(3) The issuer's or registrant's literature, circulars, or advertising is misleading, incorrect, incomplete, or calculated to deceive the purchaser or investor;

(4) The securities offered or to be offered, or issued or to be issued, in payment for property, patents, formulas, goodwill, promotion, or intangible assets, are in excess of the reasonable value thereof, or the offering has been, or would be, made with unreasonable amounts of options;

(5) The offering has been or would be made with unreasonable amounts of underwriters' or sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options. However, in an application to register the securities for a holding company which is organized for one of its purposes to acquire or start an insurance company, the total commissions, organization and promotion expenses shall not exceed ten percent of the money paid upon stock subscriptions;

(6) The authority of the applicant or registrant to do business has been denied or revoked by any other governmental agency;

(7) The enterprise or business of the issuer, promoter, or guarantor is unlawful;

(8) There is a refusal to furnish information required by the director within a reasonable time to be fixed by the director;

(9) There has been a violation of the Securities Act of Nebraska, any rule and regulation under the act, or an order of the director of which such issuer or registrant has notice;

(10) There has been a failure to keep and maintain sufficient records to permit an audit satisfactorily disclosing to the director the true situation or condition of such issuer;

(11) The applicant or registrant has failed to pay the proper registration, filing, or investigation fee;

(12) Any registration statement registering securities by qualification, as of its effective date or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact; or

(13) The security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any federal or state act applicable to the offering.

Source: Laws 1967, c. 29, § 3, p. 145; Laws 2002, LB 857, § 1; Laws 2017, LB148, § 10.

8-1109.02 Registration of securities; order of denial, suspension, or revocation; notice; request for hearing; modification of order.

Upon the entry of an order denying effectiveness to or suspending or revoking the effectiveness of a registration statement to register securities under any part of section 8-1109 or 8-1109.01, the director shall promptly notify the issuer of the securities and the applicant or registrant that the order has been entered and of the reasons therefor and that any person to whom the order is

directed may request a hearing within fifteen business days after the issuance of the order. Upon receipt of a written request the matter will be set down for hearing to commence within thirty business days after the receipt unless the parties consent to a later date or the director or a hearing officer sets a later date for good cause. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing to the issuer and to the applicant or registrant, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order. The director may modify or vacate a stop order if he or she finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

Source: Laws 1967, c. 29, § 4, p. 146; Laws 1990, LB 956, § 9; Laws 2001, LB 53, § 22; Laws 2017, LB148, § 11.

Failure of the Department of Banking and Finance to produce certified mail receipt is not conclusive proof that no notice was given. State v. Fries, 214 Neb. 874, 337 N.W.2d 398 (1983).

The alleged failure of the department to comply with the hearing requirements of this section were collateral matters in this criminal action and could not be raised on appeal. State v. Fries, 214 Neb. 874, 337 N.W.2d 398 (1983).

8-1110 Securities exempt from registration.

Sections 8-1104 to 8-1109 shall not apply to any of the following securities:

(1) Any security, including a revenue obligation, issued or guaranteed by the State of Nebraska, any political subdivision, or any agency or corporate or other instrumentality thereof or any certificate of deposit for any of the foregoing;

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) Any security issued or guaranteed by any federal credit union or any credit union or similar association organized and supervised under the laws of this state;

(4) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is (a) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality or (b) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;

(5)(a) Any federal covered security specified in section 18(b)(1) of the Securities Act of 1933 or by rule adopted under that provision;

(b) Any security listed or approved for listing on another securities market specified by rule and regulation or order under the Securities Act of Nebraska;

(c) Any put or a call option contract, a warrant, or a subscription right on or with respect to securities described in subdivisions (a) or (b) of this subdivision;

(d) Any option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the

Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934;

(e) Any offer or sale of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or

(f) Any option or a derivative security designated by the Securities and Exchange Commission under section 9(b) of the Securities Exchange Act of 1934;

(6) Any security which meets all of the following conditions:

(a) The issuer is organized under the laws of the United States or a state or has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of such agent in its prospectus;

(b) A class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 and has been so registered for the three years immediately preceding the offering date;

(c) Neither the issuer nor a significant subsidiary has had a material default during the last seven years, or during the issuer's existence if such existence is less than seven years, in the payment of (i) principal, interest, dividends, or sinking-fund installments on preferred stock or indebtedness for borrowed money or (ii) rentals under leases with terms of three or more years;

(d) The issuer has had consolidated net income, without taking into account extraordinary items and the cumulative effect of accounting changes, of at least one million dollars in four of its last five fiscal years, including its last fiscal year, and if the offering is of interest-bearing securities the issuer has had for its last fiscal year net income before deduction for income taxes and depreciation of at least one and one-half times the issuer's annual interest expense, taking into account the proposed offering and the intended use of the proceeds. However, if the issuer of the securities is a finance company which has liquid assets of at least one hundred five percent of its liabilities, other than deferred income taxes, deferred investment tax credit, capital stock, and surplus, at the end of its last five fiscal years, the net income requirement before deduction for interest expense shall be one and one-fourth times its annual interest expense. For purposes of this subdivision: (i) Last fiscal year means the most recent year for which audited financial statements are available, if such statements cover a fiscal period ending not more than fifteen months from the commencement of the offering; (ii) finance company means a company engaged primarily in the business of wholesale, retail, installment, mortgage, commercial, industrial, or consumer financing, banking, or factoring; and (iii) liquid assets means (A) cash, (B) receivables payable on demand or not more than twelve months following the close of the company's last fiscal year less applicable reserves and unearned income, and (C) readily marketable securities less applicable reserves and unearned income;

(e) If the offering is of stock or shares other than preferred stock or shares, such securities have voting rights which include (i) the right to have at least as many votes per share and (ii) the right to vote on at least as many general corporate decisions as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law; and

(f) If the offering is of stock or shares other than preferred stock or shares, such securities are owned beneficially or of record on any date within six months prior to the commencement of the offering by at least one thousand two hundred persons, and on such date there are at least seven hundred fifty thousand such shares outstanding with an aggregate market value of at least three million seven hundred fifty thousand dollars based on the average bid price for such day. When determining the number of persons who are beneficial owners of the stock or shares of an issuer, for purposes of this subdivision, the issuer or broker-dealer may rely in good faith upon written information furnished by the record owners;

(7) Any security issued or guaranteed as to both principal and interest by an international bank of which the United States is a member; or

(8) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, as a chamber of commerce, or as a trade or professional association.

Source: Laws 1965, c. 549, § 10, p. 1785; Laws 1973, LB 167, § 5; Laws 1980, LB 912, § 1; Laws 1989, LB 391, § 1; Laws 1992, LB 758, § 1; Laws 1993, LB 216, § 6; Laws 1994, LB 942, § 1; Laws 1996, LB 1053, § 8; Laws 1997, LB 335, § 6; Laws 2001, LB 53, § 23; Laws 2003, LB 131, § 9; Laws 2009, LB113, § 1; Laws 2011, LB76, § 2; Laws 2017, LB148, § 12.

8-1111 Transactions exempt from registration.

Except as provided in this section, sections 8-1103 to 8-1109 shall not apply to any of the following transactions:

(1) Any isolated transaction, whether effected through a broker-dealer or not;

(2)(a) Any nonissuer transaction by a registered agent of a registered broker-dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety days if, at the time of the transaction:

(i) The issuer of the security is actually engaged in business and not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons;

(ii) The security is sold at a price reasonably related to the current market price of the security;

(iii) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security;

(iv) A nationally recognized securities manual designated by rule and regulation or order of the director or a document filed with the Securities and Exchange Commission which is publicly available through the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) contains:

(A) A description of the business and operations of the issuer;

(B) The names of the issuer's officers and the names of the issuer's directors, if any, or, in the case of a non-United-States issuer, the corporate equivalents of such persons in the issuer's country of domicile;

(C) An audited balance sheet of the issuer as of a date within eighteen months or, in the case of a reorganization or merger when parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; and

(D) An audited income statement for each of the issuer's immediately preceding two fiscal years, or for the period of existence of the issuer if in existence for less than two years, or, in the case of a reorganization or merger when the parties to the reorganization or merger had such audited income statement, a pro forma income statement; and

(v) The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934 unless:

(A) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;

(B) The issuer of the security has been engaged in continuous business, including predecessors, for at least three years; or

(C) The issuer of the security has total assets of at least two million dollars based on an audited balance sheet as of a date within eighteen months or, in the case of a reorganization or merger when parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; or

(b) Any nonissuer transaction in a security by a registered agent of a registered broker-dealer if:

(i) The issuer of the security is actually engaged in business and not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons; and

(ii) The security is senior in rank to the common stock of the issuer both as to payment of dividends or interest and upon dissolution or liquidation of the issuer and such security has been outstanding at least three years and the issuer or any predecessor has not defaulted within the current fiscal year or the three immediately preceding fiscal years in the payment of any dividend, interest, principal, or sinking fund installment on the security when due and payable.

The director may by order deny or revoke the exemption specified in subdivision (a) or (b) of subdivision (2) of this section with respect to a specific security. Upon the entry of such an order, the director shall promptly notify all registered broker-dealers that such order has been entered and the reasons for such order and that within fifteen business days after receipt of a written request the matter will be set for hearing. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain in effect until modified or vacated by the director. If a hearing is requested or ordered, the director shall, after notice of and opportunity for hearing to all interested persons, enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order. No such order shall operate retroactively. No person may be considered to have violated the Securities Act of Nebraska by reason of any offer or sale effected after the entry of any such

order if he or she sustains the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the order;

(3) Any nonissuer transaction effected by or through a registered agent of a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the director may by rule and regulation or order require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each such form be preserved by the broker-dealer for a specified period;

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust or by an agreement for the sale of real estate or chattels if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, are offered and sold as a unit. Such exemption shall not apply to any transaction in a bond or other evidence of indebtedness secured by a real estate mortgage or deed of trust or by an agreement for the sale of real estate if the real estate securing the evidences of indebtedness are parcels of real estate the sale of which requires the subdivision in which the parcels are located to be registered under the federal Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701 et seq.;

(6) Any transaction by an executor, personal representative, administrator, sheriff, marshal, receiver, guardian, or conservator;

(7) Any transaction executed by a bona fide pledgee without any purpose of evading the Securities Act of Nebraska;

(8)(a) Any offer or sale to any of the following, whether the purchaser is acting for itself or in some fiduciary capacity:

(i) A bank, savings institution, credit union, trust company, or other financial institution;

(ii) An insurance company;

(iii) An investment company as defined in the Investment Company Act of 1940;

(iv) A pension or profit-sharing trust;

(v) A broker-dealer;

(vi) A corporation with total assets in excess of five million dollars, not formed for the specific purpose of acquiring the securities offered;

(vii) A Massachusetts or similar business trust with total assets in excess of five million dollars, not formed for the specific purpose of acquiring the securities offered;

(viii) A partnership with total assets in excess of five million dollars, not formed for the specific purpose of acquiring the securities offered;

(ix) A trust with total assets in excess of five million dollars, not formed for the specific purpose of acquiring the securities, whose purchase is directed by a person who has such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the prospective investment;

(x) Any entity in which all of the equity owners are individuals who are individual accredited investors as defined in subdivision (b) of this subdivision;

(xi) An institutional buyer as may be defined by the director by rule and regulation or order; or

(xii) An individual accredited investor.

(b) For purposes of subdivision (8)(a) of this section, individual accredited investor means (i) any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer, (ii) any manager of a limited liability company that is the issuer of the securities being offered or sold, (iii) any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his or her purchase, exceeds one million dollars, excluding the value of the primary residence of such person, or (iv) any natural person who had an individual income in excess of two hundred thousand dollars in each of the two most recent years or joint income with that person's spouse in excess of three hundred thousand dollars in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(9)(a) Any transaction pursuant to an offering in which sales are made to not more than fifteen persons, other than those designated in subdivisions (8), (11), and (17) of this section, in this state during any period of twelve consecutive months if (i) the seller reasonably believes that all the buyers are purchasing for investment, (ii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer except to a registered agent of a registered broker-dealer, (iii) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, and (iv) no general or public advertisements or solicitations are made.

(b) If a seller (i) makes sales pursuant to this subdivision for five consecutive twelve-month periods or (ii) makes sales of at least one million dollars from an offering or offerings pursuant to this subdivision, the seller shall, within ninety days after the earlier of either such occurrence, file with the director audited financial statements and a sales report which lists the names and addresses of all purchasers and holders of the seller's securities and the amount of securities held by such persons. Subsequent thereto, such seller shall file audited financial statements and sales reports with the director each time an additional one million dollars in securities is sold pursuant to this subdivision or after the elapse of each additional sixty-month period during which sales are made pursuant to this subdivision;

(10) Any offer or sale of a preorganization certificate or subscription if (a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (b) the number of subscribers does not exceed ten, and (c) no payment is made by any subscriber;

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, if (a) no commission or other remuneration, other than a standby commission, is paid or given directly or indirectly for soliciting any security holder in this state or (b) the

issuer first files a notice specifying the terms of the offer and the director does not by order disallow the exemption within the next five full business days;

(12) Any offer, but not a sale, of a security for which registration statements have been filed under both the Securities Act of Nebraska and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either the Securities Act of Nebraska or the Securities Act of 1933;

(13) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by the stockholders for the distribution other than the surrender of a right to a cash dividend when the stockholder can elect to take a dividend in cash or stock;

(14) Any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

(15) Any transaction involving the issuance for cash of any evidence of ownership interest or indebtedness by a cooperative formed as a corporation under section 21-1301 or 21-1401 or a limited cooperative association formed under the Nebraska Limited Cooperative Association Act if the issuer has first filed a notice of intention to issue with the director and the director has not by order, mailed to the issuer by certified or registered mail within ten business days after receipt thereof, disallowed the exemption;

(16) Any transaction in this state not involving a public offering when (a) there is no general or public advertising or solicitation, (b) no commission or remuneration is paid directly or indirectly for soliciting any prospective buyer, except to a registered agent of a registered broker-dealer or registered issuer-dealer, (c) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, (d) a filing fee of two hundred dollars is paid at the time of filing the notice, and (e) any such transaction is effected in accordance with rules and regulations of the director relating to this section when the director finds in adopting and promulgating such rules and regulations that the applicability of sections 8-1104 to 8-1107 is not necessary or appropriate in the public interest or for the protection of investors. For purposes of this subdivision, not involving a public offering means any offering in which the seller has reason to believe that the securities purchased are taken for investment and in which each offeree, by reason of his or her knowledge about the affairs of the issuer or otherwise, does not require the protections afforded by registration under sections 8-1104 to 8-1107 in order to make a reasonably informed judgment with respect to such investment;

(17) Any security issued in connection with an employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees, if no commission or other remuneration is paid or given directly or

indirectly for soliciting any prospective buyer except to a registered agent of a registered broker-dealer. This subdivision shall apply to offers and sales to the following individuals:

(a) Directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisors;

(b) Family members who acquire such securities from those persons through gifts or domestic relations orders;

(c) Former employees, directors, general partners, trustees, officers, consultants, and advisors if those individuals were employed by or providing services to the issuer when the securities were offered; and

(d) Insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than fifty percent of their annual income from those organizations;

(18) Any interest in a common trust fund or similar fund maintained by a bank or trust company organized and supervised under the laws of any state or a bank organized under the laws of the United States for the collective investment and reinvestment of funds contributed to such common trust fund or similar fund by the bank or trust company in its capacity as trustee, personal representative, administrator, or guardian and any interest in a collective investment fund or similar fund maintained by the bank or trust company for the collective investment of funds contributed to such collective investment fund or similar fund by the bank or trust company in its capacity as trustee or agent which interest is issued in connection with an employee's savings, pension, profit-sharing, or similar benefit plan or a self-employed person's retirement plan, if a notice generally describing the terms of the collective investment fund or similar fund is filed by the bank or trust company with the director within thirty days after the establishment of the fund. Failure to give the notice may be cured by an order issued by the director in his or her discretion;

(19) Any transaction in which a United States Series EE Savings Bond is given or delivered with or as a bonus on account of any purchase of any item or thing;

(20) Any transaction in this state not involving a public offering by a Nebraska issuer selling solely to Nebraska residents, when (a) any such transaction is effected in accordance with rules and regulations of the director relating to this section when the director finds in adopting and promulgating such rules and regulations that the applicability of sections 8-1104 to 8-1107 is not necessary or appropriate in the public interest or for the protection of investors, (b) no commission or remuneration is paid directly or indirectly for soliciting any prospective buyer, except to a registered agent of a registered broker-dealer or registered issuer-dealer, (c) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director no later than twenty days prior to any sales for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, (d) a filing fee of two hundred dollars is paid at the time of filing the notice, and (e) there is no general or public advertising or solicitation;

(21) Any transaction by a person who is an organization described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01 involving an offering of interests in a fund described in section 3(c)(10)(B) of the

Investment Company Act of 1940 solely to persons who are organizations described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01 when (a) there is no general or public advertising or solicitation, (b) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, and (c) any such transaction is effected by a trustee, director, officer, employee, or volunteer of the seller who is either a volunteer or is engaged in the overall fundraising activities of a charitable organization and receives no commission or other special compensation based on the number or the value of interests sold in the fund;

(22) Any offer or sale of any viatical settlement contract or any fractionalized or pooled interest therein in a transaction that meets all of the following criteria:

(a) Sales of such securities are made only to the following purchasers:

(i) A natural person who, either individually or jointly with the person's spouse, (A) has a minimum net worth of two hundred fifty thousand dollars and had taxable income in excess of one hundred twenty-five thousand dollars in each of the two most recent years and has a reasonable expectation of reaching the same income level in the current year or (B) has a minimum net worth of five hundred thousand dollars. Net worth shall be determined exclusive of home, home furnishings, and automobiles;

(ii) A corporation, partnership, or other organization specifically formed for the purpose of acquiring securities offered by the issuer in reliance upon this exemption if each equity owner of the corporation, partnership, or other organization is a person described in subdivision (22)(a)(i) of this section;

(iii) A pension or profit-sharing trust of the issuer, a self-employed individual retirement plan, or an individual retirement account, if the investment decisions made on behalf of the trust, plan, or account are made solely by persons described in subdivision (22)(a)(i) of this section; or

(iv) An organization described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01, or a corporation, Massachusetts or similar business trust, or partnership with total assets in excess of five million dollars according to its most recent audited financial statements;

(b) The amount of the investment of any purchaser, except a purchaser described in subdivision (a)(ii) of this subdivision, does not exceed five percent of the net worth, as determined by this subdivision, of that purchaser;

(c) Each purchaser represents that the purchaser is purchasing for the purchaser's own account or trust account, if the purchaser is a trustee, and not with a view to or for sale in connection with a distribution of the security;

(d)(i) Each purchaser receives, on or before the date the purchaser remits consideration pursuant to the purchase agreement, the following information in writing:

(A) The name, principal business and mailing addresses, and telephone number of the issuer;

(B) The suitability standards for prospective purchasers as set forth in subdivision (a) of this subdivision;

(C) A description of the issuer's type of business organization and the state in which the issuer is organized or incorporated;

(D) A brief description of the business of the issuer;

(E) If the issuer retains ownership or becomes the beneficiary of the insurance policy, an audit report from an independent certified public accountant together with a balance sheet and related statements of income, retained earnings, and cash flows that reflect the issuer's financial position, the results of the issuer's operations, and the issuer's cash flows as of a date within fifteen months before the date of the initial issuance of the securities described in this subdivision. The financial statements shall be prepared in conformity with generally accepted accounting principles. If the date of the audit report is more than one hundred twenty days before the date of the initial issuance of the securities described in this subdivision, the issuer shall provide unaudited interim financial statements;

(F) The names of all directors, officers, partners, members, or trustees of the issuer;

(G) A description of any order, judgment, or decree that is final as to the issuing entity of any state, federal, or foreign governmental agency or administrator, or of any state, federal, or foreign court of competent jurisdiction (I) revoking, suspending, denying, or censuring for cause any license, permit, or other authority of the issuer or of any director, officer, partner, member, trustee, or person owning or controlling, directly or indirectly, ten percent or more of the outstanding interest or equity securities of the issuer, to engage in the securities, commodities, franchise, insurance, real estate, or lending business or in the offer or sale of securities, commodities, franchises, insurance, real estate, or loans, (II) permanently restraining, enjoining, barring, suspending, or censuring any such person from engaging in or continuing any conduct, practice, or employment in connection with the offer or sale of securities, commodities, franchises, insurance, real estate, or loans, (III) convicting any such person of, or pleading nolo contendere by any such person to, any felony or misdemeanor involving a security, commodity, franchise, insurance, real estate, or loan, or any aspect of the securities, commodities, franchise, insurance, real estate, or lending business, or involving dishonesty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property, or (IV) holding any such person liable in a civil action involving breach of a fiduciary duty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property. This subdivision does not apply to any order, judgment, or decree that has been vacated or overturned or is more than ten years old;

(H) Notice of the purchaser's right to rescind or cancel the investment and receive a refund;

(I) A statement to the effect that any projected rate of return to the purchaser from the purchase of a viatical settlement contract or any fractionalized or pooled interest therein is based on an estimated life expectancy for the person insured under the life insurance policy; that the return on the purchase may vary substantially from the expected rate of return based upon the actual life expectancy of the insured that may be less than, may be equal to, or may greatly exceed the estimated life expectancy; and that the rate of return would be higher if the actual life expectancy were less than, and lower if the actual life expectancy were greater than, the estimated life expectancy of the insured at the time the viatical settlement contract was closed;

(J) A statement that the purchaser should consult with his or her tax advisor regarding the tax consequences of the purchase of the viatical settlement contract or any fractionalized or pooled interest therein; and

(K) Any other information as may be prescribed by rule and regulation or order of the director; and

(ii) The purchaser receives in writing at least five business days prior to closing the transaction:

(A) The name, address, and telephone number of the issuing insurance company and the name, address, and telephone number of the state or foreign country regulator of the insurance company;

(B) The total face value of the insurance policy and the percentage of the insurance policy the purchaser will own;

(C) The insurance policy number, issue date, and type;

(D) If a group insurance policy, the name, address, and telephone number of the group and, if applicable, the material terms and conditions of converting the policy to an individual policy, including the amount of increased premiums;

(E) If a term insurance policy, the term and the name, address, and telephone number of the person who will be responsible for renewing the policy if necessary;

(F) That the insurance policy is beyond the state statute for contestability and the reason therefor;

(G) The insurance policy premiums and terms of premium payments;

(H) The amount of the purchaser's money that will be set aside to pay premiums;

(I) The name, address, and telephone number of the person who will be the insurance policyowner and the person who will be responsible for paying premiums;

(J) The date on which the purchaser will be required to pay premiums and the amount of the premium, if known; and

(K) Any other information as may be prescribed by rule and regulation or order of the director;

(e) The purchaser may rescind or cancel the purchase for any reason by giving written notice of rescission or cancellation to the issuer or the issuer's agent within (i) fifteen calendar days after the date the purchaser remits the required consideration or receives the disclosure required under subdivision (d)(i) of this subdivision and (ii) five business days after the date the purchaser receives the disclosure required by subdivision (d)(ii) of this subdivision. No specific form is required for the rescission or cancellation. The notice is effective when personally delivered, deposited in the United States mail, or deposited with a commercial courier or delivery service. The issuer shall refund all the purchaser's money within seven calendar days after receiving the notice of rescission or cancellation;

(f) A notice of the issuer's intent to sell securities pursuant to this subdivision, signed by a duly authorized officer of the issuer and notarized, together with a filing fee of two hundred dollars, is filed with the department before any offers or sales of securities are made under this subdivision. Such notice shall include:

(i) The issuer's name, the issuer's type of organization, the state in which the issuer is organized, the date the issuer intends to begin selling securities within or from this state, and the issuer's principal business;

(ii) A consent to service of process; and

(iii) An audit report of an independent certified public accountant together with a balance sheet and related statements of income, retained earnings and cash flows that reflect the issuer's financial position, the results of the issuer's operations, and the issuer's cash flows as of a date within fifteen months before the date of the notice prescribed in this subdivision. The financial statements shall be prepared in conformity with generally accepted accounting principles and shall be examined according to generally accepted auditing standards. If the date of the audit report is more than one hundred twenty days before the date of the notice prescribed in this subdivision, the issuer shall provide unaudited interim financial statements;

(g) No commission or remuneration is paid directly or indirectly for soliciting any prospective purchaser, except to a registered agent of a registered broker-dealer or registered issuer-dealer; and

(h) At least ten days before use within this state, the issuer files with the department all advertising and sales materials that will be published, exhibited, broadcast, or otherwise used, directly or indirectly, in the offer or sale of a viatical settlement contract in this state;

(23) Any transaction in this state not involving a public offering by a Nebraska issuer selling solely to Nebraska residents when:

(a) The proceeds from all sales of securities by the issuer in any two-year period do not exceed seven hundred fifty thousand dollars or such greater amount as from time to time may be set in accordance with rules and regulations adopted and promulgated by the director to adjust the amount to reflect changes in the Consumer Price Index for All Urban Consumers as prepared by the United States Department of Labor, Bureau of Labor Statistics, and at least eighty percent of the proceeds are used in Nebraska;

(b) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer except to a registered agent of a registered broker-dealer;

(c) The issuer, any partner or limited liability company member of the issuer, any officer, director, or any person occupying a similar status of the issuer, any person performing similar functions for the issuer, or any person holding a direct or indirect ownership interest in the issuer or in any way a beneficial interest in such sale of securities of the issuer, has not been:

(i) Found by a final order of any state or federal administrative agency or a court of competent jurisdiction to have violated any provision of the Securities Act of Nebraska or a similar act of any other state or of the United States;

(ii) Convicted of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(iii) Found by any state or federal administrative agency or court of competent jurisdiction to have engaged in fraud or deceit, including, but not limited to, making an untrue statement of a material fact or omitting to state a material fact; or

(iv) Temporarily or preliminarily restrained or enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state or with the Securities and Exchange Commission;

(d)(i) At least fifteen business days prior to the offer or sale, the issuer files a notice with the director, which notice shall include:

(A) The name, address, telephone number, and email address of the issuer;

(B) The name and address of each person holding direct or indirect ownership or beneficial interest in the issuer;

(C) The amount of the offering; and

(D) The type of security being offered, the manner in which purchasers will be solicited, and a statement made upon oath or affirmation that the conditions of this exemption have been or will be met.

(ii) Failure to give such notice may be cured by an order issued by the director in his or her discretion;

(e) Prior to payment of consideration for the securities, the offeree receives a written disclosure statement containing (i) a description of the proposed use of the proceeds of the offering; (ii) the name of each partner or limited liability company member of the issuer, officer, director, or person occupying a similar status of the issuer or performing similar functions for the issuer; and (iii) the financial condition of the issuer;

(f) The purchaser signs a subscription agreement in which the purchaser acknowledges that he or she:

(i) Has received the written disclosure statement;

(ii) Understands the investment involves a high level of risk; and

(iii) Has the financial resources to withstand the total loss of the money invested; and

(g) The issuer, within thirty days after the completion of the offering, files with the department a statement indicating the number of investors, the total dollar amount raised, and the use of the offering proceeds; or

(24)(a) An offer or a sale of a security made after August 30, 2015, by an issuer if the offer or sale is conducted in accordance with all the following requirements:

(i) The issuer of the security is a business entity organized under the laws of Nebraska and authorized to do business in Nebraska;

(ii) The transaction meets the requirements of the federal exemption for intrastate offerings in section 3(a)(11) of the Securities Act of 1933 and Rule 147 adopted under the Securities Act of 1933, or complies with Rule 147A adopted under the Securities Act of 1933;

(iii) Except as provided in subdivision (c) of this subdivision, the sum of all cash and other consideration to be received for all sales of the security in reliance on the exemption under this subdivision, excluding sales to any accredited investor, does not exceed the following amount:

(A) If the issuer has not undergone, and made available to each prospective investor and the director the documentation resulting from, a financial audit of its most recently completed fiscal year that complies with generally accepted accounting principles, one million dollars, less the aggregate amount received

for all sales of securities by the issuer within the twelve months before the first offer or sale made in reliance on the exemption under this subdivision; or

(B) If the issuer has undergone, and made available to each prospective investor and the director the documentation resulting from, a financial audit of its most recently completed fiscal year that complies with generally accepted accounting principles, two million dollars, less the aggregate amount received for all sales of securities by the issuer within the twelve months before the first offer or sale made in reliance on the exemption under this subdivision;

(iv) The issuer does not accept more than five thousand dollars from any single purchaser except that such limitation shall not apply to an accredited investor;

(v) Unless waived by written consent by the director, not less than ten days before the commencement of an offering of securities in reliance on the exemption under this subdivision, the issuer must do all the following:

(A) Make a notice filing with the department on a form prescribed by the director;

(B) Pay a filing fee of two hundred dollars. However, no filing fee is required to file amendments to the form;

(C) Provide the director a copy of the disclosure document to be provided to prospective investors under subdivision (a)(xi) of this subdivision;

(D) Provide the director a copy of an escrow agreement with a bank, regulated trust company, savings bank, savings and loan association, or credit union authorized to do business in Nebraska in which the issuer will deposit the investor funds or cause the investor funds to be deposited. The bank, regulated trust company, savings bank, savings and loan association, or credit union in which the investor funds are deposited is only responsible to act at the direction of the party establishing the escrow agreement and does not have any duty or liability, contractual or otherwise, to any investor or other person;

(E) The issuer shall not access the escrow funds until the aggregate funds raised from all investors equals or exceeds the minimum amount specified in the escrow agreement; and

(F) An investor may cancel the investor's commitment to invest if the target offering amount is not raised before the time stated in the escrow agreement;

(vi) The issuer is not, either before or as a result of the offering, an investment company, as defined in section 3 of the Investment Company Act of 1940, an entity that would be an investment company but for the exclusions provided in section 3(c) of the Investment Company Act of 1940, or subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934;

(vii) The issuer informs all prospective purchasers of securities offered under an exemption under this subdivision that the securities have not been registered under federal or state securities law and that the securities are subject to limitations on resale. The issuer shall display the following legend conspicuously on the cover page of the disclosure document:

IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION, DEPARTMENT, OR DIVISION OR OTHER REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AU-

THORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY SUBSECTION (e) OF SEC RULE 147 OR SUBSECTION (e) OF RULE 147A ADOPTED UNDER THE SECURITIES ACT OF 1933 AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.;

(viii) The issuer requires each purchaser to certify in writing or electronically as follows:

I understand and acknowledge that I am investing in a high-risk, speculative business venture. I may lose all of my investment, or under some circumstances more than my investment, and I can afford this loss. This offering has not been reviewed or approved by any state or federal securities commission, department, or division or other regulatory authority and no such person or authority has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering. The securities I am acquiring in this offering are illiquid, there is no ready market for the sale of such securities, it may be difficult or impossible for me to sell or otherwise dispose of this investment, and, accordingly, I may be required to hold this investment indefinitely. I may be subject to tax on my share of the taxable income and losses of the company, whether or not I have sold or otherwise disposed of my investment or received any dividends or other distributions from the company.;

(ix) The issuer obtains from each purchaser of a security offered under an exemption under this subdivision evidence that the purchaser is a resident of Nebraska and, if applicable, is an individual accredited investor;

(x) All payments for purchase of securities offered under an exemption under this subdivision are directed to and held by the financial institution specified in subdivision (a)(v)(D) of this subdivision. The director may request from the financial institutions information necessary to ensure compliance with this section. This information is not a public record and is not available for public inspection;

(xi) The issuer of securities offered under an exemption under this subdivision provides a disclosure document to each prospective investor at the time the offer of securities is made to the prospective investor that contains all the following:

(A) A description of the company, its type of entity, the address and telephone number of its principal office, its history, its business plan, and the intended use of the offering proceeds, including any amounts to be paid, as compensation or otherwise, to any owner, executive officer, director, managing member, or other person occupying a similar status or performing similar functions on behalf of the issuer;

(B) The identity of all persons owning more than twenty percent of the ownership interests of any class of securities of the company;

(C) The identity of the executive officers, directors, managing members, and other persons occupying a similar status or performing similar functions in the

name of and on behalf of the issuer, including their titles and their prior experience;

(D) The terms and conditions of the securities being offered and of any outstanding securities of the company; the minimum and maximum amount of securities being offered, if any; either the percentage ownership of the company represented by the offered securities or the valuation of the company implied by the price of the offered securities; the price per share, unit, or interest of the securities being offered; any restrictions on transfer of the securities being offered; and a disclosure of any anticipated future issuance of securities that might dilute the value of securities being offered;

(E) The identity of any person who has been or will be retained by the issuer to assist the issuer in conducting the offering and sale of the securities, including any portal operator but excluding persons acting solely as accountants or attorneys and employees whose primary job responsibilities involve the operating business of the issuer rather than assisting the issuer in raising capital;

(F) For each person identified as required in subdivision (a)(xi)(E) of this subdivision, a description of the consideration being paid to the person for such assistance;

(G) A description of any litigation, legal proceedings, or pending regulatory action involving the company or its management;

(H) The names and addresses of each portal operator that will be offering or selling the issuer's securities under an exemption under this subdivision;

(I) The Uniform Resource Locator for each funding portal that will be used by the portal operator to offer or sell the issuer's securities under an exemption under this subdivision; and

(J) Any additional information material to the offering, including, if appropriate, a discussion of significant factors that make the offering speculative or risky. This discussion must be concise and organized logically and may not be limited to risks that could apply to any issuer or any offering;

(xii) The offering or sale exempted under this subdivision is made exclusively through one or more funding portals and each funding portal is subject to the following:

(A) Before any offer or sale of securities, the issuer must provide to the portal operator evidence that the issuer is organized under the laws of Nebraska and is authorized to do business in Nebraska;

(B) Subject to subdivisions (a)(xii)(C) and (E) of this subdivision, the portal operator must register with the department by filing a statement, accompanied by a two-hundred-dollar filing fee, that includes the following information:

(I) Documentation which demonstrates that the portal operator is a business entity and authorized to do business in Nebraska;

(II) A representation that the funding portal is being used to offer and sell securities pursuant to the exemption under this subdivision; and

(III) The identity and location of, and contact information for, the portal operator;

(C) The portal operator is not required to register as a broker-dealer if all of the following apply with respect to the funding portal and its portal operator:

(I) It does not offer investment advice or recommendations;

(II) It does not solicit purchases, sales, or offers to buy the securities offered or displayed on the funding portal;

(III) It does not compensate employees, agents, or other persons for the solicitation or based on the sale of securities displayed or referenced on the funding portal;

(IV) It is not compensated based on the amount of securities sold, and it does not hold, manage, possess, or otherwise handle investor funds or securities;

(V) The fee it charges an issuer for an offering of securities on the funding portal is a fixed amount for each offering, a variable amount based on the length of time that the securities are offered on the funding portal, or a combination of the fixed and variable amounts;

(VI) It does not identify, promote, or otherwise refer to any individual security offered on the funding portal in any advertising for the funding portal;

(VII) It does not engage in any other activities that the director, by rule and regulation or order, determines are prohibited of the funding portal; and

(VIII) Neither the portal operator, nor any director, executive officer, general partner, managing member, or other person with management authority over the portal operator, has been subject to any conviction, order, judgment, decree, or other action specified in Rule 506(d)(1) adopted under the Securities Act of 1933, that would disqualify an issuer under Rule 506(d) adopted under the Securities Act of 1933, from claiming an exemption specified in Rule 506(a) to Rule 506(c) adopted under the Securities Act of 1933. However, this subdivision does not apply if both of the following are met:

(1) On a showing of good cause and without prejudice to any other action by the Director of Banking and Finance, the director determines that it is not necessary under the circumstances that an exemption is denied; and

(2) The portal operator establishes that it made a factual inquiry into whether any disqualification existed under this subdivision but did not know, and in the exercise of reasonable care, could not have known, that a disqualification existed under this subdivision. The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer and the other offering participants;

(D) If any change occurs that affects the funding portal's registration exemption, the portal operator must notify the department within thirty days after the change occurs;

(E) A registered broker-dealer who also serves as a portal operator must register with the department as a portal operator pursuant to subdivision (a)(xii)(B) of this subdivision, except that the fee for registration shall be waived;

(F) The issuer and the portal operator must maintain records of all offers and sales of securities effected through the funding portal and must provide ready access to the records to the department, upon request. The records of a portal operator under this subdivision are subject to the reasonable periodic, special, or other audits or inspections by a representative of the director, in or outside Nebraska, as the director considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The director may copy, and remove for audit or inspection copies of, all records the director reasonably considers necessary or appropriate to conduct the audit or inspection. The director may

assess a reasonable charge for conducting an audit or inspection under this subdivision;

(G) The portal operator shall limit website access to the offer or sale of securities to only Nebraska residents;

(H) The portal operator shall not hold, manage, possess, or handle investor funds or securities; and

(I) The portal operator may not be an investor in any Nebraska offering under this subdivision.

(b) An issuer of a security, the offer and sale of which is exempt under this subdivision, shall provide, free of charge, a quarterly report to the issuer's investors until no securities issued under an exemption under this subdivision are outstanding. An issuer may satisfy the reporting requirement of this subdivision by making the information available on a funding portal if the information is made available within forty-five days after the end of each fiscal quarter and remains available until the succeeding quarterly report is issued. An issuer shall file each quarterly report under this subdivision with the department and, if the quarterly report is made available on a funding portal, the issuer shall also provide a written copy of the report to any investor upon request. The report must contain all the following:

(i) Compensation received by each director and executive officer, including cash compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensation received; and

(ii) An analysis by management of the issuer of the business operations and financial condition of the issuer.

(c) An offer or a sale under this subdivision to an officer, director, partner, trustee, or individual occupying similar status or performing similar functions with respect to the issuer or to a person owning ten percent or more of the outstanding shares of any class or classes of securities of the issuer does not count toward the monetary limitations in subdivision (a)(iii) of this subdivision.

(d) The exemption under this subdivision may not be used in conjunction with any other exemption under the Securities Act of Nebraska, except for offers and sales to individuals identified in the disclosure document, during the immediately preceding twelve-month period.

(e) The exemption under this subdivision does not apply if an issuer or any director, executive officer, general partner, managing member, or other person with management authority over the issuer, has been subject to any conviction, order, judgment, decree, or other action specified in Rule 506(d)(1) adopted under the Securities Act of 1933, that would disqualify an issuer under Rule 506(d) adopted under the Securities Act of 1933, from claiming an exemption specified in Rule 506(a) to Rule 506(c) adopted under the Securities Act of 1933. However, this subdivision does not apply if both of the following are met:

(i) On a showing of good cause and without prejudice to any other action by the Director of Banking and Finance, the director determines that it is not necessary under the circumstances that an exemption is denied; and

(ii) The issuer establishes that it made a factual inquiry into whether any disqualification existed under this subdivision but did not know, and in the exercise of reasonable care, could not have known, that a disqualification existed under this subdivision. The nature and scope of the requisite inquiry

will vary based on the circumstances of the issuer and the other offering participants.

(f) For purposes of this subdivision:

(i) Accredited investor means a bank, a savings institution, a trust company, an insurance company, an investment company as defined in the Investment Company Act of 1940, a pension or profit-sharing trust or other financial institution or institutional buyer, an individual accredited investor, or a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(ii) Funding portal means an Internet website that is operated by a portal operator for the offer and sale of securities pursuant to this subdivision;

(iii) Individual accredited investor means (A) any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer, (B) any manager of a limited liability company that is the issuer of the securities being offered or sold, (C) any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his or her purchase, exceeds one million dollars, excluding the value of the primary residence of such person, or (D) any natural person who had an individual income in excess of two hundred thousand dollars in each of the two most recent years or joint income with that person's spouse in excess of three hundred thousand dollars in each of those years and has a reasonable expectation of reaching the same income level in the current year; and

(iv) Portal operator means an entity authorized to do business in this state which operates a funding portal and has registered with the department as required by this subdivision.

Source: Laws 1965, c. 549, § 11, p. 1787; Laws 1973, LB 167, § 6; Laws 1977, LB 263, § 5; Laws 1978, LB 760, § 2; Laws 1980, LB 496, § 1; Laws 1986, LB 909, § 11; Laws 1987, LB 93, § 1; Laws 1989, LB 60, § 3; Laws 1990, LB 956, § 10; Laws 1991, LB 305, § 5; Laws 1992, LB 758, § 2; Laws 1993, LB 216, § 7; Laws 1994, LB 1241, § 1; Laws 1995, LB 96, § 1; Laws 1996, LB 1053, § 9; Laws 1997, LB 335, § 7; Laws 2000, LB 932, § 20; Laws 2001, LB 52, § 44; Laws 2002, LB 957, § 9; Laws 2006, LB 876, § 20; Laws 2010, LB814, § 1; Laws 2011, LB76, § 3; Laws 2013, LB205, § 2; Laws 2013, LB214, § 6; Laws 2015, LB226, § 1; Laws 2017, LB148, § 13; Laws 2019, LB259, § 5; Laws 2020, LB909, § 15.

Cross References

Nebraska Limited Cooperative Association Act, see section 21-2901.

Exemption for a transaction under subsection (9) of this section contemplates only a situation where no remuneration in any form is to be given the offeror of the stock. Labenz v. Labenz, 198 Neb. 548, 253 N.W.2d 855 (1977).

8-1112 Registrant; subject to personal jurisdiction.

Registering as a broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative under the Securities Act of Nebraska or directly or indirectly offering a security or investment adviser services in this state shall constitute sufficient contact with this state for the exercise of personal jurisdiction over such a person in any action which arises under the act.

Source: Laws 1965, c. 549, § 12, p. 1790; Laws 1973, LB 167, § 7; Laws 1983, LB 447, § 1; Laws 1993, LB 216, § 8.

8-1113 False or misleading filings; unlawful.

It shall be unlawful for any person to make or cause to be made, in any document filed with the director or in any proceeding under the Securities Act of Nebraska, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

Source: Laws 1965, c. 549, § 13, p. 1790; Laws 1998, LB 894, § 2.

8-1114 Unlawful representation concerning merits of registration or exemption.

Neither the fact that an application for registration or notice filing under section 8-1103, a notice filing under section 8-1108.02, or a registration statement under section 8-1106 or 8-1107 has been filed, nor the fact that a person or security is effectively registered, shall constitute a finding by the director that any document filed under the Securities Act of Nebraska is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction shall mean that the director has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security, or transaction. It shall be unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with this section.

Source: Laws 1965, c. 549, § 14, p. 1790; Laws 1997, LB 335, § 8; Laws 2013, LB214, § 7.

8-1115 Investigations; subpoena; director; powers.

(1) The director in his or her discretion (a) may make such public or private investigations within or without this state as he or she deems necessary to determine whether any registration should be granted, denied, or revoked or whether any person has violated or is about to violate the Securities Act of Nebraska or any rule and regulation or order under the act or to aid in the enforcement of the act or in the adopting and promulgating of rules and regulations and the prescribing of forms under the act, (b) may require or permit any person to file a statement in writing, under oath or otherwise as the director may determine, as to all the facts and circumstances concerning the matter to be investigated, and (c) may publish information concerning any violation of the act or any rule and regulation or order under the act. In the discretion of the director, the actual expense of any such investigation may be charged to the applicant or person who is the subject of the investigation.

(2) For the purpose of any investigation or proceeding under the act, the director or any person 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.

(3) At the request of an administrator responsible for enforcement of the securities laws of another state, the director may issue subpoenas to compel the attendance of any person or require the production of records in this state if the alleged violation being investigated would be a violation of the Securities Act of Nebraska if the activities had occurred in this state.

(4) 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 such person an order requiring him or her to appear before the director, or the officer designated by the director, there 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.

Source: Laws 1965, c. 549, § 15, p. 1791; Laws 1987, LB 497, § 1; Laws 2017, LB148, § 14.

8-1115.01 Investigation or other proceeding; prohibited acts.

It shall be unlawful for any person with respect to any investigation or other proceeding under the Securities Act of Nebraska to: (1) Alter, destroy, mutilate, or conceal; (2) make a false entry in or by any means falsify; or (3) remove from any place or withhold from investigators or officials any record, document, or electronic or physical evidence with the intent to impede, obstruct, avoid, evade, or influence the investigation or administration of any other proceeding under the act.

Source: Laws 2009, LB113, § 2.

8-1116 Violations; injunction; receiver; appointment; additional court orders authorized.

Whenever it appears to the director that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of the Securities Act of Nebraska or any rule and regulation or order under the act, the director may in his or her discretion bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with the Securities Act of Nebraska or any rule and regulation or order under the act. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant's assets. Upon a proper showing by the director, the court may invoke its equitable powers under the law and issue an order of rescission, restitution, or disgorgement, an order freezing assets, an order requiring an accounting, or a writ of attachment or writ of general or specific execution, directed to any person who has engaged in or is engaging in any act constituting a violation of any provision of the Securities Act of Nebraska or any rule and regulation or order under the act. The director shall not be required to post a bond.

Source: Laws 1965, c. 549, § 16, p. 1792; Laws 1998, LB 894, § 3; Laws 2009, LB113, § 3; Laws 2017, LB148, § 15.

8-1117 Violations; penalty.

(1) Any person who willfully violates any provision of the Securities Act of Nebraska except section 8-1113, or who willfully violates any rule and regulation or order under the act, or who willfully violates the provisions of section 8-1113 knowing the statement made to be false or misleading in any material respect is guilty of a Class IV felony. No indictment may be returned or information filed under the act more than five years after the alleged violation.

(2) The director may refer such evidence as may be available concerning violations of the act or any rule and regulation or order under the act to the

Attorney General or the proper county attorney, who may in his or her discretion, with or without such a reference, institute the appropriate criminal proceedings under the act.

(3) Nothing in the act shall limit the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law.

Source: Laws 1965, c. 549, § 17, p. 1792; Laws 1977, LB 40, § 65; Laws 1998, LB 894, § 4; Laws 2017, LB148, § 16.

To sustain a conviction under either the fraud or registration provisions of the Uniform Securities Act, specific intent need not be proved, and ''willful'' may mean no more than that the actor was aware of what he or she was doing. State v. Irons, 254 Neb. 18, 574 N.W.2d 144 (1998).

Proof of a specific intent, evil motive, or knowledge that the law was being violated is not required to sustain conviction of willful violation of the securities act. State v. Fries, 214 Neb. 874, 337 N.W.2d 398 (1983).

8-1118 Violations; damages; statute of limitations.

(1) Any person who offers or sells a security in violation of section 8-1104 or offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made in the light of the circumstances under which they are made not misleading, the buyer not knowing of the untruth or omission, and who does not sustain the burden of proof that he or she did not know and in the exercise of reasonable care could not have known of the untruth or omission, shall be liable to the person buying the security from him or her, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at six percent per annum from the date of payment, costs, and reasonable attorney's fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he or she no longer owns the security, except that in actions brought based on a transaction exempt from registration under subdivision (23) of section 8-1111, no person shall be liable for any statement of a material fact made or for an omission of a material fact required to be stated or necessary to make the statement made not misleading unless such statement or omission was made with the intent to defraud or mislead, with the burden of proof in such cases being on the claimant. Damages shall be the amount that would be recoverable upon a tender less (a) the value of the security when the buyer disposed of it and (b) interest at six percent per annum from the date of disposition.

(2) Any investment adviser who provides investment adviser services to another person which results in a willful violation of subsection (2), (3), or (4) of section 8-1102, subsection (2) of section 8-1103, or section 8-1114 or any investment adviser who employs any device, scheme, or artifice to defraud such person or engages in any act, practice, or course of business which operates or would operate as a fraud or deceit on such person shall be liable to such person. Such person may sue either at law or in equity to recover the consideration paid for the investment adviser services and any loss due to such investment adviser services, together with interest at six percent per annum from the date of payment of the consideration plus costs and reasonable attorney's fees, less the amount of any income received from such investment adviser services and any other economic benefit.

(3) Every person who directly or indirectly controls a person liable under subsections (1) and (2) of this section, including every partner, limited liability company member, officer, director, or person occupying a similar status or performing similar functions of a partner, limited liability company member, officer, or director, or employee of such person who materially aids in the

conduct giving rise to liability, and every broker-dealer, issuer-dealer, agent, investment adviser, or investment adviser representative who materially aids in such conduct shall be liable jointly and severally with and to the same extent as such person, unless able to sustain the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution as in cases of contract among the several persons so liable.

(4) Any tender specified in this section may be made at any time before entry of judgment. Every cause of action under the Securities Act of Nebraska shall survive the death of any person who might have been a plaintiff or defendant. No person may sue under this section more than three years after the contract of sale or the rendering of investment advice. No person may sue under this section (a) if the buyer received a written offer, before an action is commenced and at a time when he or she owned the security, to refund the consideration paid together with interest at six percent per annum from the date of payment, less the amount of any income received on the security, and the buyer failed to accept the offer within thirty days of its receipt, or (b) if the buyer received such an offer before an action is commenced and at a time when he or she did not own the security, unless the buyer rejected the offer in writing within thirty days of its receipt.

(5) No person who has made or engaged in the performance of any contract in violation of any provision of the act or any rule and regulation or order under the act, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any action on the contract. Any condition, stipulation, or provision binding any person acquiring any security or receiving any investment advice to waive compliance with any provision of the act or any rule and regulation or order under the act shall be void.

Source: Laws 1965, c. 549, § 18, p. 1793; Laws 1973, LB 167, § 8; Laws 1993, LB 216, § 9; Laws 1993, LB 121, § 99; Laws 1994, LB 884, § 14; Laws 2013, LB205, § 3; Laws 2017, LB148, § 17.

A buyer's sophistication is irrelevant to a claim under subsection (1) of this section. DMK Biodiesel v. McCoy, 290 Neb. 286, 859 N.W.2d 867 (2015).

Reliance is not an element of an investor's claim against the seller of a security under subsection (1) of this section. DMK Biodiesel v. McCoy, 290 Neb. 286, 859 N.W.2d 867 (2015).

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

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

Liability under the Securities Act of Nebraska extends only to a person who successfully solicits purchase of securities, motivated at least in part by desire to serve his or her own financial interests or those of the securities owner. Wilson v. Misko, 244 Neb. 526, 508 N.W.2d 238 (1993).

Person who offers or sells security in violation of section 8-1104 shall be liable to buyer of security, who may recover consideration paid, together with interest, costs, and attorneys' fees. Labenz v. Labenz, 198 Neb. 548, 253 N.W.2d 855 (1977).

8-1119 Appeal; procedure.

Any person aggrieved by a final order of the director may appeal the order, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1965, c. 549, § 19, p. 1794; Laws 1988, LB 352, § 12.

Cross References

Administrative Procedure Act, see section 84-920.

8-1120 Administration of act; Director of Banking and Finance; powers and duties; use of information for personal benefit prohibited; Securities Act Cash Fund; created; use; investment; transfers; document filed, when.

(1) Except as otherwise provided in this section, the Securities Act of Nebraska shall be administered by the Director of Banking and Finance who may employ such deputies, examiners, assistants, or counsel as may be reasonably necessary for the purpose thereof. The employment of any person for the administration of the act is subject to section 49-1499.07. The director may delegate to a deputy director or counsel any powers, authority, and duties imposed upon or granted to the director under the act, such as may be lawfully delegated under the common law or the statutes of this state. The director may also employ special counsel with respect to any investigation conducted by him or her under the act or with respect to any litigation to which the director is a party under the act.

(2) A security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company shall be registered, pursuant to the provisions of sections 8-1104 to 8-1109, with the Director of Insurance who shall as to such registrations administer and enforce the act, and as pertains to the administration and enforcement of such registration of such securities all references in the act to director shall mean the Director of Insurance.

(3)(a) It shall be unlawful for the director or any of his or her employees to use for personal benefit any information which is filed with or obtained by the director and which is not made public. Neither the director nor any of his or her employees shall disclose any confidential information except among themselves, when necessary or appropriate in a proceeding, examination, or investigation under the act, or as authorized in subdivision (3)(b) of this subsection. No provision of the act shall either create or derogate from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the director or any of his or her employees.

(b)(i) In administering the act, the director may also:

(A) Enter into agreements or relationships with other government officials, including, but not limited to, the securities administrator of a foreign state and the Securities and Exchange Commission, or self-regulatory organizations, to share resources, standardized or uniform methods or procedures, and documents, records, and information; or

(B) Accept and rely on examination or investigation reports made by other government officials, including, but not limited to, the securities administrator of a foreign state and the Securities and Exchange Commission, or self-regulatory organizations.

(ii) For purposes of this subdivision, foreign state means any state of the United States, other than the State of Nebraska, any territory of the United States, including Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, and the District of Columbia.

(4) The director may adopt and promulgate rules and regulations and prescribe forms to carry out the act. No rule and regulation may be adopted and promulgated or form may be prescribed unless the director finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and

provisions of the act. In adopting and promulgating rules and regulations and prescribing forms the director may cooperate with the securities administrators of the other states and the Securities and Exchange Commission with a view to effectuating the policy of the Securities Act of Nebraska to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable. All rules and regulations and forms of the director shall be published and made available to any person upon request.

(5) No provision of the act imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule and regulation, form, or order of the director, notwithstanding that the rule and regulation or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(6) Every hearing in an administrative proceeding shall be public unless the director in his or her discretion grants a request joined in by all the respondents that the hearing be conducted privately.

(7)(a) The Securities Act Cash Fund is created. All filing fees, registration fees, and all other fees and all money collected by or paid to the director under any of the provisions of the act shall be remitted to the State Treasurer for credit to the fund, except that registration fees collected by or paid to the Director of Insurance pursuant to the provisions of the act shall be credited to the Department of Insurance Cash Fund. The Securities Act Cash Fund shall be used for the purpose of administering and enforcing the provisions of the act, except that transfers may be made to the General Fund at the direction of the Legislature. Any money in the Securities Act Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(b) The State Treasurer shall transfer seven hundred twelve thousand four hundred eighty-nine dollars from the Securities Act Cash Fund to the Financial Institution Assessment Cash Fund on or before October 30, 2021, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services.

(c) The State Treasurer shall transfer three hundred ninety-seven thousand eighty-nine dollars from the Securities Act Cash Fund to the Financial Institution Assessment Cash Fund on or before October 30, 2022, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services.

(8) A document is filed when it is received by the director. The director shall keep a register of all applications for registration and registration statements which are or have ever been effective under the Securities Act of Nebraska and all denial, suspension, or revocation orders which have ever been entered under the act. The register shall be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under such conditions as the director may prescribe.

(9) The director may, by rule and regulation or order, authorize or require the filing of any document required to be filed under the act by electronic or other means, processes, or systems.

(10) Upon request and at such reasonable charges as he or she shall prescribe, the director shall furnish to any person photostatic or other copies, certified under his or her seal of office if requested, of any entry in the register

or any document which is a matter of public record. In any proceeding or prosecution under the act, any copy so certified shall be prima facie evidence of the contents of the entry or document certified.

(11) The director in his or her discretion may honor requests from interested persons for interpretative opinions.

Source: Laws 1965, c. 549, § 20, p. 1795; Laws 1969, c. 584, § 33, p. 2361; Laws 1973, LB 167, § 9; Laws 1983, LB 469, § 1; Laws 1995, LB 7, § 27; Laws 1997, LB 864, § 1; Laws 2000, LB 932, § 21; Laws 2003, LB 217, § 24; Laws 2013, LB199, § 17; Laws 2013, LB214, § 8; Laws 2017, LB148, § 18; Laws 2021, LB649, § 47.

Cross References

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

8-1121 Exemption or exception; burden of proof.

In any proceeding under the Securities Act of Nebraska, the burden of proving an exemption or an exception from a definition shall be upon the person claiming it.

Source: Laws 1965, c. 549, § 21, p. 1797; Laws 1998, LB 894, § 5.

Defendant bears the burden of proving a claim of exemption when raising the issue as a defense to a charge of unlawful sale of unregistered securities. State v. Fries, 214 Neb. 874, 337 N.W.2d 398 (1983).

8-1122 Act; how construed.

The Securities Act of Nebraska shall be construed as to effectuate its general purpose to make uniform the law of those states which enact it and to coordinate the interpretation and administration of the act with the related federal regulation.

Source: Laws 1965, c. 549, § 22, p. 1797; Laws 1998, LB 894, § 6.

8-1122.01 Federal limits rejected.

The federal limits on the registration of securities, dealers, brokers, broker-dealers, agents, and investment advisers as provided in the federal Philanthropy Protection Act of 1995, Public Law 104-62, shall not apply in Nebraska and are hereby rejected by the State of Nebraska pursuant to section 6(c) of such act. The State of Nebraska elects to retain the authority to require or not require such registration under the Securities Act of Nebraska and to retain the authority to have such registration requirements apply in all administrative and judicial actions commenced after July 15, 1998.

Source: Laws 1998, LB 1180, § 1; Laws 2017, LB148, § 19.

8-1123 Act, how cited.

Sections 8-1101 to 8-1123 shall be known and may be cited as the Securities Act of Nebraska.

Source: Laws 1965, c. 549, § 23, p. 1797; Laws 1997, LB 335, § 11; Laws 1998, LB 1180, § 2; Laws 2002, LB 957, § 11; Laws 2009, LB113, § 4; Laws 2017, LB148, § 20.

8-1124 Repealed. Laws 1988, LB 795, § 8.

ARTICLE 12

ONE BANK HOLDING COMPANY ACT OF 1973

Section
8-1201. Repealed. Laws 1995, LB 384, § 35.
8-1202. Repealed. Laws 1995, LB 384, § 35.
8-1203. Repealed. Laws 1995, LB 384, § 35.
8-1204. Repealed. Laws 1995, LB 384, § 35.
8-1205. Repealed. Laws 1995, LB 384, § 35.
8-1206. Repealed. Laws 1995, LB 384, § 35.

8-1201 Repealed. Laws 1995, LB 384, § 35.

8-1202 Repealed. Laws 1995, LB 384, § 35.

8-1203 Repealed. Laws 1995, LB 384, § 35.

8-1204 Repealed. Laws 1995, LB 384, § 35.

8-1205 Repealed. Laws 1995, LB 384, § 35.

8-1206 Repealed. Laws 1995, LB 384, § 35.

ARTICLE 13

DEPOSIT OF SECURITIES

Section
8-1301. Terms, defined.
8-1302. Deposit in a clearing corporation; procedure; rules and regulations; applicability.
8-1303. Deposit of United States Government securities with a federal reserve bank; procedure; rules and regulations; applicability.

8-1301 Terms, defined.

For the purposes of sections 8-1302 and 8-1303, unless the context otherwise requires:

(1) Fiduciary shall mean a trustee under any trust, expressed, implied, resulting, or constructive, personal representative, administrator, guardian, committee, conservator, curator, tutor, custodian, nominee, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, member, agent, officer of any corporation, public or private, public officer, or any other person acting in a fiduciary capacity for any person, trust, or estate; and

(2) Person shall mean any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, association, two or more persons having a joint or common interest, or other legal or commercial entity.

Source: Laws 1977, LB 500, § 2; Laws 1986, LB 909, § 12; Laws 1993, LB 121, § 101.

8-1302 Deposit in a clearing corporation; procedure; rules and regulations; applicability.

(1) Notwithstanding any other provision of law, any fiduciary holding securities in its fiduciary capacity, any bank or trust company holding securities as a custodian or managing agent, and any bank or trust company holding securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit of such securities in a clearing corporation, as defined in section 8-102, Uniform Commercial Code, or with any other agency or organization. When such securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation, agency or other organization with any other such securities deposited in such clearing corporation by any person regardless of the ownership of such securities. Certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such bank or trust company acting as custodian, as managing agent, or as custodian for a fiduciary shall at all times show the name of the party for whose account the securities are so deposited. Title to such securities may be transferred by bookkeeping entry on the books of such clearing corporation, agency or other organization without physical delivery of certificates representing such securities. A bank or trust company so depositing securities pursuant to this section shall be subject to such rules and regulations as, in the case of state-chartered institutions, the Director of Banking and Finance or, in the case of national banking associations, the Comptroller of the Currency may from time to time issue. A bank or trust company acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by such bank or trust company in such clearing corporation, agency or other organization for the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of such fiduciary's account or on demand by the attorney for such party, certify in writing to such party the securities deposited by such fiduciary in such clearing corporation, agency or other organization for its account as such fiduciary.

(2) This section shall apply to any fiduciary holding securities in its fiduciary capacity, and to any bank or trust company holding securities as a custodian, managing agent, or custodian for a fiduciary, acting on September 2, 1977, or who thereafter may act regardless of the date of the agreement, instrument, or court order by which it is appointed and regardless of whether or not such fiduciary, custodian, managing agent, or custodian for a fiduciary owns capital stock of such clearing corporation.

Source: Laws 1977, LB 500, § 3; Laws 1978, LB 763, § 1.

8-1303 Deposit of United States Government securities with a federal reserve bank; procedure; rules and regulations; applicability.

(1) Notwithstanding any other provision of law, any bank or trust company, when acting as a fiduciary and any bank or trust company, when holding securities as custodian for a fiduciary, is authorized to deposit, or arrange for the deposit, with the federal reserve bank in its district of any securities the principal and interest of which the United States or any department, agency, or instrumentality thereof has agreed to pay, or has guaranteed payment, to be credited to one or more accounts on the books of such federal reserve bank in the name of such bank or trust company, to be designated fiduciary or safekeeping accounts, to which account other similar securities may be credited. A bank or trust company so depositing securities with a federal reserve

bank shall be subject to such rules and regulations with respect to the making and maintenance of such deposit as, in the case of state-chartered institutions, the Director of Banking and Finance or, in the case of national banking associations, the Comptroller of the Currency may from time to time issue. The records of such bank or trust company shall at all times show the ownership of the securities held in such account. Ownership of, and other interests in, the securities credited to such account may be transferred by entries on the books of such federal reserve bank without physical delivery of any securities. A bank or trust company acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by such bank or trust company with such federal reserve bank for the account of such fiduciary. A fiduciary shall, on demand by any party to its accounting or on demand by the attorney for such party, certify in writing to such party the securities deposited by such fiduciary with such federal reserve bank for its account as such fiduciary.

(2) This section shall apply to all fiduciaries, and custodians for fiduciaries, acting on September 2, 1977, or who thereafter may act regardless of the date of the instrument or court order by which they are appointed.

Source: Laws 1977, LB 500, § 4.

ARTICLE 14

DISCLOSURE OF CONFIDENTIAL INFORMATION

Section

8-1401. Disclosure of confidential records or information; court order; not applicable, when; immunity.
8-1402. Provide records or information; costs.
8-1403. Terms, defined.
8-1404. Death of decedent; information regarding financial or property interests; furnished; to whom; affidavit; contents; immunity from liability; applicability of section.

8-1401 Disclosure of confidential records or information; court order; not applicable, when; immunity.

(1) No person organized under the Credit Union Act, the Nebraska Banking Act, the Nebraska Industrial Development Corporation Act, the Nebraska Model Business Corporation Act, the Nebraska Nonprofit Corporation Act, the Nebraska Professional Corporation Act, the Nebraska Trust Company Act, or Chapter 8, article 3, or otherwise authorized to conduct business in Nebraska or organized under the laws of the United States, shall be required to disclose any records or information, financial or otherwise, that it deems confidential concerning its affairs or the affairs of any person with which it is doing business to any person, party, agency, or organization, unless:

(a) The disclosure relates to a lawyers trust account and is required to be made to the Counsel for Discipline of the Nebraska Supreme Court pursuant to a rule adopted by the Nebraska Supreme Court;

(b) The disclosure is governed by rules for discovery promulgated pursuant to section 25-1273.01;

(c) The disclosure is made pursuant to section 8-1404;

(d) The request for disclosure is made by a law enforcement agency regarding a crime, a fraud, or any other unlawful activity in which the person to whom

the request for disclosure is made is or may be a victim of such crime, fraud, or unlawful activity;

(e) The request for disclosure is made by a governmental agency which is a duly constituted supervisory regulatory agency of the person to whom the request for disclosure is made and the disclosure relates to examinations, audits, investigations, or inquiries of such persons;

(f) The request for disclosure is made pursuant to subpoena issued under the laws of this state by a governmental agency exercising investigatory or adjudicative functions with respect to a matter within the agency's jurisdiction;

(g) The production of records is pursuant to a written demand of the Tax Commissioner under section 77-375;

(h) There is first presented to such person a subpoena, summons, or warrant issued by a court of competent jurisdiction;

(i) A statute by its terms or rules and regulations adopted and promulgated thereunder requires the disclosure, other than by subpoena, summons, warrant, or court order;

(j) There is presented to such person an order of a court of competent jurisdiction setting forth the exact nature and limits of such required disclosure and a showing that all persons to be affected by such order have had reasonable notice and an opportunity to be heard upon the merits of such order;

(k) The request for disclosure relates to information or records regarding the balance due, monthly payments due, payoff amounts, payment history, interest rates, due dates, or similar information for indebtedness owed by a deceased person when the request is made by a person having an ownership interest in real estate or personal property which secures such indebtedness owed to the person to whom the request for disclosure is made; or

(l) There is first presented to such person the written permission of the person about whom records or information is being sought authorizing the release of the requested records or information.

(2) Any person who makes a disclosure of records or information as required by this section shall not be held civilly or criminally liable for such disclosure in the absence of malice, bad faith, intent to deceive, or gross negligence.

(3) This section does not prohibit:

(a) The disclosure of records or information to a certified public accountant while engaged to perform an independent audit;

(b) The disclosure of records or information or the making of reports pursuant to a statute which, by its terms or rules and regulations adopted and promulgated thereunder, permits the disclosure or reports; or

(c) The disclosure, in the regular course of business, of records or information for the purpose of conducting due diligence pursuant to a proposed purchase or sale of a person subject to the provisions of this section or of the assets or liabilities of such a person.

Source: Laws 1977, LB 384, § 1; Laws 1979, LB 216, § 1; Laws 1986, LB 529, § 1; Laws 1995, LB 109, § 193; Laws 1996, LB 681, § 178; Laws 1996, LB 948, § 121; Laws 1998, LB 1104, § 1; Laws 2002, LB 857, § 2; Laws 2002, LB 957, § 12; Laws 2003, LB 131, § 10; Laws 2003, LB 156, § 1; Laws 2012, LB811, § 1; Laws 2014, LB749, § 233; Laws 2014, LB788, § 3; Laws 2017, LB140, § 145.

Cross References

Credit Union Act, see section 21-1701.
Nebraska Banking Act, see section 8-101.02.
Nebraska Industrial Development Corporation Act, see section 21-2318.
Nebraska Model Business Corporation Act, see section 21-201.
Nebraska Nonprofit Corporation Act, see section 21-1901.
Nebraska Professional Corporation Act, see section 21-2201.
Nebraska Trust Company Act, see section 8-201.01.

8-1402 Provide records or information; costs.

(1) Any person, party, agency, or organization requesting disclosure of records or information pursuant to section 8-1401 shall pay the costs of providing such records or information unless:

(a) The request for disclosure is made pursuant to subdivision (1)(a) of section 8-1401 and a Nebraska Supreme Court rule provides for the method of payment;

(b) The request for disclosure is made pursuant to subdivision (1)(d) or (1)(e) of section 8-1401;

(c) Otherwise ordered by a court of competent jurisdiction; or

(d) The person making the disclosure waives any or all of the costs.

(2)(a) The requesting person, party, agency, or organization shall pay the actual cost of providing the records or information.

(b) For purposes of this subsection, actual cost means:

(i) Search and processing costs, including the total amount of personnel direct time incurred in locating and retrieving, reproducing, packaging, and preparing records or information for shipment or delivery. Search and processing costs may include the actual cost of extracting information stored by computer in the format in which it is normally produced, based on computer time and necessary supplies;

(ii) Reproduction costs incurred in making copies of records or information requested. The rate for reproduction costs for making copies of requested records or information shall be the usual rate charged by the person making the disclosure to its customers for reproducing copies, including copies produced by reader-printer reproduction processes. Photographs, films, and other materials shall be reimbursed at actual cost; and

(iii) Transportation costs, including transport of personnel to locate and retrieve the records or information requested and including all other reasonably necessary costs to convey the records or information.

(3) No person authorized to receive payment pursuant to subsection (1) of this section has an obligation to provide any records or information pursuant to section 8-1401 until assurances are received that the costs due under this section will be paid, except for requests made pursuant to subdivisions (1)(d), (1)(e), (1)(f), and (1)(g) of section 8-1401.

Source: Laws 1979, LB 216, § 2; Laws 1995, LB 384, § 11; Laws 1998, LB 1104, § 2; Laws 2002, LB 957, § 13; Laws 2003, LB 156, § 2; Laws 2014, LB788, § 4; Laws 2015, LB155, § 4.

8-1403 Terms, defined.

For purposes of sections 8-1401, 8-1402, and 8-1404:

(1) Governmental agency means any agency, department, or commission of this state or any authorized officer, employee, or agent of such agency, department, or commission;

(2) Law enforcement agency means an agency or department of this state or of any political subdivision of this state that obtains, serves, and enforces arrest warrants or that conducts or engages in prosecutions for violations of the law; and

(3) Person means any individual, corporation, partnership, limited liability company, association, joint-stock association, trust, unincorporated organization, and any other legal entity.

Source: Laws 2003, LB 156, § 3; Laws 2014, LB788, § 6.

8-1404 Death of decedent; information regarding financial or property interests; furnished; to whom; affidavit; contents; immunity from liability; applicability of section.

(1) This section does not apply to:

(a) Real property owned by a decedent; or

(b) The contents of a safe deposit box rented by a decedent from a state-chartered or federally chartered bank, savings bank, building and loan association, savings and loan association, or credit union.

(2) After the death of a decedent, a person (a) indebted to the decedent or (b) having possession of (i) personal property, (ii) an instrument evidencing a debt, (iii) an obligation, (iv) a chose in action, (v) a life insurance policy, (vi) a bank account, (vii) a certificate of deposit, or (viii) intangible property, including annuities, fixed income investments, mutual funds, cash, money market accounts, or stocks, belonging to the decedent, shall furnish the value of the indebtedness or property on the date of death and the names of the known or designated beneficiaries of property described in this subsection to a person who is (A) an heir at law of the decedent, (B) a devisee of the decedent or a person nominated as a personal representative in a will of the decedent, or (C) an agent or attorney authorized in writing by any such person described in subdivision (A) or (B) of this subdivision, with a copy of such authorization attached to the affidavit, and who also presents an affidavit containing the information required by subsection (3) of this section.

(3) An affidavit presented under subsection (2) of this section shall state:

(a) The name, address, social security number if available, and date of death of the decedent;

(b) The name and address of the affiant and that the affiant is (i) an heir at law of the decedent, (ii) a devisee of the decedent or a person nominated as a personal representative in a will of the decedent, or (iii) an agent or attorney authorized in writing by any such person described in subdivision (i) or (ii) of this subdivision;

(c) That the disclosure of the value on the date of death is necessary to determine whether the decedent's estate can be administered under the summary procedures set forth in section 30-24,125, to assist in the determination of the inheritance tax in an estate that is not subject to probate, or to assist a conservator or guardian in the preparation of a final accounting subsequent to the death of the decedent;

(d) That the affiant is answerable and accountable for the information received to the decedent's personal representative, if any, or to any other person having a superior right to the property or indebtedness;

(e) That the affiant swears or affirms that all statements in the affidavit are true and material and further acknowledges that any false statement may subject the person to penalties relating to perjury under section 28-915; and

(f) That no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction.

(4) A person presented with an affidavit under subsection (2) of this section shall provide the requested information within five business days after being presented with the affidavit.

(5) A person who acts in good faith reliance on an affidavit presented under subsection (2) of this section is immune from liability for the disclosure of the requested information.

Source: Laws 2014, LB788, § 5.

ARTICLE 15

ACQUISITION OR MERGER OF FINANCIAL INSTITUTIONS

(a) STATE-CHARTERED BANKS AND INDUSTRIAL LOAN AND INVESTMENT COMPANIES

Section
8-1501. Terms, defined.
8-1502. Acquisition; notice required; exception; Director of Banking and Finance; duties.
8-1503. Acquisition; hearing; when required; procedure.
8-1504. Acquisition; notice; contents.
8-1505. Acquisition; disapproval; grounds.

(b) ACQUISITION OR MERGER OF FAILING FINANCIAL INSTITUTION

8-1506. Failing financial institution; Director of Banking and Finance; powers; hearing; order; appeal.
8-1506.01. Financial institution, defined.
8-1507. Cross-industry acquisition; acquisition and operation as bank subsidiary; when authorized.
8-1508. Application by bank or bank holding company; terms and conditions.
8-1509. Acquisition by bank holding company; prohibited; exceptions.

(c) CROSS-INDUSTRY ACQUISITION OR MERGER OF FINANCIAL INSTITUTION

8-1510. Cross-industry acquisition or merger; application; notice; hearing.

(d) ACQUISITION OF NEWLY ESTABLISHED BANK

8-1511. Terms, defined.
8-1512. Bank or thrift institution; acquire credit card bank; conditions; sections, how construed.
8-1513. Application; contents; approval; considerations; director; powers and duties.
8-1514. Repealed. Laws 1995, LB 384, § 35.

(e) ACQUISITION OF ELIGIBLE SAVINGS ASSOCIATION

8-1515. Repealed. Laws 2002, LB 1089, § 14.

(f) ACQUISITIONS

8-1516. Bank; purchase or merger; financial institution; cross-industry merger or acquisition; when.

(a) STATE-CHARTERED BANKS AND INDUSTRIAL LOAN AND INVESTMENT COMPANIES

8-1501 Terms, defined.

For purposes of sections 8-1501 to 8-1505, unless the context otherwise requires:

(1) Person means an individual, corporation, partnership, limited liability company, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or other form of entity not specifically listed in this subdivision; and

(2) Control means to own directly or indirectly or to control in any manner twenty-five percent or more of the voting shares of any bank, trust company, or holding company or to control in any manner the election of the majority of directors of any bank, trust company, or holding company.

Source: Laws 1983, LB 240, § 1; Laws 1993, LB 121, § 102; Laws 1995, LB 599, § 5; Laws 2003, LB 131, § 11.

8-1502 Acquisition; notice required; exception; Director of Banking and Finance; duties.

(1) Except as provided in subsection (2) of this section, no person acting personally or as agent shall acquire control of any state-chartered bank or trust company without first giving sixty days' notice to the Department of Banking and Finance on forms provided by the department of such proposed acquisition.

The Director of Banking and Finance, upon receipt of such notice, shall act upon it within thirty days, and, unless he or she disapproves the proposed acquisition within that period of time, it may become effective on the sixty-first day after receipt without his or her approval, except that the director may extend the thirty-day period an additional thirty days if in his or her judgment any material information submitted is substantially inaccurate or the acquiring party has not furnished all the information required by sections 8-1501 to 8-1505 or by the director.

An acquisition may be made prior to the expiration of the disapproval period if the director issues written notice of his or her intent not to disapprove the action.

Within three days after his or her decision to disapprove any proposed acquisition, the director shall notify the acquiring party in writing of the disapproval. The notice shall provide a statement of the basis for the disapproval.

(2) The notice requirements of subsection (1) of this section shall not apply when:

(a) Shares of a state-chartered bank or trust company are acquired by a person in the regular course of securing or collecting a debt previously contracted in good faith or through inheritance or a bona fide gift if notice of such acquisition is given to the department, on forms provided by the department, within thirty days after the acquisition;

(b) Shares of a state-chartered bank or trust company are transferred from an individual or individuals to a trust formed by the individual or individuals for estate-planning purposes if (i) there is no change in the proportion of shares

held by the trust for such individual or individuals compared to the ownership of such individual or individuals prior to the formation of the trust, (ii) the individual or individuals control the trust, and (iii) notice of the proposed transfer is given to the department, on forms provided by the department, at least thirty days prior to the proposed transfer and the department does not disapprove the transfer for the reason that the transfer is an attempt to subvert the requirements of sections 8-1501 to 8-1505; or

(c) The director, the Governor, and the Secretary of State jointly determine that an emergency exists which requires expeditious action or that the department must act immediately to prevent probable failure of the institution to be acquired.

Source: Laws 1983, LB 240, § 2; Laws 1986, LB 907, § 1; Laws 1987, LB 531, § 1; Laws 1995, LB 599, § 6; Laws 2000, LB 932, § 22; Laws 2003, LB 131, § 12; Laws 2010, LB890, § 12; Laws 2022, LB707, § 22.
Operative date July 21, 2022.

8-1503 Acquisition; hearing; when required; procedure.

Within ten days after receipt of notice of disapproval pursuant to section 8-1502, the acquiring party may request an agency hearing on the proposed acquisition. At such hearing, all issues shall be determined on the record pursuant to the administrative rules of procedure and the rules and regulations as may be issued by the Department of Banking and Finance in accordance with the Administrative Procedure Act. At the conclusion of such hearing, the Director of Banking and Finance shall by order approve or disapprove the proposed acquisition on the basis of the record made at such hearing.

Source: Laws 1983, LB 240, § 3; Laws 2003, LB 217, § 25.

Cross References

Administrative Procedure Act, see section 84-920.

8-1504 Acquisition; notice; contents.

Except as otherwise provided by rule and regulation of the department, a notice filed pursuant to section 8-1502 shall contain the following information:

(1) The identity, personal history, business background, and experience of each person by whom or on whose behalf the acquisition is to be made, including his or her material business activities and affiliations during the past five years, and a description of any material pending legal or administrative proceedings in which he or she is a party and any criminal indictment or conviction of such person by a state or federal court;

(2) A statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year immediately preceding the date of the notice;

(3) The terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made;

(4) The identity, source, and amount of the funds or other consideration used or to be used in making the acquisition, and if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names

of the parties, and any arrangements, agreements, or understandings with such persons;

(5) Any plans or proposals which any acquiring party making the acquisition may have to liquidate the bank or trust company, to sell its assets or merge it with any company, or to make any other major change in its business or corporate structure or management;

(6) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on his or her behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of such employment, retainer, or arrangement for compensation;

(7) Copies of all invitations, tenders, or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition; and

(8) Any additional relevant information in such form as the Director of Banking and Finance may require by rule and regulation or by specific request in connection with any particular notice.

Source: Laws 1983, LB 240, § 4; Laws 1995, LB 599, § 7; Laws 1999, LB 396, § 14; Laws 2003, LB 131, § 13.

8-1505 Acquisition; disapproval; grounds.

The Director of Banking and Finance may disapprove any proposed acquisition if:

(1) The financial condition of any acquiring person is such as might jeopardize the financial stability of the bank or trust company or prejudice the interests of the depositors of the bank or trust company;

(2) The competence, experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank or trust company or in the interest of the public to permit such person to control the bank or trust company; or

(3) Any acquiring person neglects, fails, or refuses to furnish the Director of Banking and Finance all the information required by him or her.

Source: Laws 1983, LB 240, § 5; Laws 1995, LB 599, § 8; Laws 2003, LB 131, § 14.

(b) ACQUISITION OR MERGER OF FAILING FINANCIAL INSTITUTION

8-1506 Failing financial institution; Director of Banking and Finance; powers; hearing; order; appeal.

(1) Whenever the Department of Banking and Finance determines the acquisition of any financial institution is necessary because its capital is impaired, it is conducting its business in an unsafe or unauthorized manner, or it is endangering the interest of depositors or savers, the Director of Banking and Finance may take immediate action in the case of an emergency so declared by the Governor, the Secretary of State, and the Director of Banking and Finance, without the benefit of a hearing, to convert or merge the charter, form of ownership or operating powers, some or all of the assets and liabilities, or one or more of the branches of the financial institution into the charter, form of

ownership, or operating powers of one or more financial institutions to facilitate the acquisition. In the case of a financial institution chartered under the laws of Nebraska, such immediate action may include the ability by the director to take possession of the institution.

(2) Any stockholder, depositor, or creditor of any state-chartered financial institution shall, upon application to the director within five days of the entry of the order, be afforded a hearing relating to the department's order and determination not later than ten days after such application has been filed. On the basis of such hearing, the director shall enter a final order which may continue the original order in effect, revoke it, or modify it. Any person aggrieved by a final order of the director made pursuant to this section may appeal the order by filing, within ten days after the entry of the final order, a written petition praying that the final order be modified or set aside in whole or in part. Upon service of the petition, the director shall within fifteen days certify and file in such court a copy of the original order, the application for hearing, all exhibits and testimony, and the final order from which the appeal is taken. Such appeal shall otherwise be governed by the Administrative Procedure Act.

Source: Laws 1983, LB 241, § 1; Laws 1985, LB 653, § 10; Laws 1988, LB 352, § 13; Laws 1990, LB 956, § 12.

Cross References

Administrative Procedure Act, see section 84-920.

8-1506.01 Financial institution, defined.

For purposes of sections 8-1506 to 8-1510, financial institution shall mean a bank, savings bank, savings and loan association, building and loan association, trust company, or credit union, organized under the laws of this state or organized under the laws of the United States to do business in this state.

Source: Laws 1990, LB 956, § 11; Laws 2003, LB 131, § 15.

8-1507 Cross-industry acquisition; acquisition and operation as bank subsidiary; when authorized.

Pursuant to section 8-1506, the Department of Banking and Finance may permit cross-industry acquisition of any failing financial institution or permit acquisition and operation of such financial institution as a bank subsidiary by a bank holding company when the department determines the acquisition of any of the financial institutions is necessary because its capital is impaired, it is conducting its business in an unsafe or unauthorized manner, or it is endangering the interests of depositors or savers. If the acquiring institution is a bank, it may continue to operate such financial institution in its original form notwithstanding its denomination as a bank subsidiary. Acquisitions by any financial institution under sections 8-1506 to 8-1510 or section 8-1516 shall be deemed to be of the same nature as an acquisition of a state-chartered bank and shall follow such rules or regulations as may be established by the Director of Banking and Finance for acquisition of state-chartered banks by a bank holding company.

Source: Laws 1983, LB 241, § 2; Laws 1983, LB 239, § 4; Laws 1990, LB 956, § 13; Laws 1995, LB 456, § 2; Laws 1996, LB 1275, § 4; Laws 2002, LB 1089, § 9; Laws 2003, LB 217, § 26.

8-1508 Application by bank or bank holding company; terms and conditions.

Whenever an application by a bank or a bank holding company is received by the Department of Banking and Finance to acquire any other financial institution, the following terms and conditions shall be met and such acquisitions shall be valid only when and for as long as these conditions are satisfied:

(1) The acquiring bank holding company may not apply for and it shall not operate such a financial institution as a nonbank subsidiary under section 4 of the federal Bank Holding Company Act of 1956, as such act existed on July 20, 2002, unless such financial institution is a savings association as defined by section 2(j) of the federal Bank Holding Company Act of 1956, as such act existed on July 20, 2002;

(2) The financial institution to be acquired by a bank or a bank holding company shall be subject to the conditions upon which a bank incorporated under the laws of this state may establish, maintain, relocate, or close any of its offices pursuant to the Nebraska Banking Act, but nothing in sections 8-1506 to 8-1510 or any other provision of law shall require divestiture of any branch or office in operation at the time of acquisition; and

(3) A financial institution to be acquired by a bank holding company shall be subject to the provisions of section 3 of the federal Bank Holding Company Act of 1956, as such act existed on July 20, 2002, and those rules and regulations that apply to bank subsidiaries of bank holding companies as are or may be established by both the Board of Governors of the Federal Reserve System and the Director of Banking and Finance.

Source: Laws 1983, LB 241, § 3; Laws 1983, LB 239, § 5; Laws 1988, LB 795, § 4; Laws 1990, LB 956, § 14; Laws 2002, LB 857, § 3.

Cross References

Nebraska Banking Act, see section 8-101.02.

8-1509 Acquisition by bank holding company; prohibited; exceptions.

A bank holding company shall not acquire, hold, or operate a financial institution acquired under sections 8-1506 to 8-1510 or section 8-1516 located in this state as a nonbank subsidiary under section 4 of the federal Bank Holding Company Act of 1956, as amended, unless such financial institution is a savings association as defined by section 2(j) of the federal Bank Holding Company Act of 1956, as amended. The Director of Banking and Finance shall not either accept or approve an application for acquisition under sections 8-1506 to 8-1510 or section 8-1516 which contains as a term or condition thereof the approval of the Board of Governors of the Federal Reserve System under section 4(c)(8) of the federal Bank Holding Company Act of 1956, as amended, unless such financial institution is a savings association as defined by section 2(j) of the federal Bank Holding Company Act of 1956, as amended.

Source: Laws 1983, LB 241, § 4; Laws 1990, LB 956, § 15; Laws 1996, LB 1275, § 5.

(c) CROSS-INDUSTRY ACQUISITION OR MERGER OF FINANCIAL INSTITUTION

8-1510 Cross-industry acquisition or merger; application; notice; hearing.

(1) The Director of Banking and Finance may permit cross-industry acquisition or merger of one or more financial institutions under its supervision upon

the application of such institutions to the Department of Banking and Finance. The application shall be made on forms prescribed by the department.

(2) Except as provided for in subsection (3) of this section, when an application is made for such an acquisition or merger, notice of the filing of the application shall be published by the department three weeks in a legal newspaper in or of general circulation in the county where the applicant proposes to operate the acquired or merged financial institution. A public hearing shall be held on each application. The date for hearing the application shall be not more than ninety days after the filing of the application and not less than thirty days after the last publication of notice after the examination and approval by the department of the application. If the department, upon investigation and after public hearing on the application, is satisfied that the stockholders and officers of the financial institution applying for such acquisition or merger are parties of integrity and responsibility, that the requirements of section 8-702 have been met or some alternate form of protection for depositors has been met, and that the public necessity, convenience, and advantage will be promoted by permitting such acquisition or merger, the department shall, upon payment of the required fees, issue to such institution an order of approval for the acquisition or merger.

(3) When application is made for cross-industry acquisition or merger and the director determines, in his or her discretion, that the financial condition of the financial institution surviving the acquisition or merger is such as to indicate that a hearing on the application would not be necessary, then the hearing requirement of subsection (2) of this section shall only be required if, (a) after publishing a notice of the proposed application in a newspaper of general circulation in the county or counties where the offices of the financial institution to be merged or acquired are located and (b) after giving notice to all financial institutions located within such county or counties, the director receives a substantive objection to the application within fifteen days after the first day of publication. The director shall send the notice to financial institutions by first-class mail, postage prepaid, or electronic mail. Electronic mail may be used if the financial institution agrees in advance to receive such notices by electronic mail. A financial institution may designate one office for receipt of any such notice if it has more than one office located within the county where such notice is to be sent or a main office in a county other than the county where such notice is to be sent.

(4) The expense of any publication and mailing required by this section shall be paid by the applicant but payment shall not be a condition precedent to approval by the director.

Source: Laws 1983, LB 241, § 5; Laws 1990, LB 956, § 16; Laws 2003, LB 217, § 27; Laws 2008, LB851, § 14; Laws 2011, LB74, § 4; Laws 2016, LB751, § 6.

(d) ACQUISITION OF NEWLY ESTABLISHED BANK

8-1511 Terms, defined.

For purposes of sections 8-1511 to 8-1513, unless the context otherwise requires:

(1) Affiliated bank or thrift institution means (a) if the bank or thrift institution is a subsidiary of a state bank, national banking association, or thrift

institution, the parent bank or thrift institution as the case may be and (b) if the bank or thrift institution is a subsidiary of a bank or thrift institution holding company, the principal subsidiary of the holding company which is a bank or thrift institution as the case may be;

(2) Association of banks or thrift institutions means two or more banks or thrift institutions formed for the purpose of acquiring and holding all or substantially all of the voting stock of one credit card bank pursuant to sections 8-1512 and 8-1513;

(3) Bank or banking corporation means the principal office of (a) any national bank doing business in this state, (b) any corporation which is chartered to conduct a bank in this state as provided in the Nebraska Banking Act, (c) any association of banks, (d) a bank holding company as defined in the Nebraska Bank Holding Company Act of 1995, or (e) an out-of-state bank holding company as defined in the Nebraska Bank Holding Company Act of 1995;

(4) Qualifying association means an association, corporation, partnership, limited liability company, or other entity which at all times maintains an office in this state at which it employs at least fifty persons in this state and which pursuant to contract or otherwise offers at least the following services to banks: (a) The distribution, as agent for a bank, of credit cards or transaction cards; (b) the preparation of periodic statements of amounts due under such account; (c) the receipt from credit card or transaction card holders of amounts paid on or with respect to such accounts; and (d) the maintenance of financial records reflecting the status of such accounts from time to time;

(5) Thrift institution means (a) any corporation which is chartered as a building and loan association, savings and loan association, savings bank, or credit union under the laws of the United States, any other state, or the District of Columbia and whose operations are principally conducted outside of Nebraska, (b) any holding company of a thrift institution with subsidiaries whose operations are principally conducted outside of Nebraska, or (c) any association of thrift institutions; and

(6) Transaction card means a device or means used to access a prearranged revolving credit plan account.

Source: Laws 1984, LB 1076, § 5; Laws 1987, LB 332, § 3; Laws 1993, LB 121, § 103; Laws 1995, LB 384, § 12; Laws 2002, LB 857, § 4; Laws 2002, LB 1094, § 9; Laws 2004, LB 999, § 14.

Cross References

Nebraska Bank Holding Company Act of 1995, see section 8-908.
Nebraska Banking Act, see section 8-101.02.

8-1512 Bank or thrift institution; acquire credit card bank; conditions; sections, how construed.

(1) Notwithstanding any other provisions of law and subject to the provisions of this section and to the approval of the Director of Banking and Finance, any bank or thrift institution may acquire and hold all or substantially all of the voting stock of one credit card bank located in this state when and so long as the credit card bank meets the conditions set forth in section 8-2401.

(2) Sections 8-1511 to 8-1513 and 8-2401 to 8-2403 shall not be construed so as to limit the acquisition or ownership of a credit card bank to banks or thrift institutions.

Source: Laws 1983, LB 454, § 2; R.S.Supp.,1983, § 8-905; Laws 1984, LB 1076, § 3; Laws 1987, LB 332, § 4; Laws 2004, LB 999, § 15.

8-1513 Application; contents; approval; considerations; director; powers and duties.

(1) Any bank or thrift institution proposing any acquisition pursuant to section 8-1512 shall file an application with the Department of Banking and Finance for approval to make the acquisition. The application shall contain such information as the Director of Banking and Finance may by regulation require and shall specifically acknowledge the applicant's agreement to be bound by the conditions set forth in section 8-2401. In addition, the application shall designate a resident of this state as the applicant's agent for the service of any paper, notice, or legal process upon the applicant in connection with the matters arising out of the laws of this state and shall be accompanied by the filing fee provided in section 8-602.

(2) In determining whether to approve an acquisition by a bank or thrift institution of any voting stock of a credit card bank located in this state, the director shall consider: (a) The financial and managerial resources of such bank or thrift institution; (b) whether the acquisition may result in undue concentration of resources or substantial lessening of competition; and (c) whether the convenience and benefit to the public outweigh any adverse competitive effects.

(3) Any approval granted to a bank or thrift institution by the director is subject to such reasonable conditions as the director deems necessary and to the director's continuing authority to ascertain such financial institution's compliance with the provisions of the laws of this state and the conditions of approval.

(4) Whenever the director determines after notice and hearing that any bank or thrift institution is not in compliance with the laws of this state or the conditions of approval, the director shall order such bank or thrift institution to divest itself of all stock of the credit card bank acquired pursuant to section 8-1512 and such bank or thrift institution shall be liable for a penalty of ten thousand dollars per day from the date such divestiture is ordered until it is completed.

Source: Laws 1983, LB 454, § 3; R.S.Supp.,1983, § 8-906; Laws 1984, LB 1076, § 4; Laws 1987, LB 332, § 5; Laws 2004, LB 999, § 16.

8-1514 Repealed. Laws 1995, LB 384, § 35.

(e) ACQUISITION OF ELIGIBLE SAVINGS ASSOCIATION

8-1515 Repealed. Laws 2002, LB 1089, § 14.

(f) ACQUISITIONS

8-1516 Bank; purchase or merger; financial institution; cross-industry merger or acquisition; when.

(1)(a) With the approval of the director, a bank may only acquire another bank in Nebraska as a result of a purchase or merger if the acquired bank and its branches are converted to branches of the acquiring bank.

(b) With the approval of the director, a financial institution may only acquire another financial institution in Nebraska as a result of a cross-industry merger or acquisition under section 8-1510 if (i) the acquired financial institution and its branches are converted to branches of the acquiring financial institution and (ii) section 8-1510 has been satisfied.

(2) For purposes of this section:

(a) Bank means a bank organized under the laws of this state or organized under the laws of the United States to do business in this state; and

(b) Financial institution means a bank, savings bank, savings and loan association, building and loan association, trust company, or credit union, organized under the laws of this state or organized under the laws of the United States to do business in this state.

Source: Laws 1996, LB 1275, § 1; Laws 2002, LB 1089, § 10; Laws 2003, LB 131, § 16.

ARTICLE 16

BANKERS BANKS

Section

8-1601. Terms, defined.
8-1602. Formation of bankers bank; requirements.
8-1603. Provisions applicable.
8-1604. Repurchase of capital stock; limitation.
8-1605. Acquisition of stock; limitation.

8-1601 Terms, defined.

For purposes of sections 8-1601 to 8-1605, unless the context otherwise requires:

(1) Bank has the same meaning as in section 8-909;

(2) Bank holding company has the same meaning as in section 8-909;

(3) Bankers bank means a bank formed pursuant to section 8-1602;

(4) Department means the Department of Banking and Finance;

(5) Foreign bank holding company has the same meaning as out-of-state bank holding company in section 8-909;

(6) Foreign bankers bank means a bank which is chartered in a foreign state and which is:

(a) Insured by the Federal Deposit Insurance Corporation;

(b) Owned substantially by banks in the state in which the bank was chartered; and

(c) Directly and through its subsidiaries engaged exclusively in providing services for other banks and their officers, directors, and employees;

(7) Foreign state means any state of the United States other than the State of Nebraska, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the District of Columbia; and

(8) Owned substantially means at least eighty percent of the outstanding voting stock is owned.

Source: Laws 1986, LB 1123, § 1; Laws 1999, LB 396, § 15; Laws 2006, LB 876, § 21.

8-1602 Formation of bankers bank; requirements.

A bankers bank may be formed with the approval of the department and subject to requirements and procedures for the issuance of a new bank charter or the transfer of an existing bank charter as provided in the Nebraska Banking Act. A bankers bank shall be a bank which is:

(1) Insured by the Federal Deposit Insurance Corporation;

(2) Owned substantially by other Nebraska banks, bank holding companies, foreign bank holding companies, or a combination of such entities; and

(3) Directly and through all its subsidiaries engaged exclusively in providing services for other banks and their officers, directors, and employees.

Source: Laws 1986, LB 1123, § 2; Laws 1998, LB 1321, § 72; Laws 1999, LB 396, § 16; Laws 2006, LB 876, § 22.

Cross References

Nebraska Banking Act, see section 8-101.02.

8-1603 Provisions applicable.

A bankers bank shall be subject to the Nebraska Banking Act and any rules and regulations adopted and promulgated by the department.

Source: Laws 1986, LB 1123, § 3; Laws 1998, LB 1321, § 73; Laws 2003, LB 217, § 28.

Cross References

Nebraska Banking Act, see section 8-101.02.

8-1604 Repurchase of capital stock; limitation.

A bankers bank may repurchase, for its own account, shares of its own capital stock, but the outstanding capital stock may not be reduced below the minimum required by law.

Source: Laws 1986, LB 1123, § 4.

8-1605 Acquisition of stock; limitation.

A bank may subscribe to, invest in, buy, or own voting stock of one or more bankers banks, foreign bankers banks, bank holding companies, or foreign bank holding companies of such bankers bank or foreign bankers bank in an amount not to exceed five percent of any class of voting stock of each such bankers bank, foreign bankers bank, bank holding company, or foreign bank holding company of such bankers bank or foreign bankers bank. In no event shall such bank's holdings of the stock of a bankers bank, foreign bankers bank, bank holding company, or foreign bank holding company of such bankers bank or foreign bankers bank exceed ten percent of the capital stock and paid-in and unimpaired surplus of the bank holding such stock.

Source: Laws 1986, LB 1123, § 5; Laws 1999, LB 396, § 17; Laws 2006, LB 876, § 23.

ARTICLE 17
COMMODITY CODE

Section
8-1701. Code, how cited.

Section
8-1702. Definitions, sections found.
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8-1704. CFTC rule, defined.
8-1705. Commodity, defined.
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8-1721.01. Cause of action under commodity contract authorized; exception; statute of limitations; waiver of compliance with code; void.
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8-1734. Purchase, sale, or offer within state; laws applicable; exceptions.
8-1735. Administrative proceeding; notice of intent; summary order; notice; hearing.
8-1736. Appeal; procedure.
8-1737. Exemption; burden of proof.

8-1701 Code, how cited.

Sections 8-1701 to 8-1737 shall be known and may be cited as the Commodity Code.

Source: Laws 1987, LB 575, § 1; Laws 1993, LB 283, § 1.

8-1702 Definitions, sections found.

For purposes of the Commodity Code, unless the context otherwise requires, the definitions found in sections 8-1703 to 8-1716 shall be used.

Source: Laws 1987, LB 575, § 2.

8-1703 Board of trade, defined.

Board of trade shall mean any person or group of persons engaged in buying or selling any commodity or receiving the same for sale on consignment, whether such person or group of persons is characterized as a board of trade, exchange, or other form of marketplace.

Source: Laws 1987, LB 575, § 3.

8-1704 CFTC rule, defined.

CFTC rule shall mean any rule, regulation, or order of the Commodity Futures Trading Commission in effect on January 1, 2022.

Source: Laws 1987, LB 575, § 4; Laws 1993, LB 283, § 2; Laws 2011, LB76, § 4; Laws 2019, LB259, § 6; Laws 2020, LB909, § 16; Laws 2021, LB363, § 15; Laws 2022, LB707, § 23.
Operative date April 19, 2022.

8-1705 Commodity, defined.

(1) Commodity shall mean, except as otherwise specified by the director by rule, regulation, or order:

(a) Any agricultural, grain, or livestock product or byproduct;

(b) Any metal or mineral, including a precious metal;

(c) Any gem or gemstone, whether characterized as precious, semi-precious, or otherwise;

(d) Any fuel, whether liquid, gaseous, or otherwise;

(e) Any foreign currency; and

(f) All other goods, articles, products, or items of any kind.

(2) Commodity shall not include:

(a) A numismatic coin, the fair market value of which is at least fifteen percent higher than the value of the metal it contains;

(b) Real property or any timber, agricultural, or livestock product grown or raised on real property and offered or sold by the owner or lessee of such real property; or

(c) Any work of art offered or sold by art dealers at public auction or offered or sold through a private sale by the owner of such work.

Source: Laws 1987, LB 575, § 5; Laws 1993, LB 283, § 3.

8-1706 Commodity contract, defined.

Commodity contract shall mean any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any commodity contract offered or sold shall, in the absence of evidence to the contrary, be presumed to be offered or sold for speculation or investment purposes.

Source: Laws 1987, LB 575, § 6; Laws 1993, LB 283, § 4.

8-1707 Commodity Exchange Act, defined.

Commodity Exchange Act shall mean the act of Congress known as the Commodity Exchange Act, 7 U.S.C. 1, as amended on January 1, 2022.

Source: Laws 1987, LB 575, § 7; Laws 1993, LB 283, § 5; Laws 2011, LB76, § 5; Laws 2019, LB259, § 7; Laws 2020, LB909, § 17; Laws 2021, LB363, § 16; Laws 2022, LB707, § 24.
Operative date April 19, 2022.

8-1708 Commodity Futures Trading Commission, defined.

Commodity Futures Trading Commission shall mean the independent regulatory agency established by Congress to administer the Commodity Exchange Act.

Source: Laws 1987, LB 575, § 8.

8-1709 Commodity merchant, defined.

Commodity merchant shall mean any of the following, as defined or described in the Commodity Exchange Act or by CFTC rule:

(1) Futures commission merchant;

(2) Commodity pool operator;

(3) Commodity trading advisor;

(4) Introducing broker;

(5) Leverage transaction merchant;

(6) An associated person of any of the foregoing;

(7) Floor broker; and

(8) Any other person, other than a futures association, required to register with the Commodity Futures Trading Commission.

Source: Laws 1987, LB 575, § 9.

8-1710 Commodity option, defined.

Commodity option shall mean any account, agreement, or contract giving a party thereto the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise, but shall not include an option traded on a national securities exchange registered with the Securities and Exchange Commission.

Source: Laws 1987, LB 575, § 10.

8-1711 Director, defined.

Director shall mean the Director of Banking and Finance.

Source: Laws 1987, LB 575, § 11.

8-1712 Financial institution, defined.

Financial institution shall mean a bank, savings institution, or trust company organized under, or supervised pursuant to, the laws of the United States or of any state.

Source: Laws 1987, LB 575, § 12.

8-1713 Offer, defined.

Offer shall mean every offer to sell, offer to purchase, or offer to enter into a commodity contract or commodity option.

Source: Laws 1987, LB 575, § 13.

8-1714 Person, defined.

Person shall mean an individual, a corporation, a partnership, a limited liability company, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government, but shall not include a contract market designated by the Commodity Futures Trading Commission or any clearinghouse thereof or a national securities exchange registered with the Securities and Exchange Commission or any employee, officer, or director of such contract market, clearinghouse, or exchange acting solely in that capacity.

Source: Laws 1987, LB 575, § 14; Laws 1993, LB 121, § 104.

8-1715 Precious metal, defined.

Precious metal shall mean the following in either coin, bullion, or other form:

(1) Silver;

(2) Gold;

(3) Platinum;

(4) Palladium;

(5) Copper; and

(6) Such other items as the director may specify by rule, regulation, or order.

Source: Laws 1987, LB 575, § 15.

8-1716 Sale or sell, defined.

Sale or sell shall mean every sale, contract of sale, contract to sell, or disposition, for value.

Source: Laws 1987, LB 575, § 16.

8-1717 Sale or purchase of commodity; prohibited; exception.

Except as otherwise provided in section 8-1718 or 8-1719, no person shall sell or purchase or offer to sell or purchase any commodity under any commodity contract or under any commodity option or offer to enter into or enter into as seller or purchaser any commodity contract or any commodity option.

Source: Laws 1987, LB 575, § 17.

8-1717.01 Failure to make physical delivery; defense.

It shall be a defense in any complaint, information, indictment, writ, or proceeding brought under the Commodity Code alleging a violation of section 8-1717 based solely on the failure in an individual case to make physical delivery within the applicable time period under subdivisions (1)(b) and (e) of section 8-1719 if (1) the failure to make physical delivery was due solely to factors beyond the control of the seller, the seller's officers, directors, partners,

limited liability company members, agents, servants, or employees, every person occupying a similar status or performing similar functions, every person who directly or indirectly controls or is controlled by the seller or any of them, or the seller's affiliates, subsidiaries, or successors and (2) physical delivery was completed within a reasonable time under the applicable circumstances.

Source: Laws 1993, LB 283, § 11; Laws 1994, LB 884, § 15.

8-1718 Transactions; authorized purchaser or seller.

(1) Section 8-1717 shall not apply to any transaction offered by and in which any of the following persons, or any employee, officer, or director of such person acting solely in that capacity, is the purchaser or seller:

(a) A person registered with the Commodity Futures Trading Commission as a futures commission merchant or as a leverage transaction merchant whose activities require such registration;

(b) A person registered with the Securities and Exchange Commission as a broker-dealer whose activities require such registration;

(c) A person affiliated with, and whose obligations and liabilities under the transaction are guaranteed by, a person referred to in subdivision (1)(a) or (b) of this section;

(d) A person who is a member of a contract market designated by the Commodity Futures Trading Commission or any clearinghouse thereof;

(e) A financial institution; or

(f) A person registered under the laws of this state as a securities broker-dealer whose activities require such registration.

(2) This section shall not apply to any transaction or activity which is prohibited by the Commodity Exchange Act or CFTC rule.

Source: Laws 1987, LB 575, § 18.

8-1719 Transaction; accounts or contracts authorized; director; adopt rules and regulations.

(1) Section 8-1717 shall not apply to the following:

(a) An account, agreement, or transaction within the exclusive jurisdiction of the Commodity Futures Trading Commission as granted under the Commodity Exchange Act;

(b) A commodity contract for the purchase of one or more precious metals which requires, and under which the purchaser receives, within twenty-eight calendar days from the payment of any portion of the purchase price, physical delivery of the total quantity of the precious metals purchased. For purposes of this subsection, physical delivery shall be deemed to have occurred if, within such twenty-eight-day period, the total quantity of precious metals purchased is delivered, whether in specifically segregated or fungible bulk form, into the possession of a depository, other than the seller, which is either (i) a financial institution, (ii) a depository, the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the Commodity Futures Trading Commission, (iii) a storage facility licensed or regulated by the United States or any agency thereof, or (iv) a depository designated by the director, and such depository issues and the purchaser receives, a certificate, document of title, confirmation, or other instrument

evidencing that the total quantity of precious metals purchased has been delivered to the depository and is being and will continue to be held by the depository on the purchaser's behalf, free and clear of all liens and encumbrances, other than liens of the purchaser, tax liens, liens agreed to by the purchaser, or liens of the depository for fees and expenses, which have previously been disclosed to the purchaser;

(c) A commodity contract solely between persons engaged in producing, processing, using commercially, or handling as merchants, each commodity subject to such contract or any byproduct of such commodity;

(d) A commodity contract under which the offeree or the purchaser is a person referred to in section 8-1718, an insurance company, an investment company as defined in the Investment Company Act of 1940, or an employee pension and profit-sharing or benefit plan other than a self-employed individual retirement plan or individual retirement account; or

(e) A commodity contract which requires, and under which the purchaser receives, within twenty-eight calendar days from the payment of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement.

(2) The director may adopt and promulgate or issue rules, regulations, or orders prescribing the terms and conditions of all transactions and contracts covered by the Commodity Code, which are not within the exclusive jurisdiction of the Commodity Futures Trading Commission as granted by the Commodity Exchange Act, exempting any person or transaction from any provision of the Commodity Code conditionally or unconditionally and otherwise implementing such code for the protection of purchasers and sellers of commodities.

Source: Laws 1987, LB 575, § 19; Laws 1993, LB 283, § 6.

8-1720 Commodity merchant; board of trade; requirements.

(1) No person shall engage in a trade or business or otherwise act as a commodity merchant unless such person (a) is registered or temporarily licensed with the Commodity Futures Trading Commission for each activity constituting such person as a commodity merchant and such registration or temporary license shall not have expired or been suspended or revoked or (b) is exempt from such registration by virtue of the Commodity Exchange Act or of a CFTC rule.

(2) No board of trade shall trade or provide a place for the trading of any commodity contract or commodity option required to be traded on or subject to the rules of a contract market designated by the Commodity Futures Trading Commission unless such board of trade has been so designated for such commodity contract or commodity option and such designation shall not have been vacated, suspended, or revoked.

Source: Laws 1987, LB 575, § 20.

8-1721 Prohibited acts.

(1) No person shall directly or indirectly (a) cheat, defraud, or attempt to cheat or defraud any other person or employ any device, scheme, or artifice to defraud any other person, (b) make any false report, enter any false record, or make any untrue statement of a material fact or omit to state a material fact, (c) engage in any transaction, act, practice, or course of business, including, but

not limited to, any form of advertising or solicitation, which operates or would operate as a fraud or deceit upon any person, or (d) misappropriate or convert the funds, security, or property of any other person in or in connection with the purchase or sale of, the offer to sell, the offer to purchase, the offer to enter into, or the entry into of any commodity contract or commodity option subject to section 8-1717 or 8-1718 or subdivision (1)(b) or (d) of section 8-1719.

(2) No person shall sell a commodity contract under the terms of which the purchaser, other than a person referred to in section 8-1718 or subdivision (1)(d) of section 8-1719, finances the transaction (a) through a lender affiliated with or related to the seller, (b) through a lender who directly supplies the seller with the contract documents used by the purchaser to evidence the loan and the seller has knowledge of the credit terms and participates in the preparation of the document, (c) through a lender who knowingly participates with the seller in the sale, or (d) under an agreement which conditions the granting of the loan on the purchase of the commodity from a particular seller.

Source: Laws 1987, LB 575, § 21; Laws 1993, LB 283, § 7.

8-1721.01 Cause of action under commodity contract authorized; exception; statute of limitations; waiver of compliance with code; void.

(1) Any person who violates section 8-1721 shall be liable to the purchaser who may sue either at law or in equity to recover the consideration paid under the commodity contract, including interest paid under a financing agreement in connection with the purchase, costs, and reasonable attorney's fees, less (a) the amount received upon the disposition of the commodity or (b) the value of the commodity on the date of the entry of judgment.

(2) Every cause of action under this section shall survive the death of any person who might have been a plaintiff or defendant. No person may sue under this section more than three years after the contract of sale. If the cause of action is not discovered and could not be reasonably discovered within the three-year period, then the action may be commenced within two years from the date of the discovery or from the date of discovery of facts which would reasonably lead to the discovery, whichever is earlier. In no event may a person sue under this section more than five years after the contract of sale.

(3) No person who has made or engaged in the performance of any contract in violation of any provision of the Commodity Code or any rule or order under the code or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation of the code may base any suit on the contract. Any condition, stipulation, or provision purportedly binding any purchaser to waive compliance with any provision of the code or any rule or order under the code shall be void.

Source: Laws 1993, LB 283, § 10.

8-1722 Liability; joint and several.

(1) The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, limited liability company, corporation, or trust within the scope of his or her employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, limited liability company, corporation, or trust as well as of such official, agent, or other person.

(2) Every person who directly or indirectly controls another person liable under any provision of the Commodity Code, every partner, member, officer, or director of such other person, every person occupying a similar status or performing similar functions, and every employee of such other person who materially aids in the violation shall also be liable jointly and severally with and to the same extent as such other person unless the person who is also liable by virtue of this section sustains the burden of proof that he or she did not know and in exercise of reasonable care could not have known of the existence of the facts by reason of which the liability is alleged to exist.

Source: Laws 1987, LB 575, § 22; Laws 1993, LB 121, § 105.

8-1723 Securities Act of Nebraska; applicability of code.

Nothing in the Commodity Code shall impair, derogate, or otherwise affect the authority or powers of the director under the Securities Act of Nebraska or the application of any provision of the act to any person or transaction subject to such act.

Source: Laws 1987, LB 575, § 23.

Cross References

Securities Act of Nebraska, see section 8-1123.

8-1724 Code, how construed.

The Commodity Code may be construed and implemented to effectuate its general purpose to protect investors, to prevent and prosecute illegal and fraudulent schemes involving commodity contracts, and to maximize coordination with federal and other states' law and the administration and enforcement thereof.

Source: Laws 1987, LB 575, § 24; Laws 1993, LB 283, § 8.

8-1725 Director; investigation; enforcement; powers.

(1) The director may make investigations, within or without this state, as he or she finds necessary or appropriate to:

(a) Determine whether any person has violated or is about to violate any provision of the Commodity Code or any rule, regulation, or order of the director; or

(b) Aid in enforcement of the Commodity Code.

(2) The director may publish information concerning any violation of the code or any rule, regulation, or order of the director.

(3) For purposes of any investigation or proceeding under the Commodity Code, the director or any officer or employee designated by rule, regulation, or order may administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director finds to be relevant or material to the inquiry.

(4)(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 investiga-

tion 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 1987, LB 575, § 25.

8-1726 Violations of code; director; powers.

(1) If the director believes, whether or not based upon an investigation conducted under section 8-1725, that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of the Commodity Code or any rule, regulation, or order under the code, the director may:

(a) Issue a cease and desist order;

(b) Issue an order imposing a civil penalty in an amount which may not exceed twenty-five thousand dollars for any single violation or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings; or

(c) Initiate any of the actions specified in subsection (2) of this section.

(2) The director may institute any of the following actions in the appropriate district court of this state or in the appropriate courts of another state in addition to any legal or equitable remedies otherwise available:

(a) An action for a declaratory judgment;

(b) An action for a prohibitory or mandatory injunction to enjoin the violation and to ensure compliance with the Commodity Code or any rule, regulation, or order of the director;

(c) An action for disgorgement or restitution; or

(d) An action for appointment of a receiver or conservator for the defendant or the defendant's assets.

(3)(a) The fines and costs shall be in addition to all other penalties imposed by the laws of this state. The director shall collect the fines and costs and remit them to the State Treasurer. The State Treasurer shall credit the costs to the Securities Act Cash Fund and distribute the fines in accordance with Article VII, section 5, of the Constitution of Nebraska.

(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 code.

Source: Laws 1987, LB 575, § 26; Laws 1993, LB 283, § 9; Laws 2019, LB259, § 8.

8-1727 Violations of code; civil remedies.

(1) Upon a proper showing by the director that a person has violated or is about to violate any provision of the Commodity Code or any rule, regulation,

or order of the director, the court may grant appropriate legal or equitable remedies.

(2) Upon a showing of a violation of the Commodity Code or a rule, regulation, or order of the director, the court, in addition to traditional legal and equitable remedies, including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions, and writs of prohibition or mandamus, may grant the following special remedies:

(a) Imposition of a civil penalty in an amount which may not exceed twenty-five thousand dollars for any single violation or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings;

(b) Disgorgement;

(c) Declaratory judgment;

(d) Restitution to investors wishing restitution; and

(e) Appointment of a receiver or conservator for the defendant or the defendant's assets.

(3) Appropriate remedies when the defendant is shown only about to violate the Commodity Code or a rule, regulation, or order of the director shall be limited to:

(a) A temporary restraining order;

(b) A temporary or permanent injunction;

(c) A writ of prohibition or mandamus; or

(d) An order appointing a receiver or conservator for the defendant or the defendant's assets.

(4) The court shall not require the director to post a bond in any official action under the Commodity Code.

Source: Laws 1987, LB 575, § 27.

8-1728 Violations of commodity code of foreign state; remedies.

(1) Upon a proper showing by the director or securities or commodity agency of a foreign state that a person other than a government or governmental agency or instrumentality has violated or is about to violate any provision of the commodity code of such state or any rule, regulation, or order of the director or securities or commodity agency of the foreign state, the court may grant appropriate legal and equitable remedies.

(2) Upon a showing of a violation of the securities or commodity act of the foreign state or a rule, regulation, or order of the director or securities or commodity agency of the foreign state, the court, in addition to traditional legal or equitable remedies, including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions, and writs of prohibition or mandamus, may grant the following special remedies:

(a) Disgorgement; and

(b) Appointment of a receiver, conservator, or ancillary receiver or conservator for the defendant or the defendant's assets located in this state.

(3) Appropriate remedies when the defendant is shown only about to violate the securities or commodity act of the foreign state or a rule, regulation, or order of the director or securities or commodity agency of the foreign state shall be limited to:

(a) A temporary restraining order;

(b) A temporary or permanent injunction;

(c) A writ of prohibition or mandamus; or

(d) An order appointing a receiver, conservator, or ancillary receiver or conservator for the defendant or the defendant's assets located in this state.

Source: Laws 1987, LB 575, § 28.

8-1729 Violations of code; criminal penalties; enforcement.

(1) Any person who willfully violates any provision of the Commodity Code or any rule, regulation, or order of the director under the code shall, upon conviction, be guilty of a Class IV felony.

(2) Any person convicted of violating a rule, regulation, or order under the code may be fined but may not be imprisoned if the person proves he or she had no knowledge of the rule, regulation, or order.

(3) The director may refer such evidence as is available concerning violations of the code or any rule, regulation, or 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 code.

Source: Laws 1987, LB 575, § 29.

8-1730 Code; administration; use of information for personal gain or benefit prohibited; public information; confidentiality; privilege.

(1) The Commodity Code shall be administered by the Department of Banking and Finance. Neither the director nor any employees of the director shall use any information which is filed with or obtained by the director which is not public information for personal gain or benefit, nor shall the director or any employees of the director conduct any securities or commodity dealings whatsoever based upon any such information, even though public, if there has not been a sufficient period of time for the securities or commodity markets to assimilate such information.

(2) Except as provided in subsection (3) of this section, all information collected, assembled, or maintained by the director shall be public information and shall be available for the examination of the public as provided by sections 84-712 to 84-712.09.

(3) The following information shall be deemed to be confidential:

(a) Information obtained in investigations pursuant to section 8-1725;

(b) Information made confidential by sections 84-712 to 84-712.09; or

(c) Information obtained from federal agencies which may not be disclosed under federal law.

(4) The director may disclose any information made confidential under subdivision (3)(a) of this section to persons identified in section 8-1731.

(5) No provision of the Commodity Code shall either create or derogate any privilege which exists at common law, by statute, or otherwise, when any documentary or other evidence is sought under subpoena directed to the director or any employee of the director.

Source: Laws 1987, LB 575, § 30.

8-1731 Uniform application and interpretation of code; securities regulation and enforcement; governmental cooperation; authorized.

(1) To encourage uniform application and interpretation of the Commodity Code and securities regulation and enforcement in general, the director and the employees of the director may cooperate, including bearing the expense of the cooperation, with the securities agencies or director of another jurisdiction, Canadian province, or territory or such other agencies administering its commodity code, the Commodity Futures Trading Commission, the Securities and Exchange Commission, any self-regulatory organization established under the Commodity Exchange Act or the Securities Exchange Act of 1934, any national or international organization of commodities or securities officials or agencies, and any governmental law enforcement agency.

(2) The cooperation authorized by subsection (1) of this section may include, but need not be limited to, the following:

(a) Making joint examinations or investigations;

(b) Holding joint administrative hearings;

(c) Filing and prosecuting joint litigation;

(d) Sharing and exchanging personnel;

(e) Sharing and exchanging information and documents;

(f) Formulating and adopting mutual regulations, statements of policy, guidelines, proposed statutory changes, and releases; and

(g) Issuing and enforcing subpoenas at the request of the agency administering such code in another jurisdiction, the securities agency of another jurisdiction, the Commodity Futures Trading Commission, or the Securities and Exchange Commission if the information sought would also be subject to lawful subpoena for conduct occurring in this state.

Source: Laws 1987, LB 575, § 31; Laws 2003, LB 217, § 29.

8-1732 Director; adopt rules and regulations; standards.

(1) In addition to specific authority granted elsewhere in the Commodity Code, the director may adopt and promulgate rules, regulations, and orders as are necessary to carry out the code. Such rules and regulations shall include, but not be limited to, rules and regulations defining any terms, whether or not used in the code, insofar as the definitions are not inconsistent with the code. For the purpose of rules and regulations, the director may classify commodities and commodity contracts, persons, and matters within the director's jurisdiction.

(2) Unless specifically provided in the Commodity Code, no rule, regulation, or order may be adopted and promulgated unless the director finds that the action is:

(a) Necessary or appropriate in the public interest or for the protection of investors; and

(b) Consistent with the purposes fairly intended by the policy and provisions of the code.

(3) All rules and regulations of the director shall be published.

(4) No provision of the Commodity Code imposing any liability shall apply to any act done or omitted in good faith in conformity with a rule, regulation, or

order adopted and promulgated by the director, notwithstanding that the rule, regulation, or order may later be amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

Source: Laws 1987, LB 575, § 32.

8-1733 Service of process.

When a person, including a nonresident of this state, engages in conduct prohibited or made actionable by the Commodity Code or any rule, regulation, or order of the director, the engaging in the conduct shall constitute sufficient contact with this state for the exercise of personal jurisdiction over such a person in any action which arises under the Commodity Code. Service may be made by leaving a copy of the process in the office of the director, but it shall not be effective unless (1) the plaintiff, who may be the director in a suit, action, or proceeding instituted by him or her, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at his or her last address on file with the director and (2) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

Source: Laws 1987, LB 575, § 33; Laws 1989, LB 20, § 1.

8-1734 Purchase, sale, or offer within state; laws applicable; exceptions.

(1) Sections 8-1717, 8-1720, and 8-1721 shall apply to persons who sell or offer to sell when (a) an offer to sell is made in this state or (b) an offer to buy is made and accepted in this state.

(2) Sections 8-1717, 8-1720, and 8-1721 shall apply to persons who buy or offer to buy when (a) an offer to buy is made in this state or (b) an offer to sell is made and accepted in this state.

(3) For the purpose of this section, an offer to sell or to buy shall be made in this state, whether or not either party is then present in this state, when the offer (a) originates from this state or (b) is directed by the offeror to this state and received at the place to which it is directed or at any post office in this state in the case of a mailed offer.

(4) For the purpose of this section, an offer to buy or to sell shall be accepted in this state when acceptance (a) is communicated to the offeror in this state and (b) has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance shall be communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state, reasonably believing the offeror to be in this state and it is received at the place to which it is directed or at any post office in this state in the case of a mailed acceptance.

(5) An offer to sell or to buy shall not be made in this state when (a) the publisher circulates, or there is circulated on his or her behalf, in this state any bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this state or which is published in this state but has had more than two-thirds of its circulation outside this state during the past twelve months or (b) a radio or television program originating outside this state is received in this state.

Source: Laws 1987, LB 575, § 34.

8-1735 Administrative proceeding; notice of intent; summary order; notice; hearing.

(1) The director shall commence an administrative proceeding under the Commodity Code by entering either a notice of intent to do a contemplated act or a summary order. The notice of intent or summary order may be entered without notice, without opportunity for hearing, and need not be supported by findings of fact or conclusions of law, but shall be in writing.

(2) Upon entry of a notice of intent or summary order, the director shall promptly notify all interested parties that the notice or summary order has been entered and the reasons therefor. If the proceeding is pursuant to a notice of intent, the director shall inform all interested parties of the date, time, and place set for the hearing on the notice. If the proceeding is pursuant to a summary order, the director shall inform all interested parties that they have fifteen business days from the entry of the order to file a written request for a hearing on the matter with the director and that the hearing will be scheduled to commence within thirty business days after the receipt of the written request, unless the parties consent to a later date or the hearing officer sets a later date for good cause.

(3) If the proceeding is pursuant to a summary order, the director, whether or not a written request for a hearing is received from any interested party, may set the matter down for hearing on the director's own motion.

(4) If no hearing is requested and none is ordered by the director, the summary order shall automatically become a final order after thirty business days.

(5) If a hearing is requested or ordered, the director, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination.

(6) No final order or order after hearing may be returned without (a) appropriate notice to all interested persons, (b) opportunity for hearing by all interested persons, and (c) entry of written findings of fact and conclusions of law.

(7) Every hearing in an administrative proceeding under the Commodity Code shall be public unless the director grants a request joined in by all the respondents that the hearing be conducted privately.

Source: Laws 1987, LB 575, § 35; Laws 2001, LB 53, § 24.

8-1736 Appeal; procedure.

(1) Any person aggrieved by a final order of the director may obtain a review of the order in the district court of Lancaster County by filing, within sixty days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition for review shall be served upon the director.

(2) Upon the filing of a petition for review, except when the taking of additional evidence is ordered by the court pursuant to subsection (5) or (6) of this section, the court shall have exclusive jurisdiction of the matter, and the director may not modify or set aside the order in whole or in part.

(3) The filing of a petition for review under subsection (1) of this section shall not, unless specifically ordered by the court, operate as a stay of the director's

order, and the director may enforce or ask the court to enforce the order pending the outcome of the review proceedings.

(4) Upon receipt of the petition for review, the director shall certify and file in the court a copy of the order and the transcript or record of the evidence upon which it was based. If the order became final by operation of law under subsection (4) of section 8-1735, the director shall certify and file in court the summary order, evidence of its service upon the parties to it, and an affidavit certifying that no hearing has been held and the order became final pursuant to such section.

(5) If either the aggrieved party or the director applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that there were reasonable grounds for failure to adduce the evidence in the hearing before the director or other good cause, the court may order the additional evidence to be taken by the director under such conditions as the court considers proper.

(6) If new evidence is ordered taken by the court, the director may modify the findings and order by reason of the additional evidence and shall file in the court the additional evidence together with any modified or new findings or order.

(7) The court shall review de novo the petition based upon the original record before the director as amended under subsections (5) and (6) of this section. The findings of the director as to the facts, if supported by competent, material, and substantive evidence, shall be conclusive. Based upon such review, the court may affirm, modify, enforce, or set aside the order, in whole or in part.

(8) The judgment of the court may be appealed to the Court of Appeals.

Source: Laws 1987, LB 575, § 36; Laws 1988, LB 808, § 1; Laws 1991, LB 732, § 16; Laws 1992, LB 360, § 1.

8-1737 Exemption; burden of proof.

It shall not be necessary to refute the existence of any of the exemptions of the Commodity Code in any complaint, information, or indictment or any writ or proceeding brought under the code, and the burden of proof of any such exemption shall be upon the party claiming the same.

Source: Laws 1987, LB 575, § 37.

ARTICLE 18

CURRENCY TRANSACTIONS

Section
8-1801. Repealed. Laws 2004, LB 999, § 56.
8-1802. Repealed. Laws 2004, LB 999, § 56.
8-1803. Repealed. Laws 2004, LB 999, § 56.
8-1804. Repealed. Laws 2004, LB 999, § 56.
8-1805. Repealed. Laws 2004, LB 999, § 56.
8-1806. Repealed. Laws 2004, LB 999, § 56.
8-1807. Repealed. Laws 2004, LB 999, § 56.

8-1801 Repealed. Laws 2004, LB 999, § 56.

8-1802 Repealed. Laws 2004, LB 999, § 56.

8-1803 Repealed. Laws 2004, LB 999, § 56.

8-1804 Repealed. Laws 2004, LB 999, § 56.

8-1805 Repealed. Laws 2004, LB 999, § 56.

8-1806 Repealed. Laws 2004, LB 999, § 56.

8-1807 Repealed. Laws 2004, LB 999, § 56.

ARTICLE 19
NAMES

Section
8-1901. Terms, defined.
8-1902. Name of financial institution; use of similar names unlawful; power of department.
8-1903. Rules and regulations.

8-1901 Terms, defined.

For purposes of sections 8-1901 to 8-1903, unless the context otherwise requires:

(1) Department means the Department of Banking and Finance; and

(2) Financial institution means:

(a) A bank, savings bank, building and loan association, savings and loan association, credit union, or trust company, whether chartered by the department, the United States, or a foreign state agency;

(b) A subsidiary of a bank holding company or out-of-state bank holding company; or

(c) A branch of a financial institution described in subdivision (a) or (b) of this subdivision.

Source: Laws 1995, LB 384, § 6; Laws 2003, LB 131, § 17; Laws 2007, LB124, § 16; Laws 2012, LB963, § 13.

8-1902 Name of financial institution; use of similar names unlawful; power of department.

It shall be unlawful for two or more financial institutions in the same city, village, or county in this state to have or use the same name or names so nearly alike as to cause confusion in transacting business. In all cases in which a similarity of names now exists, or may hereafter exist, a complaint may be made to the department. If in the judgment of the department a similarity does exist and creates confusion in conducting the business of either or both financial institutions, the department may by order require the financial institution which is junior in time in the use of its name in such city, village, or county to change or modify its name to prevent confusion. The change of name shall be approved by the department.

Source: Laws 1909, c. 10, § 31, p. 80; R.S.1913, § 310; Laws 1919, c. 190, tit. V, art. XVI, § 31, p. 697; C.S.1922, § 8011; C.S.1929, § 8-148; Laws 1933, c. 18, § 31, p. 150; C.S.Supp.,1941, § 8-148; R.S. 1943, § 8-148; Laws 1963, c. 29, § 23, p. 143; Laws 1979, LB 220, § 4; R.S.1943, (1991), § 8-123; Laws 1995, LB 384, § 7.

8-1903 Rules and regulations.

The department may adopt and promulgate rules and regulations to carry out the purposes of sections 8-1901 and 8-1902.

Source: Laws 1995, LB 384, § 8.

ARTICLE 20
COMPLIANCE REVIEW

Section
8-2001. Terms, defined.
8-2002. Sections; applicability.
8-2003. Compliance review documents; confidentiality, exception; use in evidence.
8-2004. Compliance review documents; confidentiality; held by governmental agency; effect.
8-2005. Sections; how construed.

8-2001 Terms, defined.

For purposes of sections 8-2001 to 8-2005, the following definitions are used:

(1) Depository institution means a state-chartered or federally chartered financial institution located in this state that is authorized to maintain deposit accounts;

(2) Compliance review committee means:

(a) An audit, loan review, or compliance committee appointed by the board of directors of a depository institution; or

(b) Any other person to the extent the person acts in an investigatory capacity at the direction of a compliance review committee;

(3) Compliance review documents means written reports prepared for or created by a compliance review committee for the purpose of ascertaining compliance with federal or state statutory or regulatory requirements or for the performance of any function described in subdivisions (1) through (3) of section 8-2002, which is not a policy otherwise in violation of any other state or federal regulatory requirements;

(4) Loan review committee means a person or group of persons who, on behalf of a depository institution, reviews loans held by the depository institution for the purpose of assessing the credit quality of the loans, compliance with the depository institution's loan policies, and compliance with applicable laws and rules and regulations; and

(5) Person means an individual, group of individuals, board, committee, partnership, firm, association, corporation, limited liability company, or other entity.

Source: Laws 1995, LB 626, § 1.

8-2002 Sections; applicability.

Sections 8-2001 to 8-2005 apply to a compliance review committee whose functions are to evaluate and seek to improve:

(1) Loan underwriting standards;

(2) Asset quality;

(3) Financial reporting to federal or state regulatory agencies; or

(4) Compliance with federal or state statutory or regulatory requirements.

Source: Laws 1995, LB 626, § 2.

8-2003 Compliance review documents; confidentiality, exception; use in evidence.

Except as provided in section 8-2004:

(1) Compliance review documents are confidential and are not discoverable or admissible in evidence in any civil action arising out of matters evaluated by the compliance review committee. Compliance review committee members shall treat compliance review documents and all proceedings of the compliance review committee as confidential and shall not be compelled to testify regarding such confidential documents or proceedings in any civil action arising out of matters evaluated by the compliance review committee, except that information, documents, or records otherwise available from original sources are not to be construed as immune from discovery or admissibility in any civil action merely because such information, documents, or records were evaluated by the compliance review committee; and

(2) Compliance review documents delivered to a federal or state governmental agency are to remain confidential and are not discoverable or admissible in evidence in any civil action arising out of matters evaluated by the compliance review committee.

Source: Laws 1995, LB 626, § 3.

8-2004 Compliance review documents; confidentiality; held by governmental agency; effect.

Section 8-2003 does not apply to any information required by statute or rule and regulation to be maintained by or provided to a governmental agency while the information is in the possession of the governmental agency to the extent applicable law expressly authorizes its disclosure.

Source: Laws 1995, LB 626, § 4.

8-2005 Sections; how construed.

Sections 8-2001 to 8-2004 are not to be construed to limit the discovery or admissibility in any civil action of any documents that are not compliance review documents and shall not preclude a depository institution's primary state or federal regulator from obtaining compliance review documents.

Source: Laws 1995, LB 626, § 5.

ARTICLE 21
INTERSTATE BRANCHING AND MERGER ACT

Section
8-2101. Act, how cited.
8-2102. Terms, defined.
8-2103. Nebraska state chartered bank; powers.
8-2104. Out-of-state bank; powers; interstate merger transaction; notice; powers and duties.
8-2105. Repealed. Laws 2012, LB 963, § 24.
8-2106. Interstate merger transaction; when prohibited.
8-2107. Director; powers and duties; costs.
8-2108. Branch closing or disposal; act; how construed.

8-2101 Act, how cited.

Sections 8-2101 to 8-2108 shall be known and may be cited as the Interstate Branching and Merger Act.

Source: Laws 1997, LB 351, § 1; Laws 2012, LB963, § 14.

8-2102 Terms, defined.

For purposes of the Interstate Branching and Merger Act, unless the context otherwise requires:

(1) Bank means a bank as defined in 12 U.S.C. 1813, as such section existed on January 1, 2012;

(2) Department means the Department of Banking and Finance;

(3) Director means the Director of Banking and Finance;

(4) Home state means (a) with respect to a state chartered bank, the state in which the bank is chartered and (b) with respect to a national bank, the state in which the main office of the bank is located;

(5) Home state regulator means, with respect to an out-of-state state chartered bank, the bank supervisory agency of the state in which such bank is chartered;

(6) Host state means a state, other than the home state of a bank, in which the bank maintains, or seeks to establish and maintain, a branch;

(7) Interstate merger transaction means a merger or consolidation of two or more banks, at least one of which is a Nebraska bank and at least one of which is an out-of-state bank, and the conversion of the main office and the branches of any bank involved in such merger or consolidation into branches of the resulting bank;

(8) Nebraska bank means a bank whose home state is Nebraska;

(9) Nebraska state chartered bank means a corporation which is chartered to conduct a bank in this state pursuant to the Nebraska Banking Act;

(10) Out-of-state bank means a bank whose home state is a state other than Nebraska;

(11) Out-of-state state chartered bank means a bank chartered under the laws of any state other than Nebraska;

(12) Resulting bank means a bank that has resulted from an interstate merger transaction under the Interstate Branching and Merger Act; and

(13) State means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

Source: Laws 1997, LB 351, § 2; Laws 1998, LB 1321, § 74; Laws 2008, LB851, § 15; Laws 2012, LB963, § 15.

Cross References

Nebraska Banking Act, see section 8-101.02.

8-2103 Nebraska state chartered bank; powers.

(1) A Nebraska state chartered bank may establish and maintain a branch or acquire a branch in any other state with the prior approval of the director and upon payment of the branch application fee set forth in section 8-602.

(2) A Nebraska state chartered bank may engage in an interstate merger transaction in any other state in which it is the resulting bank and establish one or more branches in such other state with the prior approval of the director and upon payment of the merger and branch application fees set forth in section 8-602.

(3) A Nebraska state chartered bank may conduct any activities at any branch outside the State of Nebraska that are permissible under the laws of the host state where the branch is located or of the United States.

Source: Laws 1997, LB 351, § 3; Laws 2012, LB963, § 16.

8-2104 Out-of-state bank; powers; interstate merger transaction; notice; powers and duties.

(1) An out-of-state bank may establish and maintain a branch or acquire a branch in this state upon compliance with any applicable requirements of the Nebraska Model Business Corporation Act for registration or qualification to do business in this state.

(2) An out-of-state bank may engage in an interstate merger transaction in this state in which it is the resulting bank and establish one or more branches in this state. The out-of-state bank shall notify the department of the proposed interstate merger transaction involving a Nebraska state chartered bank within fifteen days after the date it files an application for an interstate merger transaction with its primary regulator.

(3) An out-of-state bank may conduct only those activities at its branch or branches in this state that are permissible under the laws of Nebraska or of the United States, except that an out-of-state bank with trust powers may exercise all trust powers in this state as a Nebraska bank with trust powers subject to the requirements of section 8-209.

(4) All branches of an out-of-state bank shall comply with all applicable Nebraska laws and regulations in the conduct of their business in this state to the maximum extent authorized by federal law.

Source: Laws 1997, LB 351, § 4; Laws 2002, LB 1089, § 11; Laws 2012, LB963, § 17; Laws 2014, LB749, § 234.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

8-2105 Repealed. Laws 2012, LB 963, § 24.

8-2106 Interstate merger transaction; when prohibited.

An interstate merger transaction shall not be permitted if, upon consummation of such transaction, the resulting bank or its bank holding company would have direct or indirect ownership or control of deposits in Nebraska in excess of twenty-two percent of the total deposits of all banks in Nebraska, plus the total deposits, savings accounts, passbook accounts, and share accounts in savings and loan associations and building and loan associations in Nebraska, as determined by the director on the basis of the most recent midyear reports, except as provided in subsection (4), (5), or (6) of section 8-910.

Source: Laws 1997, LB 351, § 6; Laws 2008, LB851, § 16; Laws 2012, LB963, § 18.

8-2107 Director; powers and duties; costs.

(1) The director may enter into cooperative, coordinating, and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies with respect to the periodic examination or other supervision of any branch in Nebraska of an out-of-state state chartered bank or any branch of a Nebraska

state chartered bank in a host state, and the director may accept such reports of examination and reports of investigation in lieu of conducting his or her own examinations or investigations.

(2) The director may enter into contracts with any bank supervisory agencies that have concurrent jurisdiction over a Nebraska state chartered bank or an out-of-state state chartered bank operating a branch in this state to engage the services of such agencies' examiners or to provide the services of department examiners to such agency.

(3) The director may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch in Nebraska of an out-of-state state chartered bank or any branch of a Nebraska state chartered bank in any host state. The director may, at any time, take such actions independently if he or she deems such actions to be necessary or appropriate to carry out his or her responsibilities under the Interstate Branching and Merger Act or to ensure compliance with the laws of this state. In the case of an out-of-state state chartered bank, the director shall recognize the exclusive authority of the home state regulator over corporate government matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(4) The cost of any examination conducted under this section shall be assessed against such out-of-state state chartered bank in the manner set forth in sections 8-605 and 8-606 and paid for by such out-of-state state chartered bank.

Source: Laws 1997, LB 351, § 7; Laws 2007, LB124, § 17; Laws 2012, LB963, § 19.

8-2108 Branch closing or disposal; act; how construed.

Nothing in the Interstate Branching and Merger Act shall prevent the resulting bank in an interstate merger transaction from closing or disposing of any branches acquired in the transaction in accordance with state law subject to applicable federal law regarding branch closures.

Source: Laws 1997, LB 351, § 8; Laws 2012, LB963, § 20.

ARTICLE 22
NEBRASKA UNIFORM PRUDENT INVESTOR ACT

Section
8-2201. Repealed. Laws 2003, LB 130, § 143.
8-2202. Transferred to section 30-3883.
8-2203. Transferred to section 30-3884.
8-2204. Transferred to section 30-3885.
8-2205. Transferred to section 30-3886.
8-2206. Repealed. Laws 2003, LB 130, § 143.
8-2207. Repealed. Laws 2003, LB 130, § 143.
8-2208. Repealed. Laws 2003, LB 130, § 143.
8-2209. Transferred to section 30-3887.
8-2210. Transferred to section 30-3888.
8-2211. Transferred to section 30-3889.
8-2212. Repealed. Laws 2003, LB 130, § 143.
8-2213. Repealed. Laws 2003, LB 130, § 143.

8-2201 Repealed. Laws 2003, LB 130, § 143.

8-2202 Transferred to section 30-3883.

8-2203 Transferred to section 30-3884.

8-2204 Transferred to section 30-3885.

8-2205 Transferred to section 30-3886.

8-2206 Repealed. Laws 2003, LB 130, § 143.

8-2207 Repealed. Laws 2003, LB 130, § 143.

8-2208 Repealed. Laws 2003, LB 130, § 143.

8-2209 Transferred to section 30-3887.

8-2210 Transferred to section 30-3888.

8-2211 Transferred to section 30-3889.

8-2212 Repealed. Laws 2003, LB 130, § 143.

8-2213 Repealed. Laws 2003, LB 130, § 143.

ARTICLE 23

INTERSTATE TRUST COMPANY OFFICE ACT

Section

8-2301. Act, how cited.
8-2302. Terms, defined.
8-2303. Nebraska state-chartered trust company; out-of-state branch trust offices; authorized.
8-2304. Nebraska state-chartered trust company; out-of-state representative trust offices; authorized.
8-2305. Out-of-state trust company; instate branch trust offices; authorized.
8-2306. Out-of-state trust company; instate branch trust offices; requirements; procedure.
8-2307. Out-of-state trust company; instate branch trust offices; director; approval.
8-2308. Out-of-state trust company with instate branch trust office; representative trust offices; authorized; when.
8-2309. Out-of-state trust company with instate branch trust office; representative trust offices; requirements; procedure.
8-2310. Out-of-state trust company without instate branch trust office; representative trust offices; authorized; when.
8-2311. Out-of-state trust company without instate branch trust office; representative trust offices; requirements; procedure.
8-2312. Branch trust office; representative trust office; director; powers.
8-2313. Act, how construed.

8-2301 Act, how cited.

Sections 8-2301 to 8-2313 shall be known and may be cited as the Interstate Trust Company Office Act.

Source: Laws 1998, LB 1321, § 54.

8-2302 Terms, defined.

For purposes of the Interstate Trust Company Office Act, unless the context otherwise requires:

(1) Branch trust office means an office of a trust company, other than the main or principal office of a trust company, at which a trust company may act

in any fiduciary capacity or conduct any activity permitted under the Nebraska Trust Company Act;

(2) Department means the Department of Banking and Finance;

(3) Director means the Director of Banking and Finance;

(4) Fiduciary capacity means a capacity resulting from a trust company undertaking to act alone or jointly with others primarily for the benefit of another in all matters connected with the undertaking and includes the capacities of trustee, including trustee of a common trust fund, administrator, personal representative, guardian of an estate, conservator, receiver, attorney in fact, and custodian and any other similar capacity;

(5) Home state means (a) with respect to a state-chartered trust company, the state in which the trust company is chartered, and (b) with respect to a federally chartered trust company, the state in which the main or principal office of the federally chartered trust company is located;

(6) Home state regulator means the supervisory agency with primary responsibility for chartering and supervising an out-of-state trust company;

(7) Host state means a state, other than the home state of a trust company, in which the trust company maintains, or seeks to establish and maintain, a branch trust office or a representative trust office;

(8) Nebraska state-chartered trust company means (a) a corporation which is chartered to conduct a trust company business and engage in any fiduciary capacity pursuant to the Nebraska Trust Company Act or (b) a corporation which is chartered to conduct a bank in this state pursuant to the Nebraska Banking Act and which has been authorized to conduct a trust company business in the bank pursuant to sections 8-159 to 8-162;

(9) Nebraska trust company means a trust company whose home state is Nebraska;

(10) Out-of-state state trust company means a trust company chartered under the laws of any state other than Nebraska;

(11) Out-of-state trust company means a trust company whose home state is a state other than Nebraska;

(12) Representative trust office means an office at which a trust company does not act in any fiduciary capacity or conduct or engage in any activity related to its fiduciary capacities but may otherwise engage in any other activity permitted under the Nebraska Trust Company Act;

(13) State means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands; and

(14) Trust company means (a) a company chartered and supervised under the laws of any state or the United States to act in a fiduciary capacity, (b) a bank chartered and supervised under the laws of any state or the United States if such bank has been further chartered or authorized to conduct a trust company business within the bank, or (c) a savings association chartered and supervised under the laws of any state or the United States if such savings association has been further chartered or authorized to engage in a trust company business within the savings association.

Source: Laws 1998, LB 1321, § 55.

Cross References

Nebraska Banking Act, see section 8-101.02.
Nebraska Trust Company Act, see section 8-201.01.

8-2303 Nebraska state-chartered trust company; out-of-state branch trust offices; authorized.

A Nebraska state-chartered trust company may establish and maintain branch trust offices in any other state in accordance with the laws of the other state and with the prior approval of the director. A Nebraska state-chartered trust company may conduct any activities at any branch trust office outside the State of Nebraska that are permissible for a trust company chartered by the host state where the branch trust office is located or for a national bank authorized to conduct a trust company business within the host state.

Source: Laws 1998, LB 1321, § 56.

8-2304 Nebraska state-chartered trust company; out-of-state representative trust offices; authorized.

A Nebraska state-chartered trust company may establish and maintain representative trust offices in any other state in accordance with the laws of the other state and with the prior approval of the director. A Nebraska state-chartered trust company may not act in a fiduciary capacity but may conduct any other trust company activities at any representative trust office outside the State of Nebraska that are permissible for a representative trust office of a trust company chartered by the host state where the representative trust office is located or for a national bank authorized to conduct a trust company business within the host state.

Source: Laws 1998, LB 1321, § 57.

8-2305 Out-of-state trust company; instate branch trust offices; authorized.

An out-of-state trust company may establish and maintain branch trust offices in Nebraska only if (1) the requirements of sections 8-2306 and 8-2307 are met and (2) the home state of the out-of-state trust company authorizes the establishment and maintenance of branch trust offices in that state by a Nebraska trust company under conditions no more restrictive than those imposed by the laws of Nebraska, as determined by the director.

Source: Laws 1998, LB 1321, § 58.

8-2306 Out-of-state trust company; instate branch trust offices; requirements; procedure.

(1) An out-of-state trust company, in order to establish and maintain branch trust offices in Nebraska pursuant to section 8-2305, shall file written notice of the proposed transaction with the director on a form prescribed by the director on or after the date on which the out-of-state trust company applies to its home state regulator for approval to establish and maintain the branch trust office in this state. The notice shall include a copy of the application made to its home state regulator, a copy of a resolution of its board of directors authorizing the branch trust office, and the filing fee prescribed by section 8-602.

(2) An out-of-state trust company shall provide with the notice satisfactory evidence to the director of compliance with (a) any applicable requirements of the Nebraska Model Business Corporation Act and (b) the applicable require-

ments of its home state regulator for establishing and maintaining a branch trust office.

(3) An out-of-state trust company shall provide with the notice an affidavit from its president stating that for as long as it maintains a branch trust office in this state the trust company will comply with Nebraska law.

(4) An out-of-state trust company shall obtain a fidelity bond in accordance with section 8-205.01. Submission of a rider to an existing bond indicating that the required coverage is outstanding and evidencing the beneficiaries described in section 8-205.01 shall satisfy the requirements of this subsection. The bond or a substitute bond shall remain in effect during all periods in which the trust company conducts business in Nebraska.

Source: Laws 1998, LB 1321, § 59; Laws 2014, LB749, § 235.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

8-2307 Out-of-state trust company; instate branch trust offices; director; approval.

(1) The director shall act within ninety days after receipt of notice under section 8-2306. The director may extend the ninety-day period if he or she determines that the notice raises issues that require additional information or additional time for analysis.

(2) The director may deny approval of the proposed branch trust office if he or she finds that the out-of-state trust company lacks sufficient financial resources to establish the branch trust office without adversely affecting its safety or soundness or that the establishment of the proposed branch trust office would not be in the public interest.

(3) If the out-of-state trust company is not insured by an agency of the federal government, the director may condition his or her approval on the satisfaction by the out-of-state trust company of any requirement applicable to a Nebraska state-chartered trust company pursuant to the Nebraska Trust Company Act.

(4) If the director does not extend the ninety-day period pursuant to subsection (1) of this section, he or she shall certify his or her approval or denial of the notice to the out-of-state trust company's home state regulator on or before the ninetieth day after receipt of notice. If the director imposes conditions pursuant to subsection (3) of this section, the conditions shall be satisfied prior to the director's certification of approval. A copy of the certification of approval shall be sent to the out-of-state trust company. If the notice is approved, the out-of-state trust company may commence business at the branch trust office upon compliance with sections 8-209 and 8-210.

(5) If the director does extend the ninety-day period pursuant to subsection (1) of this section, he or she shall act on the notice as soon as reasonably possible. Upon reaching a decision on the notice, the director shall certify his or her approval or denial of the notice to the out-of-state trust company's home state regulator. If the director imposes conditions pursuant to subsection (3) of this section, the conditions shall be satisfied prior to the director's certification of approval. A copy of such certification shall be sent to the out-of-state trust company. If the notice is approved, the out-of-state trust company may com-

mence business at the branch trust office upon compliance with sections 8-209 and 8-210.

Source: Laws 1998, LB 1321, § 60.

Cross References

Nebraska Trust Company Act, see section 8-201.01.

8-2308 Out-of-state trust company with instate branch trust office; representative trust offices; authorized; when.

An out-of-state trust company which has established and maintains at least one branch trust office in this state pursuant to the Interstate Trust Company Office Act may establish and maintain representative trust offices in Nebraska only if (1) the requirements of section 8-2309 are met and (2) the home state of the out-of-state trust company authorizes the establishment and maintenance of representative trust offices in that state by a Nebraska trust company under conditions no more restrictive than those imposed by the laws of Nebraska, as determined by the director.

Source: Laws 1998, LB 1321, § 61.

8-2309 Out-of-state trust company with instate branch trust office; representative trust offices; requirements; procedure.

(1) An out-of-state trust company, in order to establish and maintain representative trust offices in Nebraska pursuant to section 8-2308, shall file written notice of the proposed transaction with the director on a form prescribed by the director. The notice shall include a list of the proposed activities to be conducted at the representative trust office, procedures to ensure that no fiduciary activities will be conducted at the representative trust office, a copy of a resolution of its board of directors authorizing the representative trust office, satisfactory evidence that the bond required pursuant to subsection (4) of section 8-2306 will cover the activities at the representative trust office, any other information which the director may require, and the filing fee prescribed by section 8-602.

(2) The director shall act within sixty days after receipt of the notice under subsection (1) of this section. The director may extend the sixty-day period if he or she determines that the notice raises issues that require additional information or additional time for analysis. If the sixty-day period is extended, the out-of-state trust company may establish a representative trust office only on prior written approval of the director.

(3) The director may deny approval of the proposed representative trust office if he or she finds that the trust company lacks sufficient financial resources to establish the representative trust office without adversely affecting its safety or soundness or that the establishment of the proposed representative trust office would not be in the public interest.

(4) If the director does not extend the sixty-day period pursuant to subsection (2) of this section and does not act within sixty days, the out-of-state trust company may establish representative trust offices on the sixty-first day following the director's receipt of notice.

Source: Laws 1998, LB 1321, § 62.

8-2310 Out-of-state trust company without instate branch trust office; representative trust offices; authorized; when.

An out-of-state trust company which has not established and does not maintain a branch trust office in this state may establish and maintain representative trust offices in Nebraska only if (1) the requirements of section 8-2311 are met and (2) the home state of the out-of-state trust company authorizes the establishment and maintenance of representative trust offices in that state by a Nebraska trust company under conditions no more restrictive than those imposed by the laws of Nebraska, as determined by the director.

Source: Laws 1998, LB 1321, § 63.

8-2311 Out-of-state trust company without instate branch trust office; representative trust offices; requirements; procedure.

(1) An out-of-state trust company, in order to establish and maintain representative trust offices in Nebraska pursuant to section 8-2310, shall file written notice of the proposed transaction with the director on a form prescribed by the director. The notice shall include, in addition to the information and fee prescribed in subsection (1) of section 8-2309:

(a) Satisfactory evidence that the out-of-state trust company is a trust company;

(b) Satisfactory evidence of compliance with any applicable requirements of the Nebraska Model Business Corporation Act;

(c) An affidavit from its president stating that for as long as it maintains a representative trust office in this state the trust company will comply with Nebraska law; and

(d) Submission of a fidelity bond in accordance with section 8-205.01. Submission of a rider to an existing bond indicating that the required coverage is outstanding and evidencing the beneficiaries described in section 8-205.01 shall satisfy the requirements of this subdivision. The bond or a substitute bond shall remain in effect during all periods in which the trust company conducts business in Nebraska.

(2) The director shall act within ninety days after receipt of notice under subsection (1) of this section. The director may extend the ninety-day period if he or she determines that the notice raises issues that require additional information or additional time for analysis. If the ninety-day period is extended, the out-of-state trust company may establish representative trust offices only on prior written approval of the director.

(3) The director may deny approval of the proposed representative trust office if he or she finds that the trust company lacks sufficient financial resources to establish the representative trust office without adversely affecting its safety or soundness, that the trust company does not have adequate fidelity bond coverage, or that the proposed representative trust office would not be in the public interest.

(4) If the director does not extend the ninety-day period pursuant to subsection (2) of this section and does not act within ninety days, the out-of-state trust company may, upon compliance with sections 8-209 and 8-210, establish representative trust offices on the ninety-first day following the director's receipt of notice.

Source: Laws 1998, LB 1321, § 64; Laws 2014, LB749, § 236.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

8-2312 Branch trust office; representative trust office; director; powers.

(1) The director may examine any branch trust office or representative trust office established and maintained in this state by any out-of-state state trust company as he or she deems necessary to determine whether the branch trust office or representative trust office is being operated in compliance with Nebraska law and in accordance with safe and sound practices.

(2) The director may prescribe requirements for periodic reports by an out-of-state trust company that operates branch trust offices or representative trust offices pursuant to the Interstate Trust Company Office Act. Any such reporting requirements shall be consistent with the reporting requirements applicable to Nebraska trust companies and appropriate for the purpose of enabling the director to carry out his or her responsibilities under the act.

(3) The director may enter into cooperative, coordinating, and information-sharing agreements with any other trust company supervisory agency that has concurrent jurisdiction over a Nebraska state-chartered trust company or an out-of-state state trust company operating a branch trust office or representative trust office in this state to engage the services of such supervisory agency's examiners or to provide the services of department examiners to such supervisory agency.

(4) The director may enter into joint examinations or joint enforcement actions with other trust company supervisory agencies having concurrent jurisdiction over any branch trust office or representative trust office of an out-of-state state trust company or any branch trust office or representative trust office of a Nebraska state-chartered trust company in any host state. The director may, at any time, take such actions independently if he or she deems such actions to be necessary or appropriate to carry out his or her responsibilities under the act or to ensure compliance with Nebraska law. In the case of an out-of-state state trust company, the director shall recognize the exclusive jurisdiction of the home state regulator over corporate government matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(5) The cost of any examination conducted under this section shall be assessed against the out-of-state state trust company in the manner set forth in sections 8-605 and 8-606 and paid for by the out-of-state state trust company.

Source: Laws 1998, LB 1321, § 65; Laws 2007, LB124, § 18.

8-2313 Act, how construed.

Nothing in the Interstate Trust Company Office Act shall be construed to authorize any Nebraska trust company or any out-of-state trust company to conduct the general business of banking at any branch trust office or representative trust office.

Source: Laws 1998, LB 1321, § 66.

ARTICLE 24
CREDIT CARD BANK

Section
8-2401. Formation; conditions.
8-2402. Charter; grant; when.
8-2403. Provisions applicable.

8-2401 Formation; conditions.

A credit card bank may be formed under the Nebraska Banking Act if all of the following conditions are met:

(1) A credit card bank shall not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties;

(2) A credit card bank may not accept any savings or time deposits of less than one hundred thousand dollars, except that savings or time deposits of any amount may be accepted from affiliated financial institutions;

(3) The services of a credit card bank shall be limited to the solicitation, processing, and making of loans instituted by credit card or transaction card and matters relating or incidental thereto;

(4) A credit card bank shall not make commercial loans;

(5) A credit card bank shall, on the date of commencement of banking business in this state, have a minimum capital stock and paid-in surplus of two million five hundred thousand dollars;

(6) A credit card bank shall (a) employ on the date of commencement of its banking business in this state or within one year after such date not less than fifty persons in this state in its business or (b) contract with a qualifying association as defined in subdivision (4) of section 8-1511 to provide for the processing of its credit card or transaction card operations;

(7) A credit card bank shall maintain only one office that accepts deposits;

(8) A credit card bank may maintain one or more processing centers in this state;

(9) A credit card bank shall operate in a manner and at a location that is not likely to attract customers from the general public in this state to the substantial detriment of existing financial institutions as defined in section 8-101.03 located in this state; and

(10) A credit card bank shall provide for the insurance of deposits as described in subsection (1) of section 8-702.

Source: Laws 2004, LB 999, § 17; Laws 2005, LB 533, § 24; Laws 2017, LB140, § 146.

Cross References

Nebraska Banking Act, see section 8-101.02.

8-2402 Charter; grant; when.

The Department of Banking and Finance may grant a charter to transact the business of a credit card bank if the Director of Banking and Finance is

satisfied that the applicant has met the conditions set forth in section 8-2401 and the Nebraska Banking Act as to the formation of a new bank.

Source: Laws 2004, LB 999, § 18.

Cross References

Nebraska Banking Act, see section 8-101.02.

8-2403 Provisions applicable.

A credit card bank shall be subject to the Interstate Branching and Merger Act, the Nebraska Bank Holding Company Act of 1995, the Nebraska Banking Act, and Chapter 8, articles 5, 6, 7, 8, 13, 14, 15, 16, 19, and 20, unless otherwise limited or excluded or the context otherwise requires.

Source: Laws 2004, LB 999, § 19; Laws 2012, LB963, § 21.

Cross References

Interstate Branching and Merger Act, see section 8-2101.
Nebraska Bank Holding Company Act of 1995, see section 8-908.
Nebraska Banking Act, see section 8-101.02.

ARTICLE 25

SOLICITATION FOR FINANCIAL PRODUCTS OR SERVICES

Section
8-2501. Written solicitation; restrictions.
8-2502. Written solicitation; restriction on use of loan information; exception.
8-2503. Advertisement or written solicitation; comparison authorized.
8-2504. Violation; cease and desist order; fine.
8-2505. Financial institution, defined.

8-2501 Written solicitation; restrictions.

(1) Except as provided in section 8-2503, no person shall include the name, trade name, logo, or symbol of a financial institution in a written solicitation for financial products or services directed to a consumer who has obtained a loan from the financial institution without the consent of the financial institution, unless the solicitation clearly and conspicuously states that the person is not sponsored by or affiliated with the financial institution and that the solicitation is not authorized by the financial institution, which shall be identified by name. The statement shall be made in close proximity to, and in the same or larger font size as, the first and most prominent use or uses of the name, trade name, logo, or symbol in the statement, including on an envelope or through an envelope window containing the statement.

(2) No person shall use the name of a financial institution or a name similar to that of a financial institution in a written solicitation for financial products or services directed to consumers, if that use could cause a reasonable person to be confused, mistaken, or deceived initially or otherwise as to either of the following:

(a) The financial institution's sponsorship, affiliation, connection, or association with the person using the name; or

(b) The financial institution's approval or endorsement of the person using the name or the person's products or services.

Source: Laws 2005, LB 533, § 25.

8-2502 Written solicitation; restriction on use of loan information; exception.

Except as provided in section 8-2503, no person shall include a consumer's loan number, loan amount, or other specific loan information, whether or not publicly available, in a written solicitation for products or services without the consent of the consumer, unless the solicitation clearly and conspicuously states, when applicable, that the person is not sponsored by or affiliated with the financial institution, that the statement is not authorized by the financial institution, and that the consumer's loan information was not provided to that person by the financial institution. The statement shall be made in close proximity to, and in the same or larger font as, the first and the most prominent use or uses of the consumer's loan information in the statement, including on an envelope or through an envelope window containing the statement. The prohibition in this section does not apply to communications by a financial institution or any of its affiliates, subsidiaries, or agents with a current customer of the financial institution or with a person who has been a customer of the financial institution.

Source: Laws 2005, LB 533, § 26.

8-2503 Advertisement or written solicitation; comparison authorized.

It is not a violation of section 8-2501 or 8-2502 for a person in an advertisement or written solicitation for products or services to use the name, trade name, logo, or symbol of a financial institution without the statement described in section 8-2501 or 8-2502, if that use is exclusively part of a comparison of like products or services in which the person clearly and conspicuously identifies itself. Nothing in section 8-2501 or 8-2502 shall be deemed or interpreted to alter or modify the trade name and trademark laws of this state.

Source: Laws 2005, LB 533, § 27.

8-2504 Violation; cease and desist order; fine.

(1) The Department of Banking and Finance may order any person to cease and desist whenever the Director of Banking and Finance determines that such person has violated section 8-2501 or 8-2502. Upon entry of a cease and desist order, the director shall promptly notify the affected person that such order has been entered and provide opportunity for hearing in accordance with the Administrative Procedure Act.

(2) If a person violates section 8-2501 or 8-2502 after receiving such cease and desist order, the director may, following notice and opportunity for hearing in accordance with the Administrative Procedure Act, impose a fine of up to one thousand dollars for each violation, plus the costs of investigation. Each instance in which a violation of section 8-2501 or 8-2502 takes place after receiving a cease and desist order constitutes a separate violation.

(3) The director shall remit all fines collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska. All costs collected shall be remitted to the Financial Institution Assessment Cash Fund.

(4) This section does not affect the availability of any remedies otherwise available to a financial institution.

Source: Laws 2005, LB 533, § 28; Laws 2007, LB124, § 19.

Cross References

Administrative Procedure Act, see section 84-920.

8-2505 Financial institution, defined.

For purposes of sections 8-2501 to 8-2504, financial institution means a state or federally chartered bank, savings and loan association, savings bank, or credit union or any affiliate, subsidiary, or agent thereof.

Source: Laws 2005, LB 533, § 29.

ARTICLE 26
CREDIT REPORT PROTECTION ACT

Section
8-2601. Act, how cited.
8-2602. Terms, defined.
8-2603. Security freeze; request.
8-2603.01. Protected consumer; security freeze; request; creation of record for protected consumer; placement of freeze.
8-2604. Consumer reporting agency; release of credit report or other information prohibited without authorization.
8-2605. Consumer reporting agency; placement of security freeze; when; written confirmation to consumer.
8-2606. Consumer reporting agency; disclose process of placing and temporarily lifting security freeze; consumer request to lift freeze; when.
8-2607. Security freeze; duration; consumer reporting agency; place hold on file; release; notice; temporarily lift security freeze; removal of freeze; request from consumer.
8-2608. Consumer reporting agency; mandatory removal of security freeze; conditions.
8-2608.01. Protected consumer; security freeze; duration; consumer reporting agency; restrictions on release of information.
8-2608.02. Protected consumer; removal of security freeze; request.
8-2608.03. Protected consumer; remove security freeze; delete record of protected consumer; when.
8-2609. Consumer reporting agency; power with respect to fees.
8-2609.01. Protected consumer; consumer reporting agency; power with respect to fees.
8-2610. Consumer reporting agency; changes to official information in file; written confirmation required; exceptions.
8-2611. Consumer reporting agency; restrictions with respect to third parties; request by third party; how treated.
8-2612. Consumer reporting agency; information furnished to governmental agency.
8-2613. Act; use of credit report or information derived from file; applicability.
8-2614. Entities not considered consumer reporting agencies; not required to place security freeze on file.
8-2614.01. Protected consumer provisions; applicability.
8-2615. Enforcement of act; Attorney General; powers and duties; violation; civil penalty; recovery of damages.

8-2601 Act, how cited.

Sections 8-2601 to 8-2615 shall be known and may be cited as the Credit Report Protection Act.

Source: Laws 2007, LB674, § 1; Laws 2016, LB835, § 1.

Cross References

Consumer reporting agency, duty to furnish information to consumer, see section 20-149.

8-2602 Terms, defined.

For purposes of the Credit Report Protection Act:

(1) Consumer reporting agency means any person which, for monetary fees, for dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports;

(2) Credit report has the same meaning as consumer report as defined in 15 U.S.C. 1681a(d);

(3) File, when used in connection with information on any consumer or protected consumer, means all of the information on that consumer or protected consumer recorded and retained by a consumer reporting agency regardless of how the information is stored. File does not include a record;

(4) Protected consumer means an individual who is (a) under sixteen years of age at the time a request for the placement of a security freeze is made or (b) an incapacitated person for whom a guardian or guardian ad litem has been appointed;

(5) Record means a compilation of information that (a) identifies a protected consumer, (b) is created by a consumer reporting agency solely for the purpose of complying with section 8-2603.01, and (c) may not be created or used to consider the protected consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living;

(6) Representative means a person who provides to a consumer reporting agency sufficient proof of authority to act on behalf of a protected consumer;

(7) Security freeze means:

(a) A notice placed in a consumer's file as provided in section 8-2603 that prohibits the consumer reporting agency from releasing a credit report, or any other information derived from the file, in connection with the extension of credit or the opening of a new account, without the express authorization of the consumer;

(b) If a consumer reporting agency does not have a file pertaining to a protected consumer, a restriction that:

(i) Is placed on the protected consumer's record in accordance with section 8-2603.01; and

(ii) Prohibits the consumer reporting agency from releasing the protected consumer's record except as provided in the Credit Report Protection Act; or

(c) If a consumer reporting agency has a file pertaining to the protected consumer, a restriction that:

(i) Is placed on the protected consumer's credit report in accordance with section 8-2603.01; and

(ii) Prohibits the consumer reporting agency from releasing the protected consumer's credit report or any information derived from the protected consumer's credit report except as provided in section 8-2608.01;

(8) Substantially similar type of security product means any product that provides the same level of protection to a consumer's or protected consumer's credit report as that provided under the Credit Report Protection Act regardless of the contact method used by a consumer or protected consumer to request,

temporarily lift, or remove a restriction placed on the consumer's or protected consumer's credit report;

(9) Sufficient proof of authority means documentation that shows a representative has authority to act on behalf of a protected consumer. Sufficient proof of authority includes, but is not limited to, an order issued by a court of law, a lawfully executed and valid power of attorney, or a written notarized statement signed by a representative that expressly describes the authority of the representative to act on behalf of a protected consumer. A representative who is a parent may establish sufficient proof of authority by providing a certified or official copy of the protected consumer's birth certificate;

(10) Sufficient proof of identification means information or documentation that identifies a consumer, a protected consumer, or a representative of a protected consumer. Sufficient proof of identification includes, but is not limited to, a social security number or a copy of a social security card, a certified or official copy of a birth certificate, a copy of a valid driver's license, or any other government-issued identification; and

(11) Victim of identity theft means a consumer or protected consumer who has a copy of an official police report evidencing that the consumer or protected consumer has alleged to be a victim of identity theft.

Source: Laws 2007, LB674, § 2; Laws 2009, LB177, § 1; Laws 2016, LB835, § 2; Laws 2018, LB757, § 1.

8-2603 Security freeze; request.

A consumer may elect to place a security freeze on his or her file by submitting a request at the address or other point of contact and in the manner specified by the consumer reporting agency.

Source: Laws 2007, LB674, § 3; Laws 2016, LB835, § 3.

8-2603.01 Protected consumer; security freeze; request; creation of record for protected consumer; placement of freeze.

(1) A consumer reporting agency shall place a security freeze for a protected consumer if:

(a) The consumer reporting agency receives a request from the representative for the placement of the security freeze under this section; and

(b) The representative:

(i) Submits the request to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency; and

(ii) Provides to the consumer reporting agency:

(A) Sufficient proof of identification of the protected consumer and the representative; and

(B) Sufficient proof of authority to act on behalf of the protected consumer.

(2) If a consumer reporting agency does not have a file pertaining to a protected consumer when the consumer reporting agency receives a request described in subdivision (1)(a) of this section, the consumer reporting agency shall create a record for the protected consumer.

(3) Within thirty days after receiving a request that meets the requirements of this section, a consumer reporting agency shall place a security freeze for the protected consumer.

Source: Laws 2016, LB835, § 4; Laws 2018, LB757, § 2.

8-2604 Consumer reporting agency; release of credit report or other information prohibited without authorization.

If a security freeze is in place with respect to a consumer's or protected consumer's file, the consumer reporting agency shall not release a credit report or any other information derived from the file to a third party without the prior express authorization of the consumer, protected consumer, or representative. This section does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to a consumer's or protected consumer's file.

Source: Laws 2007, LB674, § 4; Laws 2016, LB835, § 5.

8-2605 Consumer reporting agency; placement of security freeze; when; written confirmation to consumer.

(1) A consumer reporting agency shall place a security freeze on a file no later than three business days after receiving a request under section 8-2603.

(2) Until July 1, 2008, a consumer reporting agency shall, within ten business days after receiving a request under section 8-2603, send a written confirmation of the security freeze to the consumer and provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the release of a credit report or any other information derived from his or her file for a specified period of time. Beginning July 1, 2008, a consumer reporting agency shall send such confirmation and provide such identification number or password to the consumer within five business days after receiving a request under section 8-2603.

(3) The written confirmation required under subsection (2) of this section shall include a warning which shall read as follows: WARNING TO PERSONS SEEKING A CREDIT FREEZE AS PERMITTED BY THE CREDIT REPORT PROTECTION ACT: YOU MAY BE DENIED CREDIT AS A RESULT OF A FREEZE PLACED ON YOUR CREDIT.

Source: Laws 2007, LB674, § 5; Laws 2016, LB835, § 6.

8-2606 Consumer reporting agency; disclose process of placing and temporarily lifting security freeze; consumer request to lift freeze; when.

(1) When a consumer requests a security freeze under section 8-2603, the consumer reporting agency shall disclose the process of placing and temporarily lifting the security freeze, including the process for allowing access to his or her credit report or any other information derived from his or her file for a specified period of time by temporarily lifting the security freeze.

(2) If a consumer wishes to allow his or her credit report or any other information derived from his or her file to be accessed for a specified period of time by temporarily lifting the security freeze placed under section 8-2603, the consumer shall contact the consumer reporting agency, request that the freeze be temporarily lifted, and provide the following:

(a) Sufficient proof of identification of the consumer;

(b) The unique personal identification number or password provided by the consumer reporting agency under section 8-2605; and

(c) The proper information regarding the specified time period.

(3)(a) Until January 1, 2009, a consumer reporting agency that receives a request from a consumer to temporarily lift a security freeze placed under section 8-2603 on his or her file shall comply with the request no later than three business days after receiving the request.

(b) A consumer reporting agency shall develop procedures involving the use of a telephone, the Internet, or other electronic media to receive and process a request from a consumer to temporarily lift a security freeze placed under section 8-2603 on his or her file in an expedited manner. By January 1, 2009, a consumer reporting agency shall comply with a request to temporarily lift a security freeze within fifteen minutes after receiving such request by telephone or through a secure electronic method.

(4) A consumer reporting agency is not required to temporarily lift a security freeze within the time provided in subsection (3) of this section if:

(a) The consumer fails to meet the requirements of subsection (2) of this section; or

(b) The consumer reporting agency's ability to temporarily lift the security freeze within the time provided in subsection (3) of this section is prevented by:

(i) An act of God, including fire, earthquake, hurricane, storm, or similar natural disaster or phenomena;

(ii) An unauthorized or illegal act by a third party, including terrorism, sabotage, riot, vandalism, labor strike or dispute disrupting operations, or similar occurrence;

(iii) Operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failure inhibiting response time, or similar disruption;

(iv) Governmental action, including an emergency order or regulation, judicial or law enforcement action, or similar directive;

(v) Regularly scheduled maintenance, during other than normal business hours, of the consumer reporting agency's system or updates to such system;

(vi) Commercially reasonable maintenance of, or repair to, the consumer reporting agency's system that is unexpected or unscheduled; or

(vii) Receipt of a removal request outside of normal business hours.

For purposes of this subsection, normal business hours means Sunday through Saturday, between the hours of 6:00 a.m. and 9:30 p.m., in the applicable time zone in this state.

Source: Laws 2007, LB674, § 6; Laws 2016, LB835, § 7.

8-2607 Security freeze; duration; consumer reporting agency; place hold on file; release; notice; temporarily lift security freeze; removal of freeze; request from consumer.

(1) A security freeze shall remain in place, subject to being put on hold or temporarily lifted as otherwise provided in this section, until the consumer reporting agency receives a request from the consumer to remove the freeze under section 8-2608.

(2) A consumer reporting agency may place a hold on a file due to a material misrepresentation of fact by the consumer. When a consumer reporting agency intends to release a hold on a file, the consumer reporting agency shall notify the consumer in writing three business days prior to releasing the hold on the file.

(3) A consumer reporting agency shall temporarily lift a security freeze only upon request by the consumer under section 8-2606.

(4) A consumer reporting agency shall remove a security freeze upon the date that the consumer reporting agency receives a request from the consumer to remove the freeze under section 8-2608.

Source: Laws 2007, LB674, § 7; Laws 2009, LB177, § 2.

8-2608 Consumer reporting agency; mandatory removal of security freeze; conditions.

A consumer reporting agency shall remove a security freeze placed under section 8-2603 within three business days after receiving a request for removal from the consumer who provides both of the following:

(1) Sufficient proof of identity of the consumer; and

(2) The unique personal identification number or password referred to in subdivision (2)(b) of section 8-2606.

Source: Laws 2007, LB674, § 8; Laws 2016, LB835, § 8.

8-2608.01 Protected consumer; security freeze; duration; consumer reporting agency; restrictions on release of information.

A security freeze for a protected consumer shall remain in effect unless removed in accordance with section 8-2608.02 or 8-2608.03. A consumer reporting agency may not release the protected consumer's credit report, any information derived from the protected consumer's credit report, or any record created for the protected consumer.

Source: Laws 2016, LB835, § 9.

8-2608.02 Protected consumer; removal of security freeze; request.

If a protected consumer or the representative wishes to remove a security freeze placed under section 8-2603.01 for the protected consumer, the protected consumer or the representative shall:

(1) Submit a request for the removal of the security freeze to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency; and

(2) Provide to the consumer reporting agency:

(a) In the case of a request by the protected consumer:

(i) Proof that the sufficient proof of authority for the representative to act on behalf of the protected consumer is no longer valid; and

(ii) Sufficient proof of identification of the protected consumer; or

(b) In the case of a request by the representative:

(i) Sufficient proof of identification of the protected consumer and the representative; and

(ii) Sufficient proof of authority to act on behalf of the protected consumer.

Within thirty days after receiving a request that meets the requirements of this section, the consumer reporting agency shall remove the security freeze for the protected consumer.

Source: Laws 2016, LB835, § 10; Laws 2018, LB757, § 3.

8-2608.03 Protected consumer; remove security freeze; delete record of protected consumer; when.

A consumer reporting agency may remove a security freeze for a protected consumer or delete a record of a protected consumer if the security freeze was placed or the record was created based on a material misrepresentation of fact by the protected consumer or the protected consumer's representative.

Source: Laws 2016, LB835, § 11.

8-2609 Consumer reporting agency; power with respect to fees.

(1) A consumer reporting agency shall not charge any fee for placing, temporarily lifting, or removing a security freeze placed under section 8-2603 or for placing, temporarily lifting, or removing any other substantially similar type of security product. This subsection does not apply if the substantially similar type of security product, alone or in combination with another product, provides greater protection to the consumer than a security freeze.

(2) A consumer reporting agency shall reissue the same or a new personal identification number or password required under section 8-2605 one time without charge and may charge a fee of no more than five dollars for subsequent reissuance of the personal identification number or password.

Source: Laws 2007, LB674, § 9; Laws 2009, LB177, § 3; Laws 2016, LB835, § 12; Laws 2018, LB757, § 4.

8-2609.01 Protected consumer; consumer reporting agency; power with respect to fees.

A consumer reporting agency shall not charge any fee for placement or removal of a security freeze or for placement or removal of any other substantially similar type of security product for a protected consumer. This section does not apply if the substantially similar type of security product, alone or in combination with another product, provides greater protection to the protected consumer than a security freeze.

Source: Laws 2016, LB835, § 13; Laws 2018, LB757, § 5.

8-2610 Consumer reporting agency; changes to official information in file; written confirmation required; exceptions.

If a security freeze is in place, a consumer reporting agency may not change any of the following official information in a file without sending a written confirmation of the change to the consumer, protected consumer, or representative within thirty days after the change is made: Name, date of birth, social security number, and address. In the case of an address change, the written confirmation shall be sent to both the new address and the former address. Written confirmation is not required for technical modifications of a consumer's or protected consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters.

Source: Laws 2007, LB674, § 10; Laws 2016, LB835, § 14.

8-2611 Consumer reporting agency; restrictions with respect to third parties; request by third party; how treated.

(1) A consumer reporting agency may not suggest or otherwise state or imply to a third party that a security freeze on a consumer's or protected consumer's file reflects a negative credit score, history, report, or rating.

(2) If a third party requests access to a credit report or any other information derived from a file in connection with an application for credit or the opening of an account and the consumer, protected consumer, or representative has placed a security freeze on his or her file and does not allow his or her file to be accessed during that specified period of time, the third party may treat the application as incomplete.

Source: Laws 2007, LB674, § 11; Laws 2016, LB835, § 15.

8-2612 Consumer reporting agency; information furnished to governmental agency.

The Credit Report Protection Act does not prohibit a consumer reporting agency from furnishing to a governmental agency a consumer's or protected consumer's name, address, former address, place of employment, or former place of employment.

Source: Laws 2007, LB674, § 12; Laws 2016, LB835, § 16.

8-2613 Act; use of credit report or information derived from file; applicability.

The Credit Report Protection Act does not apply to the use of a credit report or any information derived from the file by any of the following:

(1) A person or entity, a subsidiary, affiliate, or agent of that person or entity, an assignee of a financial obligation owing by the consumer or protected consumer to that person or entity, or a prospective assignee of a financial obligation owing by the consumer or protected consumer to that person or entity in conjunction with the proposed purchase of the financial obligation, with which the consumer or protected consumer has or had prior to assignment an account or contract, including a demand deposit account, or to whom the consumer or protected consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or negotiable instrument. For purposes of this subdivision, reviewing the account includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements;

(2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under section 8-2606 for purposes of facilitating the extension of credit or other permissible use;

(3) Any federal, state, or local governmental entity, including, but not limited to, a law enforcement agency, a court, or an agent or assignee of a law enforcement agency or court;

(4) A private collection agency acting under a court order, warrant, or subpoena;

(5) Any person or entity for the purposes of prescreening as provided for by the federal Fair Credit Reporting Act, 15 U.S.C. 1681, as such act existed on September 1, 2007;

(6) Any person or entity administering a credit file monitoring subscription service to which the consumer or protected consumer has subscribed;

(7) Any person or entity for the purpose of providing a consumer, protected consumer, or representative with a copy of the consumer's or protected consumer's credit report or any other information derived from his or her file upon the consumer's, protected consumer's, or representative's request; and

(8) Any person or entity for use in setting or adjusting a rate, adjusting a claim, or underwriting for insurance purposes.

Source: Laws 2007, LB674, § 13; Laws 2016, LB835, § 17.

8-2614 Entities not considered consumer reporting agencies; not required to place security freeze on file.

The following entities are not consumer reporting agencies for purposes of the Credit Report Protection Act and are not required to place a security freeze under section 8-2603 or 8-2603.01:

(1) A check services or fraud prevention services company that issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payment;

(2) A deposit account information service company that issues reports regarding account closures due to fraud, substantial overdrafts, automatic teller machine abuse, or similar negative information regarding a consumer or protected consumer, to inquiring banks or other financial institutions for use only in reviewing a consumer's, protected consumer's, or representative's request for a deposit account at the inquiring bank or financial institution; and

(3) A consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency, or multiple consumer reporting agencies, and does not maintain a permanent database of credit information from which new credit reports are produced. A consumer reporting agency shall honor any security freeze placed on a file by another consumer reporting agency.

Source: Laws 2007, LB674, § 14; Laws 2016, LB835, § 18.

8-2614.01 Protected consumer provisions; applicability.

Sections 8-2603.01, 8-2608.01, 8-2608.02, 8-2608.03, and 8-2609.01 shall not apply to any person or entity that maintains a database used solely for the following:

(1) Criminal record information;

(2) Personal loss history information;

(3) Fraud prevention or detection;

(4) Employment screening; or

(5) Tenant screening.

Source: Laws 2016, LB835, § 19.

8-2615 Enforcement of act; Attorney General; powers and duties; violation; civil penalty; recovery of damages.

The Attorney General shall enforce the Credit Report Protection Act. For purposes of the act, the Attorney General may issue subpoenas, adopt and promulgate rules and regulations, and seek injunctive relief and a monetary award for civil penalties, attorney's fees, and costs. Any person who violates the act shall be subject to a civil penalty of not more than two thousand dollars for each violation. The Attorney General may also seek and recover actual damages for each consumer or protected consumer injured by a violation of the act.

Source: Laws 2007, LB674, § 15; Laws 2016, LB835, § 20.

ARTICLE 27

NEBRASKA MONEY TRANSMITTERS ACT

Section

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8-2701 Act, how cited.

Sections 8-2701 to 8-2747 shall be known and may be cited as the Nebraska Money Transmitters Act.

Source: Laws 2013, LB616, § 1; Laws 2016, LB778, § 1.

8-2702 Definitions, where found.

For purposes of the Nebraska Money Transmitters Act, the definitions found in sections 8-2703 to 8-2723 shall be used.

Source: Laws 2013, LB616, § 2.

8-2703 Applicant, defined.

Applicant means a person filing an application for a license under the Nebraska Money Transmitters Act.

Source: Laws 2013, LB616, § 3.

8-2704 Authorized delegate, defined.

Authorized delegate means an entity designated by the licensee or an exempt entity under the Nebraska Money Transmitters Act to engage in the business of money transmission on behalf of the licensee or exempt entity.

Source: Laws 2013, LB616, § 4.

8-2705 Breach of security of the system, defined.

Breach of security of the system means unauthorized acquisition of data that compromises the security, confidentiality, or integrity of the information maintained by the Nationwide Mortgage Licensing System and Registry, its affiliates, or its subsidiaries.

Source: Laws 2013, LB616, § 5.

8-2706 Control, defined.

Control means the power, directly or indirectly, to direct the management or policies of a licensee, whether through ownership of securities, by contract, or otherwise. Any person who (1) has the power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or any person in control of a licensee, (2) directly or indirectly has the right to vote ten percent or more of a class of stock or directly or indirectly has the power to sell or direct the sale of ten percent or more of a

class of stock, (3) in the case of a limited liability company, is a managing member, or (4) in the case of a partnership, has the right to receive, upon dissolution, or has contributed, ten percent or more of the capital, is presumed to control that licensee.

Source: Laws 2013, LB616, § 6.

8-2707 Controlling person, defined.

Controlling person means any person in control of a licensee.

Source: Laws 2013, LB616, § 7.

8-2708 Department, defined.

Department means the Department of Banking and Finance.

Source: Laws 2013, LB616, § 8.

8-2709 Director, defined.

Director means the Director of Banking and Finance.

Source: Laws 2013, LB616, § 9.

8-2710 Electronic instrument, defined.

Electronic instrument means a card or other tangible object for the transmission or payment of money that contains a microprocessor chip, magnetic strip, or other means for the storage of information, that is prefunded, and the value of which is decremented upon each use. Electronic instrument does not include a card or other tangible object that is redeemable by the issuer or its affiliates in goods or services of the issuer or its affiliates.

Source: Laws 2013, LB616, § 10.

8-2711 Executive officer, defined.

Executive officer means the president, chairperson of the executive committee, senior officer responsible for business decisions, chief financial officer, and any other person who performs similar functions for a licensee.

Source: Laws 2013, LB616, § 11.

8-2712 Key shareholder, defined.

Key shareholder means any person or group of persons acting in concert owning ten percent or more of any voting class of an applicant's stock.

Source: Laws 2013, LB616, § 12.

8-2713 Licensee, defined.

Licensee means a person licensed pursuant to the Nebraska Money Transmitters Act.

Source: Laws 2013, LB616, § 13.

8-2714 Material litigation, defined.

Material litigation means any litigation that, according to generally accepted accounting principles, is deemed significant to an applicant's or licensee's financial health and would be required to be referenced in an applicant's or

licensee's annual audited financial statements, report to shareholders, or similar documents.

Source: Laws 2013, LB616, § 14.

8-2715 Monetary value, defined.

Monetary value means a medium of exchange, whether or not redeemable in money.

Source: Laws 2013, LB616, § 15.

8-2716 Money transmission, defined.

Money transmission means the business of the sale or issuance of payment instruments or stored value or of receiving money or monetary value for transmission to a location within or outside the United States by any and all means, including wire, facsimile, or electronic transfer. Notwithstanding any other provision of law, money transmission also includes bill payment services not limited to the right to receive payment of any claim for another but does not include bill payment services in which an agent of a payee receives money or monetary value on behalf of such payee.

Source: Laws 2013, LB616, § 16.

8-2717 Nationwide Mortgage Licensing System and Registry, defined.

Nationwide Mortgage Licensing System and Registry means a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators, mortgage bankers, installment loan companies, and other state-regulated financial services entities and industries.

Source: Laws 2013, LB616, § 17.

8-2718 Outstanding payment instrument, defined.

Outstanding payment instrument means any payment instrument issued by a licensee which has been sold in the United States directly by the licensee or any payment instrument issued by a licensee which has been sold by an authorized delegate of the licensee in the United States, which has been reported to the licensee as having been sold, and which has not yet been paid by or for the licensee.

Source: Laws 2013, LB616, § 18.

8-2719 Payment instrument, defined.

Payment instrument means any electronic or written check, draft, money order, travelers check, or other electronic or written instrument or order for the transmission or payment of money, sold or issued to one or more persons, whether or not such instrument is negotiable. Payment instrument does not include any credit card, any voucher, any letter of credit, or any instrument that is redeemable by the issuer or its affiliates in goods or services of the issuer or its affiliates.

Source: Laws 2013, LB616, § 19.

8-2720 Permissible investments, defined.

Permissible investments means:

(1) Cash;

(2) Certificates of deposit or other debt obligations of a financial institution, either domestic or foreign;

(3) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers' acceptances, which are eligible for purchase by member banks of the federal reserve system;

(4) Any investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates such securities;

(5) Investment securities that are obligations of the United States or its agencies or instrumentalities, obligations that are guaranteed fully as to principal and interest by the United States, or any obligations of any state or political subdivision thereof;

(6) Shares in a money market mutual fund, interest-bearing bills or notes or bonds, debentures or stock traded on any national securities exchange or on a national over-the-counter market, or mutual funds primarily composed of such securities or a fund composed of one of more permissible investments as set forth in this section;

(7) Any demand borrowing agreement or agreements made to a corporation or a subsidiary of a corporation whose capital stock is listed on a national exchange;

(8) Receivables that are due to a licensee from its authorized delegates pursuant to a contract described in section 8-2739 which are not past due or doubtful of collection; or

(9) Any other investment or similar security approved by the director.

Source: Laws 2013, LB616, § 20.

8-2721 Person, defined.

Person means any individual, partnership, limited liability company, association, joint-stock association, trust, or corporation. Person does not include the United States or the State of Nebraska.

Source: Laws 2013, LB616, § 21.

8-2722 Remit, defined.

Remit, except as used in section 8-2747, means either to make direct payment of the funds to a licensee or its representatives authorized to receive those funds or to deposit the funds in a bank, credit union, or savings and loan association or other similar financial institution in an account specified by a licensee.

Source: Laws 2013, LB616, § 22.

8-2723 Stored value, defined.

Stored value means monetary value that is evidenced by an electronic record. Stored value does not include any item that is redeemable by the issuer or its affiliates in goods or services of the issuer or its affiliates.

Source: Laws 2013, LB616, § 23.

8-2724 Licensure requirement; applicability.

(1) The requirement for a license under the Nebraska Money Transmitters Act does not apply to:

(a) The United States or any department, agency, or instrumentality thereof;

(b) Any post office of the United States Postal Service;

(c) A state or any political subdivision thereof;

(d)(i) Banks, credit unions, digital asset depository institutions as defined in section 8-3003, building and loan associations, savings and loan associations, savings banks, or mutual banks organized under the laws of any state or the United States;

(ii) Subsidiaries of the institutions listed in subdivision (d)(i) of this subsection;

(iii) Bank holding companies which have a banking subsidiary located in Nebraska and whose debt securities have an investment grade rating by a national rating agency; or

(iv) Authorized delegates of the institutions and entities listed in subdivision (d)(i), (ii), or (iii) of this subsection, except that authorized delegates that are not banks, credit unions, building and loan associations, savings and loan associations, savings banks, mutual banks, subsidiaries of any of the foregoing, or bank holding companies shall comply with all requirements imposed upon authorized delegates under the act;

(e) The provision of electronic transfer of government benefits for any federal, state, or county governmental agency, as defined in Consumer Financial Protection Bureau Regulation E, 12 C.F.R. part 1005, as such regulation existed on January 1, 2022, by a contractor for and on behalf of the United States or any department, agency, or instrumentality thereof or any state or any political subdivision thereof;

(f) An operator of a payment system only to the extent that the payment system provides processing, clearing, or settlement services between or among persons who are all exempt under this section in connection with wire transfers, credit card transactions, debit card transactions, automated clearinghouse transfers, or similar fund transfers; or

(g) A person, firm, corporation, or association licensed in this state and acting within this state within the scope of a license:

(i) As a collection agency pursuant to the Collection Agency Act;

(ii) As a credit services organization pursuant to the Credit Services Organization Act; or

(iii) To engage in the debt management business pursuant to sections 69-1201 to 69-1217.

(2) An authorized delegate of a licensee or of an exempt entity, acting within the scope of its authority conferred by a written contract as described in section 8-2739, is not required to obtain a license under the Nebraska Money Transmitters Act, except that such an authorized delegate shall comply with the other provisions of the act which apply to money transmission transactions.

Source: Laws 2013, LB616, § 24; Laws 2021, LB363, § 17; Laws 2021, LB649, § 48; Laws 2022, LB707, § 25.
Operative date April 19, 2022.

Cross References

Collection Agency Act, see section 45-601.
Credit Services Organization Act, see section 45-801.

8-2725 License required; license not transferable or assignable.

(1) Except as otherwise provided in section 8-2724, a person shall not engage in money transmission without a license issued pursuant to the Nebraska Money Transmitters Act.

(2) A person is engaged in money transmission if the person provides money transmission services to any resident of this state even if the person providing money transmission services has no physical presence in this state or if the resident is not physically located in this state at the time when the resident enters into money transmission or otherwise receives money transmission services.

(3) If a licensee has a physical presence in this state, the licensee may conduct its business at one or more locations, directly or indirectly owned, or through one or more authorized delegates, or both, pursuant to the single license granted to the licensee.

(4) A license issued pursuant to the act is not transferable or assignable.

Source: Laws 2013, LB616, § 25; Laws 2021, LB363, § 18.

8-2726 License; applicant; qualifications; requirements.

To qualify for a license under the Nebraska Money Transmitters Act, an applicant, at the time of filing for a license, and a licensee at all times after a license is issued, shall satisfy the following requirements:

(1) Each applicant or licensee must have a net worth of not less than fifty thousand dollars, calculated in accordance with generally accepted accounting principles;

(2) The financial condition and responsibility, financial and business experience, and character and general fitness of the applicant or licensee must reasonably warrant the belief that the applicant's or licensee's business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community. In determining whether this requirement is met and for purposes of investigating compliance with the act, the director may review and consider the relevant business records and capital adequacy of the applicant or licensee;

(3) Each corporate applicant or licensee must be organized under the laws of any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the Northern Mariana Islands, and must be in good standing in the place of its incorporation;

(4) Each applicant or licensee must be registered or qualified to do business in the State of Nebraska; and

(5) Each applicant or licensee must maintain an office in the United States.

Source: Laws 2013, LB616, § 26; Laws 2021, LB363, § 19.

8-2727 License applicant; surety bond; alternate security; duration.

(1)(a) Except as provided in subsection (2) of this section, an applicant shall submit, with the application, a surety bond issued by a bonding company or

insurance company authorized to do business in this state and acceptable to the director in the principal sum of one hundred thousand dollars. The director may increase the amount of the bond to a maximum of two hundred fifty thousand dollars for good cause.

(b) The bond shall be in a form satisfactory to the director and shall run to the state for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee with respect to the receipt, handling, transmission, and payment of money in connection with money transmission. In the case of a bond, the aggregate liability of the surety shall not exceed the principal sum of the bond. Any claimant against the licensee may bring suit directly on the bond or the director may bring suit on behalf of any claimant, either in one action or in successive actions.

(2) Upon filing of the report required by section 8-2734 and the information required by subdivision (2)(b) of such section, a licensee shall maintain or increase its surety bond to reflect the total dollar amount of money transmitter transactions by the licensee in this state in the most recent four calendar quarters for which data is available before the date of the filing of the renewal application in accordance with the following table. A licensee may decrease its surety bond in accordance with the following table if the surety bond required is less than the amount of the surety bond on file with the department:

Dollar Amount of Money Transmitter Transactions			Surety Bond Required
$ 0.00	to	$2,000,000.00	$100,000.00
$2,000,000.01	to	$4,000,000.00	$150,000.00
$4,000,000.01	to	$6,000,000.00	$200,000.00
	Over	$6,000,000.00	$250,000.00

(3) If the department determines that a licensee does not maintain a surety bond in the amount required by subsection (2) of this section, the department shall give written notification to the licensee requiring it to increase the surety bond within thirty days to the amount required by such subsection.

(4) The director may at any time require the filing of a new or supplemental bond in the form as provided in subsection (1) of this section if he or she determines that the bond filed under this section is exhausted or is inadequate for any reason, including, but not limited to, the financial condition of a licensee or an applicant for a license or violations of the Nebraska Money Transmitters Act, any rule and regulation or order thereunder, or any state or federal law applicable to a licensee or an applicant for a license. The new or supplemental bond shall not exceed five hundred thousand dollars.

(5)(a) In lieu of the corporate surety bond or bonds required by this section or of any portion of the principal thereof, the applicant or licensee may deposit, with the director or with such banks or trust companies located in this state or with any federal reserve bank as the applicant or licensee may designate and the director may approve, interest-bearing stocks and bonds, notes, debentures or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this state, or of a city, county, village, school district, or instrumentality of this state, or guaranteed by this state, to an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the required corporate surety bond or portion thereof. The securities shall be deposited and held to secure the same obligations as would the surety bond.

(b) The licensee shall have the right, with the approval of the director, to substitute other securities for those deposited and shall be required to do so on written order of the director made for good cause shown. The licensee shall pay the fees prescribed in section 8-602 for pledging and substitution of securities. So long as the licensee so depositing shall continue solvent and is not in violation of the Nebraska Money Transmitters Act, such licensee shall be permitted to receive the interest or dividends on such deposit.

(c) The safekeeping of such securities and all other expenses incidental to the pledging of such securities shall be paid by the licensee. All such securities shall be subject to sale and transfer and to the disposal of the proceeds by the director only on the order of a court of competent jurisdiction.

(6) The surety bond shall remain in effect until cancellation, which may occur only after thirty days' written notice to the director. Cancellation shall not affect any liability incurred or accrued during the period the surety bond was in effect.

(7) The surety bond shall remain in place for at least five years after the licensee ceases money transmission in this state, except that the director may permit the surety bond to be reduced or eliminated before that time to the extent that the amount of the licensee's payment instruments outstanding in this state are reduced. The director may also permit a licensee to substitute a letter of credit or such other form of security acceptable to the director for the surety bond in place at the time the licensee ceases money transmission in the state.

Source: Laws 2013, LB616, § 27; Laws 2017, LB186, § 1.

8-2728 Licensee; investments required; waiver.

(1) Each licensee shall at all times possess permissible investments having an aggregate market value, calculated in accordance with generally accepted accounting principles, of not less than the aggregate face amount of all outstanding payment instruments and stored value issued or sold by the licensee in the United States. This requirement may be waived by the director if the dollar volume of a licensee's outstanding payment instruments and stored value does not exceed the bond or other security posted by the licensee pursuant to section 8-2727.

(2) Permissible investments, even if commingled with other assets of the licensee, are deemed by operation of law to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments in the event of the bankruptcy of the licensee.

Source: Laws 2013, LB616, § 28.

8-2729 License application; form; contents.

Each application for a license under the Nebraska Money Transmitters Act shall be made in writing and in a form prescribed by the director. Each application shall state or contain:

(1) For all applicants:

(a) The exact name of the applicant, the applicant's principal address, any fictitious or trade name used by the applicant in the conduct of its business, and the location of the applicant's business records;

(b) The history of the applicant's criminal convictions and material litigation for the five-year period before the date of the application;

(c) A description of the activities conducted by the applicant and a history of operations;

(d) A description of the business activities in which the applicant seeks to be engaged in this state;

(e) A list identifying the applicant's proposed authorized delegates in this state, if any, at the time of the filing of the application;

(f) A sample authorized delegate contract, if applicable;

(g) A sample form of payment instrument, if applicable;

(h) The locations at which the applicant and its authorized delegates, if any, propose to conduct money transmission in this state; and

(i) The name, address, and account information of each clearing bank or banks, which shall be covered by federal deposit insurance, on which the applicant's payment instruments and funds received for transmission or otherwise will be drawn or through which the payment instruments or other funds will be payable;

(2) If the applicant is a corporation, the applicant shall also provide:

(a) The date of the applicant's incorporation and state of incorporation;

(b) A certificate of good standing from the state in which the applicant was incorporated;

(c) A certificate of authority from the Secretary of State to conduct business in this state;

(d) A description of the corporate structure of the applicant, including the identity of any parent or subsidiary of the applicant, and a disclosure of whether any parent or subsidiary is publicly traded on any stock exchange;

(e) The name, business and residence addresses, and employment history for the five-year period immediately before the date of the application of the applicant's executive officers and the officers or managers who will be in charge of the applicant's activities to be licensed under the act;

(f) The name, business and residence addresses, and employment history for the five-year period immediately before the date of the application and the most recent personal financial statement of any key shareholder of the applicant;

(g) The history of criminal convictions and material litigation for the five-year period immediately before the date of the application of every executive officer or key shareholder of the applicant;

(h) A copy of the applicant's most recent audited financial statement including balance sheet, statement of income or loss, statement of changes in shareholder equity, and statement of changes in financial position and, if available, the applicant's audited financial statements for the immediately preceding two-year period. However, if the applicant is a wholly owned subsidiary of another corporation, the applicant may submit either the parent corporation's consolidated audited financial statements for the current year and for the immediately preceding two-year period or the parent corporation's Form 10-K reports filed with the United States Securities and Exchange Commission for the prior three years in lieu of the applicant's financial statements. If the applicant is a wholly owned subsidiary of a corporation having its principal place of business outside the United States, similar docu-

mentation filed with the parent corporation's non-United States regulator may be submitted to satisfy this subdivision; and

(i) Copies of all filings, if any, made by the applicant with the United States Securities and Exchange Commission or with a similar regulator in a country other than the United States, within the year preceding the date of filing of the application; and

(3) If the applicant is not a corporation, the applicant shall also provide:

(a) The name, business and residence addresses, personal financial statement, and employment history, for the five-year period immediately before the date of the application, of each principal of the applicant and the name, business and residence addresses, and employment history for the five-year period immediately before the date of the application of any other person or persons who will be in charge of the applicant's money transmission activities;

(b) A copy of the applicant's registration or qualification to do business in this state;

(c) The history of criminal convictions and material litigation for the five-year period immediately before the date of the application for each individual having any ownership interest in the applicant and each individual who exercises supervisory responsibility with respect to the applicant's activities; and

(d) Copies of the applicant's audited financial statements including balance sheet, statement of income or loss, and statement of changes in financial position for the current year and, if available, for the immediately preceding two-year period.

Source: Laws 2013, LB616, § 29; Laws 2021, LB363, § 20.

8-2730 Licensee; license and registration through Nationwide Mortgage Licensing System and Registry; department; powers; director; reports; duties; department; duties.

(1) Effective July 1, 2014, the department shall require licensees under the Nebraska Money Transmitters Act to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement, the department is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the department may establish, by adopting and promulgating rules and regulations or by order, requirements as necessary. The requirements may include, but are not limited to:

(a) Background checks of applicants and licensees, including, but not limited to:

(i) Checks of an applicant's or a licensee's criminal history through fingerprint or other databases, except that the department shall not require the submission of fingerprints by (A) an executive officer or director of an applicant or licensee which is either a publicly traded company or a wholly owned subsidiary of a publicly traded company or (B) an applicant or licensee who has previously submitted the fingerprints of an executive officer or director directly to the Nationwide Mortgage Licensing System and Registry and the Federal Bureau of Investigation will accept such fingerprints for a criminal background check;

(ii) Checks of civil or administrative records;

(iii) Checks of an applicant's or a licensee's credit history; or

(iv) Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry;

(b) The payment of fees to apply for or renew a license through the Nationwide Mortgage Licensing System and Registry;

(c) The setting or resetting, as necessary, of renewal processing or reporting dates;

(d) Information and reports pertaining to authorized delegates; and

(e) Amending or surrendering a license or any other such activities as the director deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

(2) In order to fulfill the purposes of the act, the department is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to the act. The department may allow such system to collect licensing fees on behalf of the department and allow such system to collect a processing fee for the services of the system directly from each licensee or applicant for a license.

(3) The director is required to regularly report enforcement actions and other relevant information to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in section 8-2731.

(4) The director shall establish a process whereby applicants and licensees may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the director.

(5) The department shall ensure that the Nationwide Mortgage Licensing System and Registry adopts a privacy, data security, and breach of security of the system notification policy. The director shall make available upon written request a copy of the contract between the department and the Nationwide Mortgage Licensing System and Registry pertaining to the breach of security of the system provisions.

(6) The department shall upon written request provide the most recently available audited financial report of the Nationwide Mortgage Licensing System and Registry.

Source: Laws 2013, LB616, § 30.

8-2731 Supervisory information sharing; information and material; how treated; applicability; director; powers.

(1) In order to promote more effective regulation and reduce the regulatory burden through supervisory information sharing:

(a) Except as otherwise provided in this section, the requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. Such information and material may be shared with all federal and

state regulatory officials with money transmitter industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law;

(b) Information or material that is subject to privilege or confidentiality under subdivision (a) of this subsection shall not be subject to:

(i) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(ii) Subpoena or discovery or admission into evidence in any private civil action or administrative process unless, with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege;

(c) Any state statute relating to the disclosure of confidential supervisory information or any information or material described in subdivision (a) of this subsection that is inconsistent with such subdivision shall be superseded by the requirements of this section; and

(d) This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, applicants and licensees that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

(2) For these purposes, the director is authorized to enter into agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, the Money Transmitter Regulators Association, or other associations representing governmental agencies as established by adopting and promulgating rules and regulations or an order of the director.

Source: Laws 2013, LB616, § 31.

8-2732 Application fee; processing fee.

Each applicant shall submit, with the application, an application fee of one thousand dollars, and any processing fee allowed under subsection (2) of section 8-2730 which shall not be subject to refund but which, if the license is granted, shall constitute the license fee for the first license year or part thereof.

Source: Laws 2013, LB616, § 32.

8-2733 Application; director; duties; powers; onsite investigation; costs; denial of application; reasons; hearing.

(1) Upon the filing of a complete application under the Nebraska Money Transmitters Act, the director shall investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the applicant. The director may conduct an onsite investigation of the applicant, the reasonable cost of which shall be borne by the applicant. If the director finds that the applicant's business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community and that the applicant has fulfilled the requirements imposed by the act and has paid the required application or license fee, the director shall issue a license to the applicant authorizing the applicant to engage in money transmission in this

state. If these requirements have not been met, the director shall deny the application in writing, setting forth the reasons for the denial.

(2) The director shall approve or deny every application for an original license within one hundred twenty days after the date a complete application is submitted, which period may be extended by the written consent of the applicant. The director shall notify the applicant of the date when the application is deemed complete.

(3) Any applicant aggrieved by a denial issued by the director under the act may, at any time within fifteen business days after the date of the denial, request a hearing before the director. The hearing shall be held in accordance with the Administrative Procedure Act and rules and regulations of the department.

(4) If an applicant for a license under the Nebraska Money Transmitters Act does not complete the license application and fails to respond to a notice or notices from the department to correct the deficiency or deficiencies for a period of one hundred twenty days or more after the date the department sends the initial notice to correct the deficiency or deficiencies, the department may deem the application as abandoned and may issue a notice of abandonment of the application to the applicant in lieu of proceedings to deny the application.

Source: Laws 2013, LB616, § 33; Laws 2017, LB185, § 1.

Cross References

Administrative Procedure Act, see section 84-920.

8-2734 License; renewal application; licensing fee; processing fee; report; contents.

(1) Initial licenses shall remain in full force and effect until the next succeeding December 31. Each licensee shall, annually on or before December 31 of each year, file a license renewal application and pay to the director a license fee of two hundred fifty dollars and any processing fee allowed under subsection (2) of section 8-2730, both of which shall not be subject to refund.

(2) The renewal application and license fee shall be accompanied by a report, in a form prescribed by the director, which shall include:

(a) A copy of the licensee's most recent audited consolidated annual financial statement including balance sheet, statement of income or loss, statement of changes in shareholders' equity, and statement of changes in financial position, or, if a licensee is a wholly owned subsidiary of another corporation, the consolidated audited annual financial statement of the parent corporation may be filed in lieu of the licensee's audited annual financial statement;

(b) The number of payment instruments sold by the licensee in the state, the dollar amount of those instruments, and the dollar amount of payment instruments currently outstanding, for the most recent quarter for which data is available before the date of the filing of the renewal application, but in no event more than one hundred twenty days before the renewal date;

(c) Any material changes to any of the information submitted by the licensee on its original application which have not previously been reported to the director on any other report required to be filed under the Nebraska Money Transmitters Act; and

(d) A list of the licensee's permissible investments.

Source: Laws 2013, LB616, § 34; Laws 2016, LB778, § 2; Laws 2021, LB363, § 21.

8-2735 Licensee; notice to director; when; report; contents.

(1) A licensee shall file notice with the director within thirty calendar days after any material change in information provided in a licensee's application as prescribed by the director.

(2) A licensee shall file a report with the director within five business days after the licensee has reason to know of the occurrence of any of the following events:

(a) The filing of a petition by or against the licensee under any bankruptcy law of the United States for liquidation or reorganization;

(b) The filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors;

(c) The filing of an action to revoke or suspend the licensee's license in a state or country in which the licensee engages in business or is licensed;

(d) The cancellation or other impairment of the licensee's bond or other security;

(e) A charge or conviction of the licensee or of an executive officer, manager, or director of, or controlling person of, the licensee, for a felony; or

(f) A charge or conviction of an authorized delegate for a felony.

Source: Laws 2013, LB616, § 35.

8-2736 Acquisition of control of licensee; notice to director; director; duties; powers; disapproval; grounds; notice; hearing.

(1) No person acting personally or as an authorized delegate shall acquire control of any licensee under the Nebraska Money Transmitters Act without first giving thirty days' notice to the director on forms prescribed by the director of such proposed acquisition.

(2) The director, upon receipt of such notice, shall act upon the proposed acquisition within thirty days, and unless he or she disapproves the proposed acquisition within that period of time, the acquisition shall become effective on the thirty-first day after receipt without the director's approval, except that the director may extend the thirty-day period an additional thirty days if, in his or her judgment, any material information submitted is substantially inaccurate or the acquiring person has not furnished all the information required by the director.

(3) An acquisition may be made prior to the expiration of the disapproval period if the director issues written notice of his or her intent not to disapprove the action.

(4)(a) The director may disapprove any proposed acquisition if:

(i) The financial condition of any acquiring person is such as might jeopardize the financial stability of the acquired licensee;

(ii) The business experience, character, and general fitness of any acquiring person or of any of the proposed management personnel of the acquiring person indicate that the acquired licensee would not be operated honestly, carefully, or efficiently; or

(iii) Any acquiring person neglects, fails, or refuses to furnish all information required by the director.

(b) The director may require that any acquiring person comply with the application requirements of section 8-2729.

(c) The director shall notify the acquiring person in writing of disapproval of the acquisition. The notice shall provide a statement of the basis for the disapproval.

(d) Within fifteen business days after receipt of written notice of disapproval, the acquiring person may request a hearing on the proposed acquisition. The hearing shall be in accordance with the Administrative Procedure Act and rules and regulations of the department. Following such hearing, the director shall, by order, approve or disapprove the proposed acquisition on the basis of the record made at the hearing.

Source: Laws 2013, LB616, § 36.

Cross References

Administrative Procedure Act, see section 84-920.

8-2737 Examination, investigation, inquiry request for information; procedure; director; powers; administrative fine; disposition; lien; charge.

(1) The director may conduct an examination of a licensee upon reasonable written notice to the licensee. The director may examine a licensee without prior notice if the director has a reasonable basis to believe that the licensee is in noncompliance with the Nebraska Money Transmitters Act.

(2) An examination may be conducted in conjunction with examinations to be performed by representatives of agencies of another state or states or departments or agencies of the United States. The director, in lieu of an examination, may accept the examination report of an agency of another state or a department or an agency of the United States or a report prepared by an independent accounting firm. Reports so accepted are considered for all purposes as an official report of the department.

(3) The director may make investigations regarding complaints of alleged violations of the Nebraska Money Transmitters Act, any rule and regulation or order under the act, or any state or federal law applicable to a licensee, an authorized delegate, or an applicant for a license, as the director deems necessary, and to the extent necessary for this purpose, the director may examine such licensee, authorized delegate, or any other person, interview officers, principals, employees, and customers of the licensee, authorized delegate, or applicant, and compel the production of all relevant books, records, accounts, and documents.

(4) The director may request financial data from a licensee in addition to that required under section 8-2734.

(5) The director may conduct an examination of any authorized delegate of a licensee within this state upon reasonable written notice to the licensee and the authorized delegate. The director may conduct an examination of any authorized delegate without prior notice to the authorized delegate or licensee only if

the director has a reasonable basis to believe that the licensee or authorized delegate is in noncompliance with the Nebraska Money Transmitters Act.

(6) Upon receipt by a licensee, an authorized delegate, or any other person of a notice of investigation or inquiry request for information from the department, the licensee, authorized delegate, or other person shall respond within twenty-one calendar days. Failure to respond is a violation of the Nebraska Money Transmitters Act. Each day a licensee, authorized delegate, or other person fails to respond as required by this subsection shall constitute a separate violation.

(7) If the director finds, after notice and opportunity for hearing in accordance with the Administrative Procedure Act, that any person has violated subsection (6) of this section, the director may order such person to pay (a) an administrative fine of not more than two thousand dollars for each separate violation and (b) the costs of investigation. The department shall remit fines collected under this subsection to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(8) If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to subsection (7) of this section, a lien in the amount of such fine and costs may be imposed upon all assets and property of such person in this state and may be recovered in a civil action by the director. The lien shall attach to the real property of such person when notice of the lien is filed and indexed against the real property in the office of the register of deeds in the county where the real property is located. The lien shall attach to any other property of such person when notice of the lien is filed against the property in the manner prescribed by law. Failure of the person to pay such fine and costs shall constitute a separate violation of the Nebraska Money Transmitters Act.

(9) For purposes of any investigation, examination, or proceeding under the Nebraska Money Transmitters Act, the director or any officer designated by the director may administer oaths and affirmations, subpoena witnesses, compel attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry. If any person refuses to comply with a subpoena issued under this subsection or to testify with respect to any matter relevant to the proceeding, the district court of Lancaster County may, on application of the director, issue an order requiring the person to comply with the subpoena and to testify. Failure to obey an order of the court to comply with the subpoena may be punished by the court as civil contempt.

(10) The total charge for an examination under this section shall be paid by the licensee or authorized delegate as set forth in sections 8-605 and 8-606.

Source: Laws 2013, LB616, § 37; Laws 2019, LB355, § 1; Laws 2021, LB363, § 22.

Cross References

Administrative Procedure Act, see section 84-920.

8-2738 Licensee; books, accounts, and records.

(1) Each licensee shall make, keep, and preserve the following books, accounts, and other records for a period of three years which shall be open to inspection by the director:

(a) A record of each payment instrument and stored value sold;

(b) A general ledger containing all assets, liability, capital, income, and expense accounts, which general ledger shall be posted at least monthly;

(c) Settlement sheets received from authorized delegates;

(d) Bank statements and bank reconciliation records;

(e) Records of outstanding payment instruments and stored value;

(f) Records of each payment instrument and stored value paid;

(g) A list of the names and addresses of all of the licensee's authorized delegates; and

(h) Any other records the director reasonably requires by rule or regulation or order.

(2) Maintenance of such documents as are required by this section in a photographic, electronic, or other similar form constitutes compliance with this section.

(3) Records may be maintained at a location other than within this state so long as the records are made accessible to the director on seven business days' written notice.

Source: Laws 2013, LB616, § 38.

8-2739 Licensee; authorized delegate; contract; contents.

A licensee desiring to conduct money transmission through an authorized delegate shall authorize each authorized delegate to operate pursuant to an express written contract which, for contracts entered into on or after January 1, 2014, shall provide the following:

(1) That the licensee appoints the person as its authorized delegate with authority to engage in the sale and issue of payment instruments or engage in the business of money transmission on behalf of the licensee;

(2) That neither a licensee nor an authorized delegate may authorize subdelegates without the written consent of the director; and

(3) That the licensee is subject to supervision and regulation by the director.

Source: Laws 2013, LB616, § 39.

8-2740 Authorized delegate; duties.

(1) An authorized delegate shall not make any fraudulent or false statement or misrepresentation to a licensee or to the director.

(2) An authorized delegate shall conduct all money transmission strictly in accordance with the licensee's written procedures provided to the authorized delegate.

(3) An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate.

(4) An authorized delegate is deemed to consent to the director's inspection with or without prior notice to the licensee or authorized delegate.

(5) An authorized delegate is under a duty to act only as authorized under the contract with the licensee and the Nebraska Money Transmitters Act. An

authorized delegate who exceeds its authority is subject to cancellation of its contract and further disciplinary action by the director.

(6) All funds, less fees, received by an authorized delegate of a licensee from the sale or delivery of a payment instrument issued by a licensee or received by an authorized delegate for transmission shall, from the time such funds are received by such authorized delegate until such time when the funds or an equivalent amount are remitted by the authorized delegate to the licensee, constitute trust funds owned by and belonging to the licensee. If an authorized delegate commingles any such funds with any other funds or property owned or controlled by the authorized delegate, all commingled proceeds and other property is impressed with a trust in favor of the licensee in an amount equal to the amount of the proceeds due the licensee.

Source: Laws 2013, LB616, § 40.

8-2741 License; suspension or revocation; grounds; director; powers and duties; hearing; surrender; cancellation; expiration.

(1) The director may, following a hearing in accordance with the Administrative Procedure Act, suspend or revoke any license issued pursuant to the Nebraska Money Transmitters Act if he or she finds:

(a) Any fact or condition exists that, if it had existed at the time when the licensee applied for its original or renewal license, would have been grounds for denying such application;

(b) The licensee's net worth has become inadequate and the licensee, after ten days' written notice from the director, failed to take such steps as the director deems necessary to remedy such deficiency;

(c) The licensee knowingly violated any material provision of the act or any rule or order validly adopted and promulgated under the act;

(d) The licensee conducted money transmission in an unsafe or unsound manner;

(e) The licensee is insolvent;

(f) The licensee has suspended payment of its obligations, made an assignment for the benefit of its creditors, or admitted in writing its inability to pay its debts as they became due;

(g) The licensee filed for liquidation or reorganization under any bankruptcy law;

(h) The licensee refused to permit the director to make any examination authorized by the act; or

(i) The licensee willfully failed to make any report required by the act.

(2) In determining whether a licensee is engaging in an unsafe or unsound practice, the director may consider the size and condition of the licensee's money transmission, the magnitude of the loss, if any, the gravity of the violation of the act, and the previous conduct of the licensee.

(3) A licensee may voluntarily surrender a license by delivering to the director written notice of the surrender, but a surrender shall not affect civil or criminal liability for acts committed before the surrender or liability for any fines which may be levied against the licensee or any of its officers, directors, key shareholders, partners, or members for acts committed before the surrender.

(4)(a) If a licensee fails to renew its license as required by section 8-2734 and does not voluntarily surrender the license pursuant to this section, the department may issue a notice of expiration of the license to the licensee in lieu of revocation proceedings.

(b) If a licensee fails to maintain a surety bond as required by section 8-2727, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

(5) Revocation, suspension, surrender, cancellation, or expiration of a license shall not impair or affect the obligation of a preexisting lawful contract between the licensee and any person.

(6) Revocation, suspension, cancellation, or expiration of a license shall not affect civil or criminal liability for acts committed before the revocation, suspension, cancellation, or expiration or liability for any fines which may be levied against the licensee or any of its officers, directors, key shareholders, partners, or members for acts committed before the revocation, suspension, cancellation, or expiration.

Source: Laws 2013, LB616, § 41.

Cross References

Administrative Procedure Act, see section 84-920.

8-2742 Authorized delegate; suspension or revocation of designation; grounds; director; powers and duties; hearing; final order; application to modify or rescind.

(1) The director may, following a hearing in accordance with the Administrative Procedure Act, issue an order suspending or revoking the designation of an authorized delegate if the director finds that:

(a) The authorized delegate violated the Nebraska Money Transmitters Act or a rule or regulation adopted and promulgated or an order issued under the act;

(b) The authorized delegate did not cooperate with an examination or investigation by the director;

(c) The authorized delegate engaged in fraud, intentional misrepresentation, or gross negligence;

(d) The authorized delegate is convicted of a violation of a state or federal anti-money laundering statute;

(e) The competence, experience, character, or general fitness of the authorized delegate or a controlling person of the authorized delegate indicates that it is not in the public interest to permit the authorized delegate to engage in money transmission services; or

(f) The authorized delegate is engaged in an unsafe or unsound practice.

(2) In determining whether an authorized delegate is engaging in an unsafe or unsound practice, the director may consider the size and condition of the authorized delegate's money transmission, the magnitude of the loss, if any, the gravity of the violation of the act, and the previous conduct of the authorized delegate.

(3) Any authorized delegate to whom a final order is issued under this section may apply to the director to modify or rescind the order. The director shall not grant the application unless the director finds that (a) it is in the public interest to do so and (b) it is reasonable to believe that the person will comply with the

act and any rule, regulation, or order issued under the act if and when that person is permitted to resume being an authorized delegate of a licensee.

Source: Laws 2013, LB616, § 42.

Cross References

Administrative Procedure Act, see section 84-920.

8-2743 Cease and desist order; notice; hearing; vacation or modification of order; when; judicial review; enforcement.

(1) The department may order any person to cease and desist whenever the department determines that the person has violated the Nebraska Money Transmitters Act. Upon entry of a cease and desist order, the director shall promptly notify the affected person that such order has been entered, of the reasons for such order, and that upon receipt, within fifteen business days after the date of the order, of a written request from the affected person, a hearing will be scheduled within thirty business days after the date of receipt of the written request, unless the parties consent to a later date or the hearing officer sets a later date for good cause. The hearing shall be held in accordance with the Administrative Procedure Act and rules and regulations of the department. If a hearing is not requested and none is ordered by the director, the order shall remain in effect until it is modified or vacated.

(2) The director may issue an order against a licensee to cease and desist from engaging in money transmission through an authorized delegate that is the subject of a separate order pursuant to section 8-2742.

(3) The director may vacate or modify a cease and desist order if he or she finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so.

(4) A person aggrieved by a cease and desist order of the department may obtain judicial review of the order. The review shall be in the manner prescribed in the Administrative Procedure Act. The director may obtain an order from the district court of Lancaster County for enforcement of the cease and desist order.

Source: Laws 2013, LB616, § 43.

Cross References

Administrative Procedure Act, see section 84-920.

8-2744 Violations; orders authorized.

If the director finds, after notice and hearing in accordance with the Administrative Procedure Act, that any person has violated the Nebraska Money Transmitters Act or any rule, regulation, or order of the director thereunder, the director may order such person to pay (1) an administrative fine of not more than five thousand dollars for each separate violation and (2) the costs of investigation.

Source: Laws 2013, LB616, § 44.

Cross References

Administrative Procedure Act, see section 84-920.

8-2745 Violations; penalties.

(1) Except as provided in subsections (2) and (3) of this section, any person violating the Nebraska Money Transmitters Act or any rule, regulation, or order of the director made pursuant to the act or who engages in any act, practice, or transaction declared by the Nebraska Money Transmitters Act to be unlawful is guilty of a Class III misdemeanor.

(2) A person who intentionally makes a false statement, misrepresentation, or false certification in a record filed or required to be maintained under the act or who intentionally makes a false entry or omits a material entry in such a record is guilty of a Class I misdemeanor.

(3) An individual who knowingly engages in money transmission for which a license is required under the act without being licensed under the act is guilty of a Class I misdemeanor.

Source: Laws 2013, LB616, § 45.

8-2746 Rules and regulations.

The director may adopt and promulgate rules and regulations and issue orders, rulings, findings, and demands as may be necessary to carry out the purposes of the Nebraska Money Transmitters Act.

Source: Laws 2013, LB616, § 46.

8-2747 Fees, charges, costs, and fines; disposition.

(1) The department shall remit all fees, charges, and costs collected by the department pursuant to the Nebraska Money Transmitters Act to the State Treasurer for credit to the Financial Institution Assessment Cash Fund.

(2) The department shall remit fines collected under the act to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2013, LB616, § 47.

8-2748 Repealed. Laws 2016, LB778, § 9.

ARTICLE 28

REAL ESTATE FINANCING ENFORCEMENT AND SERVICING

Section

8-2801. Real estate loan agreement, mortgage, deed of trust, security instrument; enforcement and servicing; local ordinance or resolution; limitation.

8-2801 Real estate loan agreement, mortgage, deed of trust, security instrument; enforcement and servicing; local ordinance or resolution; limitation.

(1) The enforcement and servicing of any real estate loan agreement or any mortgage, deed of trust, or other security instrument by which the loan is secured shall be pursuant only to state and federal law. No local ordinance or resolution may add to, change, interfere with any rights or obligations of, impose upon, or require payment of fees or taxes of any kind by, a lender, mortgagee, beneficiary, or trustee in a trust deed or servicer relating to, or delay or affect the enforcement and servicing of, any real estate loan agreement or any mortgage, deed of trust, or other security instrument by which the loan is secured.

(2) Subsection (1) of this section shall not apply to any ordinance or resolution adopted pursuant to the Community Development Law.

Source: Laws 2014, LB788, § 1.

Cross References

Community Development Law, see section 18-2101.

ARTICLE 29

FINANCIAL EXPLOITATION OF A VULNERABLE ADULT OR SENIOR ADULT

(a) FINANCIAL INSTITUTIONS

Section
8-2901. Terms, defined.
8-2902. Legislative intent.
8-2903. Financial exploitation of a vulnerable adult or senior adult; financial institution; authority to delay, refuse, or prevent certain activity; expiration; effect; immunity.

(b) NEBRASKA PROTECTION OF VULNERABLE ADULTS FROM FINANCIAL EXPLOITATION ACT

8-2904. Act, how cited.
8-2905. Terms, defined.
8-2906. Financial exploitation; qualified person; notify agencies.
8-2907. Financial exploitation; qualified person; notify third party; immunity.
8-2908. Broker-dealer; investment adviser; delay transaction or disbursement; conditions; expiration; court order; immunity.
8-2909. Broker-dealer; investment adviser; provide access to records; immunity.

(a) FINANCIAL INSTITUTIONS

8-2901 Terms, defined.

For purposes of sections 8-2901 to 8-2903:

(1) Account means a contract of deposit of funds between the depositor and a financial institution and:

(a) The account is owned by a vulnerable adult or senior adult, whether individually or with one or more other persons; or

(b) A vulnerable adult or senior adult is a beneficiary of the account, including a formal or informal trust account, a payable on death account, a conservatorship account, or a guardianship account;

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

(3) Financial exploitation means:

(a) The wrongful or unauthorized taking, withholding, appropriation, or use of the money, assets, or other property or the identifying information of a vulnerable adult or senior adult by any person; or

(b) An act or omission by a person, including through the use of a power of attorney on behalf of, or as the conservator or guardian of, a vulnerable adult or senior adult, to:

(i) Obtain control, through deception, intimidation, fraud, or undue influence, over the vulnerable adult's or senior adult's money, assets, or other property to deprive the vulnerable adult or senior adult of the ownership, use, benefit, or possession of the property; or

(ii) Convert the money, assets, or other property of a vulnerable adult or senior adult to deprive a vulnerable adult or senior adult of the ownership, use, benefit, or possession of the property;

(4) Financial institution means a bank, savings bank, building and loan association, savings and loan association, or credit union, whether chartered by the Department of Banking and Finance, the United States, or a foreign state agency; any other similar organization which is covered by federal deposit insurance; a subsidiary or affiliate of any such entity; or a trust company as defined in section 8-230;

(5) Law enforcement agency has the same meaning as in section 28-359;

(6) Senior adult has the same meaning as in section 28-366.01;

(7) Transaction means any of the following as applicable to services provided by a financial institution:

(a) A transfer or request to transfer or disburse funds or assets in an account;

(b) A request to initiate a wire transfer, initiate an automated clearinghouse transfer, or issue a money order, cashier's check, or official check;

(c) A request to negotiate a check or other negotiable instrument;

(d) A request to change the ownership of, or access to, an account;

(e) A request for a loan, guarantee of a loan, extension of credit, or draw on a line of credit;

(f) A request to encumber any movable or immovable property, including real property, personal property, or fixtures; and

(g) A request to designate or change the designation of beneficiaries to receive any property, benefit, or contract right for a vulnerable adult or senior adult at death; and

(8) Vulnerable adult has the same meaning as in section 28-371.

Source: Laws 2020, LB909, § 18.

8-2902 Legislative intent.

(1) It is the intent of the Legislature to provide legal protection to financial institutions so that they have the discretion to take action to assist in detecting and preventing financial exploitation.

(2) The Legislature recognizes that financial institutions are in a unique position to potentially discover financial exploitation when conducting transactions on behalf of and at the request of their customers.

(3) The Legislature recognizes that financial institutions have duties imposed by contract and duties imposed by both federal and state law to conduct transactions requested by their customers faithfully and timely in accordance with the customer's instructions.

(4) The Legislature recognizes that financial institutions do not have a duty to contravene the valid instructions of their customers and nothing in sections 8-2901 to 8-2903 creates such a duty.

Source: Laws 2020, LB909, § 19.

8-2903 Financial exploitation of a vulnerable adult or senior adult; financial institution; authority to delay, refuse, or prevent certain activity; expiration; effect; immunity.

(1) When a financial institution, or an employee of a financial institution, reasonably believes, or has received information from the department or a law enforcement agency demonstrating that it is reasonable to believe, that financial exploitation of a vulnerable adult or senior adult may have occurred, may have been attempted, is occurring, or is being attempted, the financial institution may, but is not required to:

(a) Delay or refuse a transaction with or involving the vulnerable adult or senior adult;

(b) Delay or refuse to permit the withdrawal or disbursement of funds contained in the vulnerable adult's or senior adult's account;

(c) Prevent a change in ownership of the vulnerable adult's or senior adult's account;

(d) Prevent a transfer of funds from the vulnerable adult's or senior adult's account to an account owned wholly or partially by another person;

(e) Refuse to comply with instructions given to the financial institution by an agent or a person acting for or with an agent under a power of attorney signed or purported to have been signed by the vulnerable adult or senior adult; or

(f) Prevent the designation or change the designation of beneficiaries to receive any property, benefit, or contract rights for a vulnerable adult or senior adult at death.

(2) A financial institution is not required to act under subsection (1) of this section when provided with information alleging that financial exploitation may have occurred, may have been attempted, is occurring, or is being attempted, but may use the financial institution's discretion to determine whether or not to act under subsection (1) of this section based on the information available to the financial institution at the time.

(3)(a)(i) A financial institution may notify any third party reasonably associated with a vulnerable adult or senior adult if the financial institution reasonably believes that the financial exploitation of a vulnerable adult or senior adult may have occurred, may have been attempted, is occurring, or is being attempted.

(ii) A third party reasonably associated with a vulnerable adult or senior adult includes, but is not limited to, the following: (A) A parent, spouse, adult child, sibling, or other known family member or close associate of a vulnerable adult or senior adult; (B) an authorized contact provided by a vulnerable adult or senior adult to the financial institution; (C) a co-owner, additional authorized signatory, or beneficiary on a vulnerable adult's or a senior adult's account; (D) an attorney in fact, trustee, conservator, guardian, or other fiduciary who has been selected by a vulnerable adult or senior adult, a court, or a third party to manage some or all of the financial affairs of the vulnerable adult or senior adult; and (E) an attorney known to represent or have represented the vulnerable adult or senior adult.

(b) A financial institution may choose not to notify any third party reasonably associated with a vulnerable adult or senior adult of suspected financial exploitation of the vulnerable adult or senior adult if the financial institution reasonably believes the third party is, may be, or may have been engaged in the financial exploitation of the vulnerable adult or senior adult or if requested to refrain from making a notification by a law enforcement agency, if such notification could interfere with a law enforcement investigation.

(c) Nothing in this subsection shall prevent a financial institution from notifying the department or a law enforcement agency, if the financial institution reasonably believes that the financial exploitation of a vulnerable adult or senior adult may have occurred, may have been attempted, is occurring, or is being attempted.

(4) The authority granted the financial institution under subsection (1) of this section expires upon the sooner of: (a) Thirty business days after the date on which the financial institution first acted under subsection (1) of this section; (b) when the financial institution is satisfied that the transaction or act will not result in financial exploitation of the vulnerable adult or senior adult; or (c) upon termination by an order of a court of competent jurisdiction.

(5) Unless otherwise directed by order of a court of competent jurisdiction, a financial institution may extend the duration under subsection (4) of this section based on a reasonable belief that the financial exploitation of a vulnerable adult or senior adult may continue to occur or continue to be attempted.

(6) A financial institution and its bank holding company, if any, and any employees, agents, officers, and directors of the financial institution and its bank holding company, if any, shall be immune from any civil, criminal, or administrative liability that may otherwise exist (a) for delaying or refusing to execute a transaction, withdrawal, or disbursement, or for not delaying or refusing to execute such transaction, withdrawal, or disbursement under this section and (b) for actions taken in furtherance of determinations made under subsections (1) through (5) of this section.

(7)(a) Notwithstanding any other law to the contrary, the refusal by a financial institution to engage in a transaction as authorized under subsection (1) of this section shall not constitute the wrongful dishonor of an item under section 4-402, Uniform Commercial Code.

(b) Notwithstanding any other law to the contrary, a reasonable belief that payment of a check will facilitate the financial exploitation of a vulnerable adult or senior adult shall constitute reasonable grounds to doubt the collectability of the item for purposes of the federal Check Clearing for the 21st Century Act, 12 U.S.C. 5001 et seq., the federal Expedited Funds Availability Act, 12 U.S.C. 4001 et seq., and 12 C.F.R. part 229, as such acts and part existed on January 1, 2022.

Source: Laws 2020, LB909, § 20; Laws 2021, LB363, § 23; Laws 2022, LB707, § 26.
Operative date April 19, 2022.

(b) NEBRASKA PROTECTION OF VULNERABLE ADULTS FROM FINANCIAL EXPLOITATION ACT

8-2904 Act, how cited.

Sections 8-2904 to 8-2909 shall be known and may be cited as the Nebraska Protection of Vulnerable Adults from Financial Exploitation Act.

Source: Laws 2021, LB297, § 1.

8-2905 Terms, defined.

For purposes of the Nebraska Protection of Vulnerable Adults from Financial Exploitation Act, unless the context otherwise requires:

(1) Agencies means:

(a) The Adult Protective Services Division of the Department of Health and Human Services; and

(b) The Department of Banking and Finance;

(2) Agent has the same meaning as in section 8-1101;

(3) Broker-dealer has the same meaning as in section 8-1101;

(4) Eligible adult means:

(a) A senior adult as defined in section 28-366.01; or

(b) A vulnerable adult as defined in section 28-371;

(5) Financial exploitation means:

(a) The wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or other property of an eligible adult; or

(b) Any act or omission taken by a person, including through the use of a power of attorney, guardianship, or conservatorship of an eligible adult, to:

(i) Obtain control, through deception, intimidation, or undue influence, over the eligible adult's money, assets, or other property to deprive the eligible adult of the ownership, use, benefit, or possession of his or her money, assets, or other property; or

(ii) Convert money, assets, or other property of the eligible adult to deprive such eligible adult of the ownership, use, benefit, or possession of his or her money, assets, or other property;

(6) Investment adviser has the same meaning as in section 8-1101;

(7) Investment adviser representative has the same meaning as in section 8-1101; and

(8) Qualified person means any broker-dealer, investment adviser, agent, investment adviser representative, or person who serves in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser.

Source: Laws 2021, LB297, § 2.

8-2906 Financial exploitation; qualified person; notify agencies.

If a qualified person reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is occurring or being attempted, the qualified person may notify the agencies.

Source: Laws 2021, LB297, § 3.

8-2907 Financial exploitation; qualified person; notify third party; immunity.

(1) If a qualified person reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is occurring or being attempted, a qualified person may notify any third party previously designated by the eligible adult or any person allowed to receive notification under applicable law or any customer agreement. Notification may not be made to any designated third party that is suspected of financial exploitation or other abuse of the eligible adult.

(2) Any qualified person that in good faith and exercising reasonable care makes a notification pursuant to subsection (1) of this section shall be immune

from administrative or civil liability that might otherwise arise from such notification or for any failure to notify the eligible adult of the disclosure.

Source: Laws 2021, LB297, § 4.

8-2908 Broker-dealer; investment adviser; delay transaction or disbursement; conditions; expiration; court order; immunity.

(1) A broker-dealer or investment adviser may delay a transaction or disbursement from an account of an eligible adult or an account on which an eligible adult is a beneficiary if:

(a) The broker-dealer or investment adviser reasonably believes, after initiating an internal review of the requested transaction or disbursement, that the requested transaction or disbursement may result in financial exploitation of an eligible adult; and

(b) The broker-dealer or investment adviser:

(i) Immediately, but in no event more than two business days after the requested transaction or disbursement, provides written notification of the delay and the reason for the delay to all parties authorized to transact business on the account unless any such party is reasonably believed to have engaged in suspected or attempted financial exploitation of the eligible adult;

(ii) Immediately, but in no event more than two business days after the requested transaction or disbursement, notifies the agencies; and

(iii) Continues its internal review of the suspected or attempted financial exploitation of the eligible adult, as necessary, and reports the internal review's results to the agencies upon request.

(2) Any delay of a transaction or disbursement as authorized by this section will expire upon the sooner of:

(a) A determination by the broker-dealer or investment adviser that the transaction or disbursement will not result in financial exploitation of the eligible adult; or

(b) Fifteen business days after the date on which the broker-dealer or investment adviser first delayed the transaction or disbursement of the funds, unless either of the agencies requests that the broker-dealer or investment adviser extend the delay, in which case the delay shall expire no more than thirty business days after the date on which the broker-dealer or investment adviser first delayed the transaction or disbursement of the funds unless sooner terminated by either of the agencies or by an order of a court of competent jurisdiction.

(3) A court of competent jurisdiction may enter an order extending the delay of the transaction or disbursement of the funds or may order other protective relief based on the petition of (a) either or both of the agencies, (b) the broker-dealer or investment adviser that initiated the delay under this section, or (c) any other interested party.

(4) Any qualified person that, in good faith and exercising reasonable care, complies with this section shall be immune from any administrative or civil liability that might otherwise arise from such delay or notification.

Source: Laws 2021, LB297, § 5.

8-2909 Broker-dealer; investment adviser; provide access to records; immunity.

(1) A broker-dealer or investment adviser shall provide access to or copies of records that are relevant to any suspected or attempted financial exploitation of an eligible adult to (a) the Adult Protective Services Division of the Department of Health and Human Services, (b) other agencies charged with administering state adult protective services laws, and (c) law enforcement, either as part of a referral to the agencies or to law enforcement, or upon request of the agencies or law enforcement pursuant to an investigation. The records may include historical records as well as records relating to the most recent transaction or disbursement or transactions or disbursements that may comprise financial exploitation of an eligible adult.

(2) Any qualified person that, in good faith and exercising reasonable care, complies with subsection (1) of this section shall be immune from any administrative or civil liability that might otherwise arise from providing such access to records.

(3) Any records made available to agencies and law enforcement under this section shall not be considered public records subject to disclosure pursuant to sections 84-712 to 84-712.09.

(4) Nothing in this section shall limit or otherwise impede the authority of the Department of Banking and Finance to access or examine the books and records of broker-dealers and investment advisers as otherwise provided by law.

Source: Laws 2021, LB297, § 6.

ARTICLE 30

NEBRASKA FINANCIAL INNOVATION ACT

Section
8-3001. Act, how cited.
8-3002. Legislative findings and declarations.
8-3003. Terms, defined.
8-3004. Director; powers and duties.
8-3005. Digital asset depository; powers; digital asset depository institution; organization; operating authority; demand deposits and loans; prohibited.
8-3006. Digital asset depository institution; subject to other provisions of law.
8-3007. Customers; criteria.
8-3008. Digital asset depository account; disclosures to customer; requirements.
8-3009. Digital asset depository; required liquid assets.
8-3010. Digital asset depository; compliance with state and federal laws; required.
8-3011. Digital asset depository; notice and statement regarding insurance and risk; customer; acknowledgment.
8-3012. Digital asset depository institution; formation; articles of incorporation; contents; filing; capital requirements; bank holding company; powers.
8-3013. Digital asset depository institution; capital and surplus requirements.
8-3014. Financial institution; digital asset depository department; charter amendment; director; powers and duties.
8-3015. Digital asset depository; act as; authority or charter to operate; required; application; fee.
8-3016. Application for authority or charter; notice; hearing; director; department; powers and duties.
8-3017. Application for charter or authority to operate; hearing; how conducted.
8-3018. Application for charter or authority to operate; director; investigation and examination.

Section
8-3019. Application for charter or authority to operate; decision; criteria and requirements; approval; how effected.
8-3020. Conditions to commence business; compliance required; failure to commence business; effect.
8-3021. Appeal.
8-3022. Surety bond; pledge of assets; requirements; treatment.
8-3023. Reports; director; powers; examination by department; when; assessments and costs; insurance or bond required.
8-3024. Digital asset business activities authorized.
8-3025. Charter or authority; suspend or revoke; grounds.
8-3026. Charter or authority; surrendered, suspended, or revoked; effect.
8-3027. Failure, unsafe or unsound condition, or endangerment of customers' interests; director; conduct liquidation or appoint receiver.
8-3028. Voluntary dissolution; procedure.
8-3029. Reports; failure to submit as prescribed; fee.
8-3030. Digital asset depository; officer, director, employee, or agent; removal; grounds.
8-3031. Orders; rules and regulations.

8-3001 Act, how cited.

Sections 8-3001 to 8-3031 shall be known and may be cited as the Nebraska Financial Innovation Act.

Source: Laws 2021, LB649, § 1.

8-3002 Legislative findings and declarations.

The Legislature finds and declares that:

(1) Economic development initiatives demand buy-in and input from community stakeholders across multiple industries. The Legislature should send a strong message that Nebraska wants to bring high-tech jobs and digital asset operations to our state. Nebraska has an incredible opportunity to be a leader in this emerging technology;

(2) Nebraska desires to create an entrepreneurial ecosystem where young talent can be paired with private investors in order to create jobs, enhance our quality of life, and prevent the brain drain that is particularly acute in rural Nebraska. If Nebraska does not make intentional and meaningful changes to how it recruits and retains young people, Nebraska will be left behind;

(3) The rapid innovation of blockchain and digital ledger technology, including the growing use of virtual currency, digital assets, and other controllable electronic records has complicated the development of blockchain services and products in the marketplace;

(4) Blockchain innovators are able and willing to address banking compliance challenges such as federal customer identification, anti-money laundering, and beneficial ownership requirements to comply with regulators' concerns;

(5) Compliance with federal and state laws, including, but not limited to, know-your-customer and anti-money-laundering rules and the federal Bank Secrecy Act, is critical to ensuring the future growth and reputation of the blockchain and technology industries as a whole; and

(6) Authorizing digital asset depositories in Nebraska will provide a necessary and valuable service to blockchain innovators and customers, emphasize Nebraska's partnership with the technology and financial industry, safely grow

this state's ever-evolving financial sector, and afford more opportunities for Nebraska residents.

Source: Laws 2021, LB649, § 2.

8-3003 Terms, defined.

For purposes of the Nebraska Financial Innovation Act:

(1) Blockchain means a distributed digital record of controllable electronic record transactions;

(2) Centralized finance means centralized digital asset exchanges, businesses, or organizations with a valid physical address;

(3) Control has the following meaning:

(a) A person has control of a controllable electronic record if:

(i) The following conditions are met:

(A) The controllable electronic record or the system in which it is recorded, if any, gives the person:

(I) The power to derive substantially all the benefit from the controllable electronic record;

(II) Subject to subdivision (b) of this subdivision, the exclusive power to prevent others from deriving substantially all the benefit from the controllable electronic record; and

(III) Subject to subdivision (b) of this subdivision, the exclusive power to transfer control of the controllable electronic record to another person or cause another person to obtain control of a controllable electronic record that derives from the controllable electronic record; and

(B) The controllable electronic record, a record attached to or logically associated with the controllable electronic record, or the system in which the controllable electronic record is recorded, if any, enables the person to readily identify itself as having the powers specified in subdivision (a)(i) of this subdivision; or

(ii) Another person obtains control of the controllable electronic record on behalf of the person, or having previously obtained control of the controllable electronic record, acknowledges that it has control on behalf of the person.

(b) A power specified in subdivisions (3)(a)(i)(A)(II) or (III) of this section can be exclusive, even if:

(i) The controllable electronic record or the system in which it is recorded, if any, limits the use to which the controllable electronic record may be put or has protocols that are programmed to result in a transfer of control; and

(ii) The person has agreed to share the power with another person.

(c) For the purposes of subdivision (3)(a)(i)(B) of this section, a person may be identified in any way, including by name, identifying number, cryptographic key, office, or account number;

(4) Controllable electronic borrowing means the act of receiving digital assets or the use of digital assets from a lender in exchange for the payment to the lender of digital assets, interest, fees, or rewards;

(5) Controllable electronic record means an electronic record that can be subjected to control. The term has the same meaning as digital asset and does

not include electronic chattel paper, electronic documents, investment property, and transferable records under the Uniform Electronic Transactions Act;

(6) Controllable electronic record exchange means a business that allows customers to purchase, sell, convert, send, receive, or trade digital assets for other digital assets;

(7) Controllable electronic record lending means the act of providing digital assets to a borrower in exchange for digital assets, interest, fees, or rewards;

(8) Controllable electronic records staking means the act of pledging a digital asset or token with an expectation of gaining digital assets, interest, fees, or other rewards on such act;

(9) Customer means a digital asset depositor or digital asset account holder;

(10) Decentralized finance means digital asset exchanges, businesses, or organizations operating independently on blockchains;

(11) Department means the Department of Banking and Finance;

(12) Digital asset depository means a financial institution that securely holds liquid assets when such assets are in the form of controllable electronic records, either as a corporation organized, chartered, and operated pursuant to the Nebraska Financial Innovation Act as a digital asset depository institution or a financial institution operating a digital asset depository business as a digital asset depository department under a grant of authority by the director;

(13) Digital asset depository department means a financial institution operating a digital asset depository business as a digital asset depository department under a grant of authority by the director;

(14) Digital asset depository institution means a corporation operating a digital asset depository business organized and chartered pursuant to the Nebraska Financial Innovation Act;

(15) Director means the Director of Banking and Finance;

(16) Financial institution means a bank, savings bank, building and loan association, savings and loan association, whether chartered by the United States, the department, or a foreign state agency; or a trust company;

(17) Fork means a change to the protocol of a blockchain network;

(18) Independent node verification network means a shared electronic database where copies of the same information are stored on multiple computers; and

(19) Stablecoin means a cryptocurrency designed to have a stable value that is backed by a reserve asset.

Source: Laws 2021, LB649, § 3.

8-3004 Director; powers and duties.

The director shall have the power to issue to corporations desiring to transact business as a digital asset depository institution charters of authority to transact digital asset depository business as defined in the Nebraska Financial Innovation Act. The director shall have general supervision and control over such digital asset depositories.

Source: Laws 2021, LB649, § 4.

8-3005 Digital asset depository; powers; digital asset depository institution; organization; operating authority; demand deposits and loans; prohibited.

(1)(a) A digital asset depository may:

(i) Make contracts as a corporation under Nebraska law;

(ii) Sue and be sued;

(iii) Receive notes as permitted by federal law;

(iv) Carry on a nonlending digital asset banking business for customers, consistent with subdivision (2)(b) of this section;

(v) Provide payment services upon the request of a customer; and

(vi) Make an application to become a member bank of the federal reserve system.

(b) A digital asset depository shall maintain its main office and the primary office of its chief executive officer in Nebraska.

(c) As otherwise authorized by this section, a digital asset depository may conduct business with customers outside this state.

(2)(a) A digital asset depository institution, consistent with the Nebraska Financial Innovation Act, shall be organized as a corporation under the Nebraska Model Business Corporation Act to exercise the powers set forth in subsection (1) of this section.

(b) A digital asset depository institution shall not accept demand deposits of United States currency or United States currency that may be accessed or withdrawn by check or similar means for payment to third parties and except as otherwise provided in this subsection, a digital asset depository institution shall not make any consumer loans for personal, property or household purposes, mortgage loans, or commercial loans of any fiat currency including, but not limited to, United States currency, including the provision of temporary credit relating to overdrafts. Notwithstanding this prohibition against fiat currency lending by a digital asset depository institution, a digital asset depository institution may facilitate the provision of digital asset business services resulting from the interaction of customers with centralized finance or decentralized finance platforms including, but not limited to, controllable electronic record exchange, staking, controllable electronic record lending, and controllable electronic record borrowing. A digital asset depository institution may purchase debt obligations specified by subdivision (2)(c) of section 8-3009.

(c) Subject to the laws of the host state, a digital asset depository institution may open a branch in another state in the manner set forth in section 8-157 or 8-2303. A digital asset depository institution, including any branch of the digital asset depository institution, may only accept digital asset deposits or provide other digital asset business services under the Nebraska Financial Innovation Act to individual customers or a customer that is a legal entity other than a natural person engaged in a bona fide business which is lawful under the laws of Nebraska, the laws of the host state if the entity is headquartered in another state, and federal law.

(3) The deposit limitations of subdivision (2)(a)(ii) of section 8-157 shall not apply to a digital asset depository.

(4) Any United States currency coming into an account established by a customer of a digital asset depository institution shall be held in a financial institution, the deposits of which are insured by the Federal Deposit Insurance

Corporation, which maintained a main-chartered office in this state, any branch thereof in this state, or any branch of the financial institution which maintained the main-chartered office in this state prior to becoming a branch of such financial institution.

(5) A digital asset depository institution shall establish and maintain programs for compliance with the federal Bank Secrecy Act, in accordance with 12 C.F.R. 208.63, as the act and rule existed on January 1, 2022.

(6) A digital asset depository shall help meet the digital financial needs of the communities in which it operates, consistent with safe and sound operations, and shall maintain and update a public file and on any Internet website it maintains containing specific information about its efforts to meet community needs, including:

(a) The collection and reporting of data;

(b) Its policies and procedures for accepting and responding to consumer complaints; and

(c) Its efforts to assist with financial literacy or personal finance programs to increase knowledge and skills of Nebraska students in areas such as budgeting, credit, checking and savings accounts, loans, stocks, and insurance.

Source: Laws 2021, LB649, § 5; Laws 2022, LB707, § 27.
Operative date April 19, 2022.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.

8-3006 Digital asset depository institution; subject to other provisions of law.

A digital asset depository institution shall be subject to the Interstate Branching and Merger Act, the Nebraska Bank Holding Company Act of 1995, and Chapter 8, articles 6, 8, 13, 14, 15, 16, 19, 20, 25, 26, and 29 unless otherwise limited or excluded or the context otherwise requires.

Source: Laws 2021, LB649, § 6.

Cross References

Interstate Branching and Merger Act, see section 8-2101.
Nebraska Bank Holding Company Act of 1995, see section 8-908.

8-3007 Customers; criteria.

(1) No customer shall open or maintain an account with a digital asset depository or otherwise receive any services from the digital asset depository unless the customer meets the criteria of this subsection. A customer shall:

(a) Make sufficient evidence available to the digital asset depository to enable compliance with anti-money laundering, customer identification, and beneficial ownership requirements, as determined by the federal Bank Secrecy Act guidance and the policies and practices of the institution; and

(b) If the customer is a legal entity other than a natural person:

(i) Be in good standing with the jurisdiction in the United States in which it is incorporated or organized; and

(ii) Be engaged in a business that is lawful and bona fide in Nebraska, in the host state, if applicable, and under federal law consistent with subsection (3) of this section.

(2) A customer which meets the criteria of subsection (1) of this section may be issued a digital asset depository account and otherwise receive services from the digital asset depository, contingent on the availability of sufficient insurance under subsection (5) of section 8-3023.

(3) Consistent with subdivisions (1)(a)(iv) and (v) of section 8-3005, and in addition to any requirements specified by federal law, a digital asset depository shall require that any potential customer that is a legal entity other than a natural person provide reasonable evidence that the entity is engaged in a business that is lawful and bona fide in Nebraska, in the host state, and under federal law or is likely to open a lawful, bona fide business within a federal Bank Secrecy Act compliant timeframe, as the act existed on January 1, 2022. For purposes of this subsection, reasonable evidence includes business entity filings, articles of incorporation or organization, bylaws, operating agreements, business plans, promotional materials, financing agreements, or other evidence.

Source: Laws 2021, LB649, § 7; Laws 2022, LB707, § 28.
Operative date April 19, 2022.

8-3008 Digital asset depository account; disclosures to customer; requirements.

The terms and conditions of a customer's digital asset depository account at a digital asset depository shall be disclosed at the time the customer contracts for a digital asset business service. Such disclosure shall be full and complete, contain no material misrepresentations, be in readily understandable language, and shall include, as appropriate and to the extent applicable:

(1) A schedule of fees and charges the digital asset depository may assess, the manner by which fees and charges will be calculated if they are not set in advance and disclosed, and the timing of the fees and charges;

(2) A statement that the customer's digital asset depository account is not protected by the Federal Deposit Insurance Corporation;

(3) A statement whether there is support for forked networks of each digital asset;

(4) A statement that investment in digital assets is volatile and subject to market loss;

(5) A statement that investment in digital assets may result in total loss of value;

(6) A statement that legal, legislative, and regulatory changes may impair the value of digital assets;

(7) A statement that customers should perform research before investing in digital assets;

(8) A statement that transfers of digital assets are irrevocable, if applicable;

(9) A statement how liability for an unauthorized, mistaken, or accidental transfer shall be apportioned;

(10) A statement that digital assets are not legal tender in any jurisdiction;

(11) A statement that digital assets may be subject to cyber theft or theft and become unrecoverable;

(12) A statement about who maintains control, ownership, and access to any private key related to a digital assets customer's digital asset account; and

(13) A statement that losing private key information may result in permanent total loss of access to digital assets.

Source: Laws 2021, LB649, § 8.

8-3009 Digital asset depository; required liquid assets.

(1) At all times, a digital asset depository shall maintain unencumbered liquid assets denominated in United States dollars valued at not less than one hundred percent of the value of any outstanding stablecoin issued by the digital asset depository.

(2) For purposes of this section, liquid assets means:

(a) United States currency held on the premises of the digital asset depository that is not a digital asset depository institution;

(b) United States currency held for the digital asset depository by a federal reserve bank or a Federal Deposit Insurance Corporation-insured financial institution which has a main-chartered office in this state, any branch thereof in this state, or any branch of the financial institution which maintained a main-chartered office in this state prior to becoming a branch of such financial institution; or

(c) Investments which are highly liquid and obligations of the United States Treasury or other federal agency obligations, consistent with rules and regulations or order adopted by the director.

Source: Laws 2021, LB649, § 9; Laws 2022, LB707, § 29.
Operative date July 21, 2022.

8-3010 Digital asset depository; compliance with state and federal laws; required.

A digital asset depository shall comply with all state and federal laws, including, but not limited to, those relating to anti-money laundering, customer identification, and beneficial ownership.

Source: Laws 2021, LB649, § 10.

8-3011 Digital asset depository; notice and statement regarding insurance and risk; customer; acknowledgment.

(1) With respect to all digital asset business activities, a digital asset depository shall display and include in all advertising, in all marketing materials, on any Internet website it maintains, and at each window or place where it accepts digital asset deposits, (a) a notice conspicuously stating that digital asset deposits and digital asset accounts are not insured by the Federal Deposit Insurance Corporation, if applicable, and (b) the following conspicuous statement: Holdings of digital assets are speculative and involve a substantial degree of risk, including the risk of complete loss. There is no assurance that any digital asset will be viable, liquid, or solvent. Nothing in this communication is intended to imply that any digital asset held in custody by a digital asset depository is low-risk or risk-free. Digital assets held in custody are not guaranteed by a digital asset depository and are not FDIC insured.

(2) Upon opening a digital asset depository account, and if applicable, a digital asset depository shall require each customer to execute a statement acknowledging that all digital asset deposits at the digital asset depository are not insured by the Federal Deposit Insurance Corporation. The digital asset

depository shall permanently retain this acknowledgment, whether in electronic form or as a signature card.

Source: Laws 2021, LB649, § 11.

8-3012 Digital asset depository institution; formation; articles of incorporation; contents; filing; capital requirements; bank holding company; powers.

(1) Except as otherwise provided by subsection (5) of this section, five or more adult persons, including at least one Nebraska resident, may form a digital asset depository institution. The incorporators shall subscribe the articles of incorporation and transmit them to the director as part of an application for a charter under section 8-3015.

(2) The articles of incorporation shall include the following information:

(a) The corporate name;

(b) The object for which the corporation is organized;

(c) The term of its existence, which may be perpetual;

(d) The place in Nebraska where its main office shall be physically located and its operations conducted;

(e) The amount of capital stock and the number of shares;

(f) The name and residence of each shareholder subscribing to more than ten percent of the stock and the number of shares owned by that shareholder;

(g) The number of directors and the names of those who shall manage the affairs of the corporation for the first year; and

(h) A statement that the articles of incorporation are made to enable the incorporators to avail themselves of the advantages of the laws of the state.

(3) Copies of all amended articles of incorporation shall be filed in the same manner as the original articles of incorporation.

(4) The incorporators shall solicit capital prior to filing an application for a charter with the director, consistent with section 8-3013. In the event an application for a charter is not filed or is denied by the director, all capital shall be promptly returned without loss.

(5) Subject to federal and state law, a bank holding company may apply to hold a digital asset depository.

Source: Laws 2021, LB649, § 12.

8-3013 Digital asset depository institution; capital and surplus requirements.

(1) The capital stock of each digital asset depository institution chartered under the Nebraska Financial Innovation Act shall be subscribed for as paid-up stock. No digital asset depository institution shall be chartered with capital stock of less than ten million dollars.

(2) No digital asset depository institution shall commence business until the full amount of its authorized capital is subscribed and all capital stock is fully paid in. No digital asset depository institution may be chartered without a paid-up surplus fund of at least three years of estimated operating expenses in the amount disclosed pursuant to subsection (2) of section 8-3015 or in another amount required by the director.

(3) A digital asset depository institution may acquire additional capital prior to the granting of a charter and shall report this capital in its charter application.

Source: Laws 2021, LB649, § 13.

8-3014 Financial institution; digital asset depository department; charter amendment; director; powers and duties.

(1) Any financial institution, having adopted or amended its articles of incorporation to authorize the conduct of a digital asset depository business may be further chartered by the director to transact a digital asset depository business in a digital asset depository department in connection with such financial institution.

(2) The director has the authority to issue to financial institutions amendments to their charters of authority to transact digital asset depository business and has general supervision and control over such digital asset depository departments of financial institutions.

(3) The director, before granting to any financial institution the right to operate a digital asset depository department, shall require such financial institution to make an application for amendment of its charter, setting forth such information as the director may require.

(4) A digital asset depository department of a financial institution when chartered under subsection (1) of this section shall be separate and apart from every other department of the financial institution and shall have all of the powers, duties, and obligations of a digital asset depository institution as set forth in the Nebraska Financial Innovation Act.

(5) Any financial institution authorized to transact a digital asset depository business in a digital asset depository department pursuant to subsection (1) of this section may conduct such digital asset depository business at the office of any financial institution which is a subsidiary of the same bank holding company as the authorized financial institution.

(6) A financial institution may deposit or have on deposit funds of an account controlled by the financial institution's digital asset depository department unless prohibited by applicable law.

Source: Laws 2021, LB649, § 14.

8-3015 Digital asset depository; act as; authority or charter to operate; required; application; fee.

(1) No corporation shall act as a digital asset depository without first obtaining authority or a charter to operate from the director under the Nebraska Financial Innovation Act.

(2) The incorporators under section 8-3012 shall apply to the director for a charter. The application shall contain the digital asset depository institution's articles of incorporation, a detailed business plan, a comprehensive estimate of operating expenses for the first three years of operation, a complete proposal for compliance with the provisions of the Nebraska Financial Innovation Act, evidence of the capital required under section 8-3013, and any investors or owners holding ten percent or more equity in the digital asset depository institution. The director may prescribe the form of application.

(3) A financial institution may apply to the director for authority to operate a digital asset depository business as a department. The application shall contain a detailed business plan, a comprehensive estimate of operating expenses for the first three years of operation, and a complete proposal for compliance with the provisions of the Nebraska Financial Innovation Act. The director may prescribe the form of application.

(4) Each application for a charter or authority shall be accompanied by an application fee of fifty thousand dollars.

Source: Laws 2021, LB649, § 15.

8-3016 Application for authority or charter; notice; hearing; director; department; powers and duties.

(1) After a substantially complete application for digital asset depository authority or a digital asset depository institution charter has been submitted, the director shall notify the applicants in writing within thirty calendar days of any deficiency in the required information or that the application has been accepted for filing. When the director is satisfied that all required information has been furnished, the director shall establish a time and place for a public hearing which shall be conducted not less than sixty days, nor more than one hundred twenty days, after notice from the director to the applicants that the application is in order.

(2) Within thirty days after receipt of notice of the time and place of the public hearing, the department shall cause notice of filing of the application and the hearing to be published at the applicants' expense in a newspaper of general circulation within the county where the proposed digital asset depository is to be located. Publication shall be made at least once a week for three consecutive weeks before the hearing, stating the proposed location of the digital asset depository, the names of the applicants for a charter, the nature of the activities to be conducted by the proposed digital asset depository, and other information required by rule and regulation. The director shall electronically send notice of the hearing to state and national banks, federal savings and loan associations, state and federal credit unions, and other financial institutions in the state, federal agencies, and financial industry trade groups.

Source: Laws 2021, LB649, § 16.

8-3017 Application for charter or authority to operate; hearing; how conducted.

The hearing for a charter application or for authority to operate a digital asset depository shall be conducted under the Administrative Procedure Act and shall comply with the requirements of the act.

Source: Laws 2021, LB649, § 17.

Cross References

Administrative Procedure Act, see section 84-920.

8-3018 Application for charter or authority to operate; director; investigation and examination.

Upon receiving the application for a charter to become a digital asset depository institution, or for authority to operate a digital asset depository department, the applicable fee, and other information required by the director,

the director shall make a careful investigation and examination of the following:

(1) The character, reputation, criminal record, financial standing, and ability of the shareholders owning ten percent or more equity in the applicant;

(2) The character, financial responsibility, criminal background, banking or other financial experience, and business qualifications of those proposed as officers and directors;

(3) Whether the applicant or any of its officers, directors, or shareholders owning ten percent or more equity in the applicant have ever been convicted of any (i) misdemeanor involving any aspect of a digital asset depository business or any business of a similar nature or (ii) felony;

(4) Whether the applicant or any of its officers, directors, or shareholders owning ten percent or more equity in the applicant have ever been permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of a digital asset depository business or any business of a similar nature;

(5) A criminal history record information check of the applicant, its officers, directors, and shareholders owning ten percent or more equity in the applicant. The direct cost of the criminal history record information check shall be paid by the applicant; and

(6) The application for a charter, or for authority to operate a digital asset depository, including the adequacy and plausibility of the business plan of the digital asset depository, the benefits to the customers, and whether the applicant has offered a complete proposal for compliance with the Nebraska Financial Innovation Act.

Source: Laws 2021, LB649, § 18.

8-3019 Application for charter or authority to operate; decision; criteria and requirements; approval; how effected.

(1) Within ninety days after receipt of the transcript of the public hearing, the director shall render a decision on the application based on the following criteria and requirements:

(a) Whether the character, reputation, criminal record, financial standing, and ability of the shareholders owning ten percent or more equity in the applicant are sufficient to afford reasonable promise of a successful operation;

(b) That the digital asset depository will be operated by officers of integrity and responsibility;

(c) Whether the character, financial responsibility, criminal background, and banking or other financial experience and business qualifications of those proposed as officers and directors are sufficient to afford reasonable promise of a successful operation;

(d) The adequacy and plausibility of the business plan of the digital asset depository institution, including the ongoing customer expectations of the digital asset depository institution as determined by the director;

(e) Compliance by the digital asset depository institution with the capital and surplus requirements of section 8-3013;

(f) Whether the digital asset depository institution is being formed for no other purpose than legitimate objectives authorized by law;

(g) That the name of the proposed digital asset depository institution includes the words ''digital asset bank'' so that it does not resemble the name of any other financial institution transacting business in the state so as to cause confusion;

(h) That the digital asset depository will be operated in a safe and sound manner to benefit its customers;

(i) That the digital asset depository shall help meet the digital financial needs of the communities in which it operates, consistent with safe and sound operations, and shall maintain and update a public file and on any Internet website it maintains containing specific information about its efforts to meet community needs, including:

(i) The collection and reporting of data;

(ii) Its policies and procedures for accepting and responding to consumer complaints; and

(iii) Its efforts to assist with financial literacy or personal finance programs to increase knowledge and skills of Nebraska students in areas such as budgeting, credit, checking and savings accounts, loans, stocks, and insurance;

(j) Whether the applicants have complied with all provisions of state law and are eligible to apply for membership in the federal reserve system; and

(k) Any other considerations in addition to statutory requirements submitted by the applicant pursuant to operational order, rules and regulations, or request of the department.

(2) The director shall approve an application upon making favorable findings on the criteria set forth in subsection (1) of this section. If necessary, the director may either conditionally approve an application by specifying conditions relating to the criteria or may disapprove the application. The director shall state findings of fact and conclusions of law as part of such decision.

(3) If the director approves the application, the director shall issue an order.

Source: Laws 2021, LB649, § 19.

8-3020 Conditions to commence business; compliance required; failure to commence business; effect.

(1) If an application is approved and a charter or authority is granted by the director under section 8-3019, the digital asset depository shall not commence business before satisfaction of all conditions precedent contained in the director's order or conditional order.

(2) If an approved digital asset depository fails to commence business in good faith within twelve months after the issuance of a charter or an order of authority to operate by the director, the charter or authority shall expire. The director, for good cause and upon an application filed prior to the expiration of the six-month period, may extend the time within which the digital asset depository may open for business.

Source: Laws 2021, LB649, § 20.

8-3021 Appeal.

Any decision of the department or director in approving, conditionally approving, or disapproving a charter or authority for a digital asset depository is appealable in accordance with the Administrative Procedure Act.

Source: Laws 2021, LB649, § 21.

Cross References

Administrative Procedure Act, see section 84-920.

8-3022 Surety bond; pledge of assets; requirements; treatment.

(1) Except as otherwise provided by subsection (2) of this section, a digital asset depository shall, before transacting any business, pledge or furnish a surety bond to the director to cover costs likely to be incurred by the director in a liquidation or conservatorship of the digital asset depository. The amount of the surety bond or pledge of assets under subsection (2) of this section shall be determined by the director in an amount sufficient to defray the costs of a liquidation or conservatorship.

(2) In lieu of a bond, a digital asset depository may irrevocably pledge specified assets equivalent to a bond under subsection (1) of this section. Any assets pledged to the director under this subsection shall be held in a state or nationally chartered bank, trust company, federal reserve bank, or savings and loan association having a principal or branch office in this state, excluding affiliated institutions. All costs associated with pledging and holding such assets are the responsibility of the digital asset depository.

(3) Assets pledged to the director shall not include money and shall be of the same nature and quality as those required under section 8-210.

(4) Surety bonds shall run to the State of Nebraska, and shall be approved under the terms and conditions required under section 8-110.

(5) The director may by order or rules and regulations establish additional investment guidelines or investment options for purposes of the pledge or surety bond required by this section.

(6) In the event of a liquidation or conservatorship of a digital asset depository pursuant to section 8-3027, the director may, without regard to priorities, preferences, or adverse claims, reduce the surety bond or assets pledged under this section to cash as soon as practicable and utilize the cash to defray the costs associated with the liquidation or conservatorship.

(7) Income from assets pledged under subsection (2) of this section shall be paid to the digital asset depository no less than annually, unless a liquidation or conservatorship takes place.

(8) Upon evidence that the current surety bond is or pledged assets are insufficient, the director may require a digital asset depository to increase its surety bond or pledged assets by providing not less than thirty days' written notice to the digital asset depository.

Source: Laws 2021, LB649, § 22.

8-3023 Reports; director; powers; examination by department; when; assessments and costs; insurance or bond required.

(1) The director may call for reports verified under oath from a digital asset depository at any time as necessary to inform the director of the condition of the digital asset depository. Such reports shall be available to the public.

(2) All reports required of a digital asset depository by the director and all materials relating to examinations of a digital asset depository shall be subject to the provisions of sections 8-103 and 8-108.

(3) Every digital asset depository is subject to examination by the department to determine the condition and resources of a digital asset depository, the mode of managing digital asset depository affairs and conducting business, the actions of officers and directors in the investment and disposition of funds, the safety and prudence of digital asset depository management, compliance with the requirements of the Nebraska Financial Innovation Act, and such other matters as the director may require.

(4) A digital asset depository shall pay an assessment in a sum to be determined by the director in accordance with section 8-601 and approved by the Governor and the costs of any examination or investigation as provided in sections 8-108 and 8-606.

(5) A digital asset depository shall maintain appropriate insurance or a bond covering the operational risks of the digital asset depository, which shall include coverage for directors' and officers' liability, errors and omissions liability, and information technology infrastructure and activities liability as determined by the director.

Source: Laws 2021, LB649, § 23.

8-3024 Digital asset business activities authorized.

A digital asset depository is authorized to carry on one or more of the following digital asset business activities:

(1) Provide digital asset and cryptocurrency custody services. Such custody services shall not be provided for a digital asset or cryptocurrency unless the digital asset or cryptocurrency was:

(a) Initially offered for public trade more than six months prior to the date of the custody services; or

(b) Created or issued by any bank, savings bank, savings and loan association, or building and loan association organized under the laws of this state or organized under the laws of the United States to do business in this state;

(2) Issue stablecoins and hold deposits at a Federal Deposit Insurance Corporation-insured financial institution which has a main-chartered office in this state, any branch thereof in this state, or any branch of the financial institution which maintained a main-chartered office in this state prior to becoming a branch of such financial institution that serves as reserves for stablecoins; and

(3) Use independent node verification networks and stablecoins for payment activities.

Source: Laws 2021, LB649, § 24; Laws 2022, LB707, § 30.
Operative date July 21, 2022.

8-3025 Charter or authority; suspend or revoke; grounds.

The director may suspend or revoke the charter or authority of a digital asset depository if, after notice and opportunity for a hearing, the director determines that:

(1) The digital asset depository has failed or refused to comply with an order issued under section 8-1,136, 8-2504, or 8-2743;

(2) The application for a charter or authority contained a materially false statement, misrepresentation, or omission; or

(3) An officer, a director, or an agent of the digital asset depository, in connection with an application for a charter or authority, an examination, a report, or other document filed with the director, knowingly made a materially false statement, misrepresentation, or omission to the department, the director, or the duly authorized agent of the department or director.

Source: Laws 2021, LB649, § 25.

8-3026 Charter or authority; surrendered, suspended, or revoked; effect.

If the charter or authority of a digital asset depository is surrendered, suspended, or revoked, the digital asset depository shall continue to be subject to the provisions of the Nebraska Financial Innovation Act during any liquidation or conservatorship.

Source: Laws 2021, LB649, § 26.

8-3027 Failure, unsafe or unsound condition, or endangerment of customers' interests; director; conduct liquidation or appoint receiver.

(1) If the director finds that a digital asset depository has failed, is operating in an unsafe or unsound condition, or is endangering the interests of customers, and the failure, unsafe or unsound condition, or endangerment has not been remedied within the time prescribed under section 8-1,117 or as directed by order of the director issued pursuant to section 8-1,136, 8-2504, or 8-2743, the director shall conduct a liquidation or appoint a receiver as provided by sections 8-198, 8-1,100, and 8-1,102.

(2) For purposes of this section:

(a) Failed or failure means, consistent with an order or rules and regulations of the director, a circumstance when a digital asset depository has not:

(i) Complied with the requirements of section 8-3009;

(ii) Maintained capital and surplus as required by section 8-3013; or

(iii) Paid, in the manner commonly accepted by business practices, its legal obligations to customers on demand or to discharge any promissory notes, or other indebtedness when due; and

(b) Unsafe or unsound condition means, consistent with an order or rules and regulations of the director, a circumstance relating to a digital asset depository which is likely to:

(i) Cause the failure of the digital asset depository;

(ii) Cause a substantial dissipation of assets or earnings;

(iii) Substantially disrupt the services provided by the digital asset depository to customers; or

(iv) Otherwise substantially prejudice the interests of customers of the digital asset depository.

Source: Laws 2021, LB649, § 27.

8-3028 Voluntary dissolution; procedure.

(1) A digital asset depository may voluntarily dissolve in accordance with this section. Voluntary dissolution shall be accomplished by either liquidating the digital asset depository or reorganizing the digital asset depository into an appropriate business entity that does not engage in any activity authorized only for a digital asset depository. Upon complete liquidation or completion of the reorganization, the director shall revoke the charter or authority of the digital asset depository. Thereafter, the corporation or business entity shall not use the words digital asset depository or digital asset bank in its business name or in connection with its ongoing business.

(2) A digital asset depository institution may dissolve its charter either by liquidation or reorganization. The board of directors shall file an application for dissolution with the director, accompanied by a filing fee established by an order or the rules and regulations of the director. The application shall include a comprehensive plan for dissolution setting forth the proposed disposition of all assets and liabilities in reasonable detail to effect a liquidation or reorganization, and any other plans required by the director. The plan of dissolution shall provide for the discharge or assumption of all of the known and unknown claims and liabilities of the digital asset depository institution. Additionally, the application for dissolution shall include other evidence, certifications, affidavits, documents, or information as the director may require, including demonstration of how assets and liabilities will be disposed, the timetable for effecting disposition of the assets and liabilities, and a proposal of the digital asset depository institution for addressing any claims that are asserted after dissolution has been completed. The director shall examine the application for compliance with this section, the business entity laws applicable to the required type of dissolution, and applicable orders and rules and regulations. The director may conduct a special examination of the digital asset depository institution, consistent with subsection (3) of section 8-3023, for purposes of evaluating the application.

(3) If the director finds that the application is incomplete, the director shall return it for completion not later than sixty days after it is filed. If the application is found to be complete by the director, the director shall approve or disapprove the application not later than thirty days after it is filed. If the director approves the application, the digital asset depository institution may proceed with the dissolution pursuant to the plan outlined in the application, subject to any further conditions the director may prescribe. If the digital asset depository institution subsequently determines that the plan of dissolution needs to be amended to complete the dissolution, it shall file an amended plan with the director and obtain approval to proceed under the amended plan. If the director does not approve the application or amended plan, the digital asset depository institution may appeal the decision to the director pursuant to the Administrative Procedure Act.

(4) Upon completion of all actions required under the plan of dissolution and satisfaction of all conditions prescribed by the director, the digital asset depository institution shall submit a written report of its actions to the director. The report shall contain a certification made under oath that the report is true and correct. Following receipt of the report, the director, no later than sixty days after the filing of the report, shall examine the digital asset depository institution to determine whether the director is satisfied that all required actions have been taken in accordance with the plan of dissolution and any conditions prescribed by the director. If all requirements and conditions have been met,

the director shall, within thirty days of the examination, notify the digital asset depository institution in writing that the dissolution has been completed and issue an order of dissolution.

(5) Upon receiving an order of dissolution, the digital asset depository institution shall surrender its charter to the director. The digital asset depository institution shall then file articles of dissolution and other documents required by sections 21-2,184 to 21-2,201 for a corporation with the Secretary of State. In the case of reorganization, the digital asset depository institution shall file the documents required by the Secretary of State to finalize the reorganization.

(6) If the director determines that all required actions under the plan for dissolution, or as otherwise required by the director, have not been completed, the director shall notify the digital asset depository institution, not later than thirty days after this determination, in writing, of what additional actions shall be taken in order for the institution to be eligible for a certificate of dissolution. The director shall establish a reasonable deadline of up to thirty days for the submission of evidence that additional actions have been taken and the director may extend any deadline upon good cause. If the digital asset depository institution fails to file a supplemental report showing that the additional actions have been taken before the deadline, or submits a report that is found not to be satisfactory by the director, the director shall notify the digital asset depository institution in writing that its voluntary dissolution is not approved, and the institution may appeal the decision to the director pursuant to the Administrative Procedure Act.

Source: Laws 2021, LB649, § 28.

Cross References

Administrative Procedure Act, see section 84-920.

8-3029 Reports; failure to submit as prescribed; fee.

If a digital asset depository fails to submit any report required by the Nebraska Financial Innovation Act or by order or rules and regulations of the director within the prescribed period, the director may impose and collect a fee of five thousand dollars for each day the report is overdue, as established by order of the director. The fee shall be remitted to the State Treasurer for credit to the Department of Banking and Finance Settlement Cash Fund.

Source: Laws 2021, LB649, § 29.

8-3030 Digital asset depository; officer, director, employee, or agent; removal; grounds.

Each officer, director, employee, or agent of a digital asset depository, following written notice from the director, is subject to removal upon order of the director if such officer, director, employee, or agent knowingly, willfully, or negligently:

(1) Fails to perform any duty required by the Nebraska Financial Innovation Act or other applicable law;

(2) Fails to conform to any order or rules and regulations of the director; or

(3) Endangers the interest of a customer.

Source: Laws 2021, LB649, § 30.

8-3031 Orders; rules and regulations.

The director may issue any order and adopt and promulgate any rules and regulations necessary to implement the Nebraska Financial Innovation Act.

Source: Laws 2021, LB649, § 31.

ARTICLE 31

LIBOR TRANSITION ACT

Section
8-3101. Act, how cited.
8-3102. Terms, defined.
8-3103. Contract, security, or instrument; recommended benchmark replacement; how determined; act; effect; applicability.
8-3104. Recommended benchmark replacement; selection or use; effects; treatment; not subject to liability or certain claims.

8-3101 Act, how cited.

Sections 8-3101 to 8-3104 shall be known and may be cited as the LIBOR Transition Act.

Source: Laws 2022, LB707, § 1.
Operative date April 19, 2022.

8-3102 Terms, defined.

For purposes of the LIBOR Transition Act:

(1) Benchmark means an index of interest rates or dividend rates that is used, in whole or in part, as the basis of or as a reference for calculating or determining any valuation, payment, or other measurement under or in respect of a contract, security, or instrument;

(2) Benchmark replacement means a benchmark, or an interest rate or dividend rate, which may or may not be based in whole or in part on a prior setting of LIBOR, to replace LIBOR or any interest rate or dividend rate based on LIBOR, whether on a temporary, permanent, or indefinite basis, under or in respect of a contract, security, or instrument;

(3) Benchmark replacement conforming changes means, with respect to any type of contract, security, or instrument, any technical, administrative, or operational changes, alterations, or modifications that are associated with and reasonably necessary to the use, adoption, calculation, or implementation of a recommended benchmark replacement and that:

(a) Have been selected or recommended by a relevant recommending body; and

(b) If, in the reasonable judgment of the calculating person, the benchmark replacement conforming changes selected or recommended pursuant to subdivision (3)(a) of this section do not apply to such contract, security, or instrument or are insufficient to permit administration and calculation of the recommended benchmark replacement, then benchmark replacement conforming changes shall include such other changes, alterations, or modifications that, in the reasonable judgment of the calculating person:

(i) Are necessary to permit administration and calculation of the recommended benchmark replacement under or in respect of such contract, security, or instrument in a manner consistent with market practice for substantially

similar contracts, securities, or instruments and, to the extent practicable, the manner in which such contract, security, or instrument was administered immediately prior to the LIBOR replacement date; and

(ii) Would not result in a disposition of such contract, security, or instrument for United States federal income tax purposes;

(4) Calculating person means, with respect to any contract, security, or instrument, any person, which may be the determining person, responsible for calculating or determining any valuation, payment, or other measurement based on a benchmark;

(5) Contract, security, or instrument includes, without limitation, any contract, agreement, mortgage, deed of trust, lease, security, whether representing debt or equity and including any interest in a corporation, a partnership, or a limited liability company, instrument, or other obligation;

(6) Determining person means, with respect to any contract, security, or instrument, in the following order of priority:

(a) Any person specified as a determining person; or

(b) Any person with the authority, right, or obligation to:

(i) Determine the benchmark replacement that will take effect on the LIBOR replacement date;

(ii) Calculate or determine a valuation, payment, or other measurement based on a benchmark; or

(iii) Notify other persons of the occurrence of a LIBOR discontinuance event, a LIBOR replacement date, or a benchmark replacement;

(7) Fallback provisions means terms in a contract, security, or instrument that set forth a methodology or procedure for determining a benchmark replacement, including any terms relating to the date on which the benchmark replacement becomes effective, without regard to whether a benchmark replacement can be determined in accordance with such methodology or procedure;

(8) LIBOR means, for purposes of the application of the LIBOR Transition Act to any particular contract, security, or instrument, United States dollar LIBOR, formerly known as the London interbank offered rate, as administered by ICE Benchmark Administration Limited, or any predecessor or successor thereof, or any tenor thereof, as applicable, that is used in making any calculation or determination thereunder;

(9)(a) LIBOR discontinuance event means the earliest to occur of any of the following:

(i) A public statement or publication of information by or on behalf of the administrator of LIBOR announcing that such administrator has ceased or will cease to provide LIBOR, permanently or indefinitely, provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide LIBOR;

(ii) A public statement or publication of information by the regulatory supervisor for the administrator of LIBOR, the United States Federal Reserve System, an insolvency official with jurisdiction over the administrator for LIBOR, a resolution authority with jurisdiction over the administrator for LIBOR, or a court or an entity with similar insolvency or resolution authority over the administrator for LIBOR, which states that the administrator of

LIBOR has ceased or will cease to provide LIBOR permanently or indefinitely, provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide LIBOR; or

(iii) A public statement or publication of information by the regulatory supervisor for the administrator of LIBOR announcing that LIBOR is no longer representative.

(b) For purposes of this subdivision (9), a public statement or publication of information that affects one or more tenors of LIBOR shall not constitute a LIBOR discontinuance event with respect to any contract, security, or instrument that (i) provides for only one tenor of LIBOR, if such contract, security, or instrument requires interpolation and such tenor can be interpolated from LIBOR tenors that are not so affected, or (ii) permits a party to choose from more than one tenor of LIBOR and any of such tenors (A) is not so affected or (B) if such contract, security, or instrument requires interpolation, can be interpolated from LIBOR tenors that are not so affected;

(10)(a) LIBOR replacement date means:

(i) In the case of a LIBOR discontinuance event described in subdivision (9)(a)(i) or (ii) of this section, the later of (A) the date of the public statement or publication of information referenced therein and (B) the date on which the administrator of LIBOR permanently or indefinitely ceases to provide LIBOR; and

(ii) In the case of a LIBOR discontinuance event described in subdivision (9)(a)(iii) of this section, the date of the public statement or publication of information referenced therein.

(b) For purposes of this subdivision (10), a date that affects one or more tenors of LIBOR shall not constitute a LIBOR replacement date with respect to any contract, security, or instrument that (i) provides for only one tenor of LIBOR, if such contract, security, or instrument requires interpolation and such tenor can be interpolated from LIBOR tenors that are not so affected, or (ii) permits a party to choose from more than one tenor of LIBOR and any of such tenors (A) is not so affected or (B) if such contract, security, or instrument requires interpolation, can be interpolated from LIBOR tenors that are not so affected;

(11) Recommended benchmark replacement means, with respect to any particular type of contract, security, or instrument, a benchmark replacement based on SOFR, which shall include any recommended spread adjustment and any benchmark replacement conforming changes, that has been selected or recommended by a relevant recommending body with respect to such type of contract, security, or instrument;

(12) Recommended spread adjustment means a spread adjustment, or method for calculating or determining such spread adjustment, which may be a positive or negative value or zero, that has been selected or recommended by a relevant recommending body for a recommended benchmark replacement for a particular type of contract, security, or instrument and for a particular term to account for the effects of the transition or change from LIBOR to a recommended benchmark replacement;

(13) Relevant recommending body means the Federal Reserve Board, the Federal Reserve Bank of New York, or the Alternative Reference Rates Committee, or any successor to any of them; and

(14) SOFR means, with respect to any day, the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark or a successor administrator, on the Federal Reserve Bank of New York's website.

Source: Laws 2022, LB707, § 2.
Operative date April 19, 2022.

8-3103 Contract, security, or instrument; recommended benchmark replacement; how determined; act; effect; applicability.

(1) On the LIBOR replacement date, the recommended benchmark replacement shall, by operation of law, be the benchmark replacement for any contract, security, or instrument that uses LIBOR as a benchmark and:

(a) Contains no fallback provisions; or

(b) Contains fallback provisions that result in a benchmark replacement, other than a recommended benchmark replacement, that is based in any way on any LIBOR value.

(2) Following the occurrence of a LIBOR discontinuance event, any fallback provisions in a contract, security, or instrument that provide for a benchmark replacement based on or otherwise involving a poll, survey, or inquiries for quotes or information concerning interbank lending rates or any interest rate or dividend rate based on LIBOR shall be disregarded as if not included in such contract, security, or instrument and shall be deemed null and void and without any force or effect.

(3)(a) This subsection shall apply to any contract, security, or instrument that uses LIBOR as a benchmark and contains fallback provisions that permit or require the selection of a benchmark replacement that is:

(i) Based in any way on any LIBOR value; or

(ii) The substantive equivalent of subdivision (1)(a), (b), or (c) of section 8-3104.

(b) A determining person shall have the authority under the LIBOR Transition Act, but shall not be required, to select on or after the occurrence of a LIBOR discontinuance event the recommended benchmark replacement as the benchmark replacement. Such selection of the recommended benchmark replacement shall be:

(i) Irrevocable;

(ii) Made by the earlier of either the LIBOR replacement date or the latest date for selecting a benchmark replacement according to such contract, security, or instrument; and

(iii) Used in any determinations of the benchmark under or with respect to such contract, security, or instrument occurring on or after the LIBOR replacement date.

(4) If a recommended benchmark replacement becomes the benchmark replacement for any contract, security, or instrument pursuant to subsection (1) or (3) of this section, then all benchmark replacement conforming changes that are applicable to such recommended benchmark replacement shall become an integral part of such contract, security, or instrument by operation of law.

(5) The LIBOR Transition Act shall not alter or impair:

(a) Any written agreement by all requisite parties that, retrospectively or prospectively, provides that the contract, security, or instrument shall not be subject to the LIBOR Transition Act without necessarily referring specifically to the act. For purposes of this subdivision, requisite parties means all parties required to amend the terms and provisions of a contract, security, or instrument that would otherwise be altered or affected by the act;

(b) Any contract, security, or instrument that contains fallback provisions that would result in a benchmark replacement that is not based on LIBOR, including, but not limited to, the prime rate or the federal funds rate, except that such contract, security, or instrument shall be subject to subsection (2) of this section;

(c) Any contract, security, or instrument subject to subsection (3) of this section as to which a determining person does not elect to use a recommended benchmark replacement pursuant to subsection (3) of this section or as to which a determining person elects to use a recommended benchmark replacement prior to the occurrence of a LIBOR discontinuance event, except that such contract, security, or instrument shall be subject to subsection (2) of this section; or

(d) The application to a recommended benchmark replacement of any cap, floor, modifier, or spread adjustment to which LIBOR had been subject pursuant to the terms of a contract, security, or instrument.

(6) Notwithstanding the Uniform Commercial Code or any other law of this state, the LIBOR Transition Act shall apply to all contracts, securities, and instruments, including contracts, with respect to commercial transactions and shall not be deemed to be displaced by any other law of this state.

Source: Laws 2022, LB707, § 3.
Operative date April 19, 2022.

8-3104 Recommended benchmark replacement; selection or use; effects; treatment; not subject to liability or certain claims.

(1) The selection or use of a recommended benchmark replacement as a benchmark replacement under or in respect of a contract, security, or instrument by operation of section 8-3103 shall constitute:

(a) A commercially reasonable replacement for and a commercially substantial equivalent to LIBOR;

(b) A reasonable, comparable, or analogous term for LIBOR under or in respect of such contract, security, or instrument;

(c) A replacement that is based on a methodology or information that is similar or comparable to LIBOR; and

(d) Substantial performance by any person of any right or obligation relating to or based on LIBOR under or in respect of a contract, security, or instrument.

(2) Any LIBOR discontinuance event or LIBOR replacement date, selection or use of a recommended benchmark replacement as a benchmark replacement, or determination, implementation, or performance of benchmark replacement conforming changes that occurs by operation of section 8-3103 shall not:

(a) Be deemed to impair or affect the right of any person to receive a payment, or affect the amount or timing of such payment, under any contract, security, or instrument; or

(b) Have the effect of (i) discharging or excusing performance under any contract, security, or instrument for any reason, claim, or defense, including, but not limited to, any force majeure or other provision in any contract, security, or instrument, (ii) giving any person the right to unilaterally terminate or suspend performance under any contract, security, or instrument, (iii) constituting a breach of a contract, security, or instrument, or (iv) voiding or nullifying any contract, security, or instrument.

(3) No person shall have any liability for damages to any person or be subject to any claim or request for equitable relief arising out of or related to the selection or use of a recommended benchmark replacement or the determination, implementation, or performance of benchmark replacement conforming changes, in each case, by operation of section 8-3103, and such selection or use of the recommended benchmark replacement or such determination, implementation, or performance of benchmark replacement conforming changes shall not give rise to any claim or cause of action by any person in law or in equity.

(4) The selection or use of a recommended benchmark replacement or the determination, implementation, or performance of benchmark replacement conforming changes, by operation of section 8-3103, shall be deemed to:

(a) Not be an amendment or modification of any contract, security, or instrument; and

(b) Not prejudice, impair, or affect any person's rights, interests, or obligations under or in respect of any contract, security, or instrument.

(5) Except as provided in either subsection (1) or (3) of section 8-3103, the LIBOR Transition Act shall not be interpreted as creating any negative inference or negative presumption regarding the validity or enforceability of:

(a) Any benchmark replacement that is not a recommended benchmark replacement;

(b) Any spread adjustment, or method for calculating or determining a spread adjustment, that is not a recommended spread adjustment; or

(c) Any changes, alterations, or modifications to or in respect of a contract, security, or instrument that are not benchmark replacement conforming changes.

Source: Laws 2022, LB707, § 4.
Operative date April 19, 2022.

CHAPTER 9
BINGO AND OTHER GAMBLING

Article.
1. General Provisions. 9-101 to 9-1,106.
2. Bingo. 9-201 to 9-266.
3. Pickle Cards. 9-301 to 9-356.
4. Lotteries and Raffles. 9-401 to 9-437.
5. Small Lotteries and Raffles. 9-501 to 9-513.
6. County and City Lotteries. 9-601 to 9-653.
7. Gift Enterprises. 9-701.
8. State Lottery. 9-801 to 9-842.
9. Gaming Tax and License Fee. Repealed.
10. Nebraska Commission on Problem Gambling. 9-1001 to 9-1007.
11. Nebraska Racetrack Gaming Act. 9-1101 to 9-1118.
12. Taxation of Games of Chance. 9-1201 to 9-1209.

Cross References

Constitutional provisions:
Legislature may authorize on certain conditions, see Article III, section 24, Constitution of Nebraska.
Cities of the first class, powers, see section 16-226.
Cities of the metropolitan class, powers, see section 14-102.
Cities of the primary class, powers, see section 15-258.
Cities of the second class and villages, powers, see sections 17-120 and 17-207.
Criminal Code, Nebraska, see section 28-1101 et seq.
Horseracing, see section 2-1201 et seq.
Income tax on gambling winnings, see section 77-2753.
License Suspension Act, see section 43-3301.
Volunteer fire departments, deposit and expenditure of gambling proceeds, see section 35-901.

ARTICLE 1
GENERAL PROVISIONS

Section
9-101. Repealed. Laws 1978, LB 351, § 52.
9-102. Repealed. Laws 1978, LB 351, § 52.
9-103. Repealed. Laws 1978, LB 351, § 52.
9-104. Repealed. Laws 1978, LB 351, § 52.
9-105. Repealed. Laws 1978, LB 351, § 52.
9-106. Repealed. Laws 1978, LB 351, § 52.
9-107. Repealed. Laws 1978, LB 351, § 52.
9-108. Repealed. Laws 1978, LB 351, § 52.
9-109. Repealed. Laws 1978, LB 351, § 52.
9-110. Repealed. Laws 1978, LB 351, § 52.
9-111. Repealed. Laws 1978, LB 351, § 52.
9-112. Repealed. Laws 1978, LB 351, § 52.
9-113. Repealed. Laws 1978, LB 351, § 52.
9-114. Repealed. Laws 1978, LB 351, § 52.
9-115. Repealed. Laws 1978, LB 351, § 52.
9-116. Repealed. Laws 1978, LB 351, § 52.
9-117. Repealed. Laws 1978, LB 351, § 52.
9-118. Repealed. Laws 1978, LB 351, § 52.
9-119. Repealed. Laws 1978, LB 351, § 52.
9-120. Repealed. Laws 1978, LB 351, § 52.
9-121. Repealed. Laws 1978, LB 351, § 52.
9-121.01. Repealed. Laws 1978, LB 351, § 52.
9-122. Repealed. Laws 1978, LB 351, § 52.

Section
9-123. Repealed. Laws 1978, LB 351, § 52.
9-124. Transferred to section 9-202.
9-125. Transferred to section 9-203.
9-126. Transferred to section 9-211.
9-127. Transferred to section 9-204.
9-128. Transferred to section 9-205.
9-129. Transferred to section 9-206.
9-130. Repealed. Laws 1983, LB 259, § 64.
9-131. Repealed. Laws 1984, LB 949, § 79.
9-132. Transferred to section 9-210.
9-133. Transferred to section 9-213.
9-134. Transferred to section 9-214.
9-135. Transferred to section 9-216.
9-136. Transferred to section 9-217.
9-137. Transferred to section 9-218.
9-138. Transferred to section 9-219.
9-139. Transferred to section 9-222.
9-140. Transferred to section 9-223.
9-140.01. Transferred to section 9-346.
9-140.02. Repealed. Laws 1986, LB 1027, § 225.
9-140.03. Transferred to section 9-308.
9-140.04. Transferred to section 9-209.
9-140.05. Transferred to section 9-317.
9-140.06. Transferred to section 9-224.
9-140.07. Transferred to section 9-225.
9-140.08. Transferred to section 9-207.
9-140.09. Transferred to section 9-220.
9-140.10. Transferred to section 9-212.
9-140.11. Transferred to section 9-221.
9-140.12. Transferred to section 9-208.
9-140.13. Transferred to section 9-320.
9-140.14. Transferred to section 9-316.
9-140.15. Transferred to section 9-313.
9-140.16. Transferred to section 9-215.
9-141. Transferred to section 9-231.
9-142. Transferred to section 9-232.
9-143. Transferred to section 9-233.
9-143.01. Transferred to section 9-329.
9-143.02. Transferred to section 9-332.
9-143.03. Transferred to section 9-335.
9-143.04. Transferred to section 9-341.
9-143.05. Transferred to section 9-333.
9-143.06. Transferred to section 9-334.
9-144. Transferred to section 9-246.
9-145. Transferred to section 9-243.
9-146. Transferred to section 9-244.
9-147. Transferred to section 9-245.
9-148. Transferred to section 9-257.
9-149. Transferred to section 9-242.
9-150. Transferred to section 9-250.
9-151. Transferred to section 9-248.
9-152. Transferred to section 9-249.
9-153. Transferred to section 9-261.
9-154. Transferred to section 9-256.
9-155. Transferred to section 9-251.
9-156. Transferred to section 9-247.
9-157. Transferred to section 9-260.
9-158. Transferred to section 9-258.
9-159. Transferred to section 9-259.
9-160. Transferred to section 9-241.
9-161. Transferred to section 9-254.

Section
9-162. Transferred to section 9-255.
9-163. Transferred to section 9-253.
9-164. Transferred to section 9-237.
9-165. Transferred to section 9-239.
9-166. Transferred to section 9-236.
9-167. Transferred to section 9-238.
9-168. Repealed. Laws 1986, LB 1027, § 225.
9-169. Repealed. Laws 1986, LB 1027, § 225.
9-170. Transferred to section 9-262.
9-171. Transferred to section 9-230.
9-172. Transferred to section 9-263.
9-173. Transferred to section 9-201.
9-174. Transferred to section 9-264.
9-175. Transferred to section 9-265.
9-176. Repealed. Laws 1986, LB 1027, § 225.
9-177. Transferred to section 9-342.
9-178. Transferred to section 9-235.
9-178.01. Transferred to section 9-234.
9-179. Transferred to section 9-351.
9-180. Repealed. Laws 1984, LB 949, § 79.
9-181. Transferred to section 9-348.
9-182. Transferred to section 9-349.
9-183. Transferred to section 9-343.
9-184. Transferred to section 9-344.
9-185. Transferred to section 9-427.
9-186. Transferred to section 9-340.
9-186.01. Transferred to section 9-337.
9-186.02. Transferred to section 9-338.
9-186.03. Transferred to section 9-336.
9-186.04. Transferred to section 9-339.
9-187. Transferred to section 9-226.
9-187.01. Transferred to section 9-227.
9-187.02. Transferred to section 9-350.
9-188. Transferred to section 9-228.
9-189. Transferred to section 9-229.
9-190. Transferred to section 9-252.
9-191. Repealed. Laws 1986, LB 1027, § 225.
9-192. Repealed. Laws 1986, LB 1027, § 225.
9-193. Repealed. Laws 1986, LB 1027, § 225.
9-193.01. Repealed. Laws 1986, LB 1027, § 225.
9-194. Repealed. Laws 1986, LB 1027, § 225.
9-195. Transferred to section 9-433.
9-196. Transferred to section 9-429.
9-197. Transferred to section 9-240.
9-198. Transferred to section 9-431.
9-199. Transferred to section 9-422.
9-199.01. Transferred to section 9-426.
9-1,100. Repealed. Laws 1985, LB 408, § 41.
9-1,101. Department of Revenue; Charitable Gaming Division; created; duties; Charitable Gaming Operations Fund; created; use; investment; investigators; powers; fees authorized; administration of Nebraska Commission on Problem Gambling.
9-1,102. Repealed. Laws 2000, LB 1135, § 34.
9-1,103. Invalidity of acts; effect.
9-1,104. Contract or license applicant or holder; fingerprinting; criminal history record information check; personal history report; background investigation; facilities inspection; required; when; payment of costs; refusal to comply; effect.
9-1,105. Charitable Gaming Investigation Petty Cash Fund; authorized; use; records; investment.
9-1,106. Tribal-state compact governing gaming; Governor; powers.

9-101 Repealed. Laws 1978, LB 351, § 52.

9-102 Repealed. Laws 1978, LB 351, § 52.

9-103 Repealed. Laws 1978, LB 351, § 52.

9-104 Repealed. Laws 1978, LB 351, § 52.

9-105 Repealed. Laws 1978, LB 351, § 52.

9-106 Repealed. Laws 1978, LB 351, § 52.

9-107 Repealed. Laws 1978, LB 351, § 52.

9-108 Repealed. Laws 1978, LB 351, § 52.

9-109 Repealed. Laws 1978, LB 351, § 52.

9-110 Repealed. Laws 1978, LB 351, § 52.

9-111 Repealed. Laws 1978, LB 351, § 52.

9-112 Repealed. Laws 1978, LB 351, § 52.

9-113 Repealed. Laws 1978, LB 351, § 52.

9-114 Repealed. Laws 1978, LB 351, § 52.

9-115 Repealed. Laws 1978, LB 351, § 52.

9-116 Repealed. Laws 1978, LB 351, § 52.

9-117 Repealed. Laws 1978, LB 351, § 52.

9-118 Repealed. Laws 1978, LB 351, § 52.

9-119 Repealed. Laws 1978, LB 351, § 52.

9-120 Repealed. Laws 1978, LB 351, § 52.

9-121 Repealed. Laws 1978, LB 351, § 52.

9-121.01 Repealed. Laws 1978, LB 351, § 52.

9-122 Repealed. Laws 1978, LB 351, § 52.

9-123 Repealed. Laws 1978, LB 351, § 52.

9-124 Transferred to section 9-202.

9-125 Transferred to section 9-203.

9-126 Transferred to section 9-211.

9-127 Transferred to section 9-204.

9-128 Transferred to section 9-205.

9-129 Transferred to section 9-206.

9-130 Repealed. Laws 1983, LB 259, § 64.

9-131 Repealed. Laws 1984, LB 949, § 79.

9-132 Transferred to section 9-210.

9-133 Transferred to section 9-213.

9-134 Transferred to section 9-214.

9-135 Transferred to section 9-216.

9-136 Transferred to section 9-217.

9-137 Transferred to section 9-218.

9-138 Transferred to section 9-219.

9-139 Transferred to section 9-222.

9-140 Transferred to section 9-223.

9-140.01 Transferred to section 9-346.

9-140.02 Repealed. Laws 1986, LB 1027, § 225.

9-140.03 Transferred to section 9-308.

9-140.04 Transferred to section 9-209.

9-140.05 Transferred to section 9-317.

9-140.06 Transferred to section 9-224.

9-140.07 Transferred to section 9-225.

9-140.08 Transferred to section 9-207.

9-140.09 Transferred to section 9-220.

9-140.10 Transferred to section 9-212.

9-140.11 Transferred to section 9-221.

9-140.12 Transferred to section 9-208.

9-140.13 Transferred to section 9-320.

9-140.14 Transferred to section 9-316.

9-140.15 Transferred to section 9-313.

9-140.16 Transferred to section 9-215.

9-141 Transferred to section 9-231.

9-142 Transferred to section 9-232.

9-143 Transferred to section 9-233.

9-143.01 Transferred to section 9-329.

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9-143.05 Transferred to section 9-333.

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9-164 Transferred to section 9-237.

9-165 Transferred to section 9-239.

9-166 Transferred to section 9-236.

9-167 Transferred to section 9-238.

9-168 Repealed. Laws 1986, LB 1027, § 225.

9-169 Repealed. Laws 1986, LB 1027, § 225.

9-170 Transferred to section 9-262.

9-171 Transferred to section 9-230.

9-172 Transferred to section 9-263.

9-173 Transferred to section 9-201.

9-174 Transferred to section 9-264.

9-175 Transferred to section 9-265.

9-176 Repealed. Laws 1986, LB 1027, § 225.

9-177 Transferred to section 9-342.

9-178 Transferred to section 9-235.

9-178.01 Transferred to section 9-234.

9-179 Transferred to section 9-351.

9-180 Repealed. Laws 1984, LB 949, § 79.

9-181 Transferred to section 9-348.

9-182 Transferred to section 9-349.

9-183 Transferred to section 9-343.

9-184 Transferred to section 9-344.

9-185 Transferred to section 9-427.

9-186 Transferred to section 9-340.

9-186.01 Transferred to section 9-337.

9-186.02 Transferred to section 9-338.

9-186.03 Transferred to section 9-336.

9-186.04 Transferred to section 9-339.

9-187 Transferred to section 9-226.

9-187.01 Transferred to section 9-227.

9-187.02 Transferred to section 9-350.

9-188 Transferred to section 9-228.

9-189 Transferred to section 9-229.

9-190 Transferred to section 9-252.

9-191 Repealed. Laws 1986, LB 1027, § 225.

9-192 Repealed. Laws 1986, LB 1027, § 225.

9-193 Repealed. Laws 1986, LB 1027, § 225.

9-193.01 Repealed. Laws 1986, LB 1027, § 225.

9-194 Repealed. Laws 1986, LB 1027, § 225.

9-195 Transferred to section 9-433.

9-196 Transferred to section 9-429.

9-197 Transferred to section 9-240.

9-198 Transferred to section 9-431.

9-199 Transferred to section 9-422.

9-199.01 Transferred to section 9-426.

9-1,100 Repealed. Laws 1985, LB 408, § 41.

9-1,101 Department of Revenue; Charitable Gaming Division; created; duties; Charitable Gaming Operations Fund; created; use; investment; investigators; powers; fees authorized; administration of Nebraska Commission on Problem Gambling.

(1) The Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, and section 9-701 shall be administered and enforced by the Charitable Gaming Division of the Department of Revenue, which division is hereby created. The Department of Revenue shall make annual reports to the Governor, Legislature, Auditor of Public Accounts, and Attorney General on all tax revenue received, expenses incurred, and other activities relating to the administration and enforcement of such acts. The report submitted to the Legislature shall be submitted electronically.

(2) The Charitable Gaming Operations Fund is hereby created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(3)(a) Forty percent of the taxes collected pursuant to sections 9-239, 9-344, 9-429, and 9-648 shall be available to the Charitable Gaming Division for administering and enforcing the acts listed in subsection (1) of this section and providing administrative support for the Nebraska Commission on Problem Gambling. The remaining sixty percent shall be transferred to the General Fund. Any portion of the forty percent not used by the division in the administration and enforcement of such acts and section shall be distributed as provided in this subsection.

(b) Beginning July 1, 2019, through June 30, 2023, on or before the last day of the last month of each calendar quarter, the State Treasurer shall transfer one hundred thousand dollars from the Charitable Gaming Operations Fund to the Compulsive Gamblers Assistance Fund.

(c) Any money remaining in the Charitable Gaming Operations Fund after the transfer pursuant to subdivision (b) of this subsection not used by the Charitable Gaming Division in its administration and enforcement duties pursuant to this section may be transferred to the General Fund and the Compulsive Gamblers Assistance Fund at the direction of the Legislature.

(4) The Tax Commissioner shall employ investigators who shall be vested with the authority and power of a law enforcement officer to carry out the laws of this state administered by the Tax Commissioner or the Department of

Revenue and to enforce sections 28-1101 to 28-1117 relating to possession of a gambling device. For purposes of enforcing sections 28-1101 to 28-1117, the authority of the investigators shall be limited to investigating possession of a gambling device, notifying local law enforcement authorities, and reporting suspected violations to the county attorney for prosecution.

(5) The Charitable Gaming Division may charge a fee for publications and listings it produces. The fee shall not exceed the cost of publication and distribution of such items. The division may also charge a fee for making a copy of any record in its possession equal to the actual cost per page. The division shall remit the fees to the State Treasurer for credit to the Charitable Gaming Operations Fund.

(6) For administrative purposes only, the Nebraska Commission on Problem Gambling shall be located within the Charitable Gaming Division. The division shall provide office space, furniture, equipment, and stationery and other necessary supplies for the commission. Commission staff shall be appointed, supervised, and terminated by the director of the Gamblers Assistance Program pursuant to section 9-1004.

Source: Laws 1986, LB 1027, § 185; Laws 1988, LB 1232, § 1; Laws 1989, LB 767, § 1; Laws 1990, LB 1055, § 3; Laws 1991, LB 427, § 1; Laws 1993, LB 397, § 1; Laws 1994, LB 694, § 1; Laws 1994, LB 1066, § 8; Laws 2000, LB 659, § 1; Laws 2001, LB 541, § 2; Laws 2002, LB 1310, § 2; Laws 2007, LB638, § 1; Laws 2010, LB879, § 1; Laws 2012, LB782, § 11; Laws 2013, LB6, § 8; Laws 2018, LB945, § 9; Laws 2019, LB298, § 13; Laws 2020, LB1009, § 2; Laws 2021, LB384, § 7.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Small Lottery and Raffle Act, see section 9-501.
Nebraska State Funds Investment Act, see section 72-1260.
State Athletic Commissioner, office and duties, see section 81-8,128.

9-1,102 Repealed. Laws 2000, LB 1135, § 34.

9-1,103 Invalidity of acts; effect.

If any provision of the Nebraska Bingo Act, the Nebraska Pickle Card Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Small Lottery and Raffle Act, or the Nebraska County and City Lottery Act or the application of such acts to any person or circumstance is held invalid, the remainder of the acts or the application of the provision to other persons or circumstances shall not be affected.

Source: Laws 1988, LB 1232, § 3.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Small Lottery and Raffle Act, see section 9-501.

9-1,104 Contract or license applicant or holder; fingerprinting; criminal history record information check; personal history report; background investi-

gation; facilities inspection; required; when; payment of costs; refusal to comply; effect.

(1) Any person applying for or holding a contract or license (a) as a distributor, gaming manager, or manufacturer pursuant to the Nebraska Bingo Act, (b) as a distributor, manufacturer, pickle card operator, or sales agent pursuant to the Nebraska Pickle Card Lottery Act, (c) as a lottery operator, lottery worker who is designated as a keno manager or who has authority over the verification of winning number selection by an electrically operated blower machine, manufacturer-distributor, or sales outlet location pursuant to the Nebraska County and City Lottery Act, or (d) pursuant to the State Lottery Act shall be subject to fingerprinting and a check of his or her criminal history record information maintained by the Identification Division of the Federal Bureau of Investigation through the Nebraska State Patrol for the purpose of determining whether the Department of Revenue has a basis to deny the contract or license application or to suspend, cancel, revoke, or terminate the person's contract or license. Each applicant for or party holding a license as a manufacturer, distributor, manufacturer-distributor, or lottery operator shall also submit a personal history report to the department on a form provided by the department and may be subject to a background investigation, an inspection of the applicant's or licensee's facilities, or both. If the applicant is an individual, the application shall also include the applicant's social security number.

(2)(a) If the applicant, party to the contract, or licensee is a corporation, the persons subject to such requirements shall include any officer or director of the corporation, his or her spouse, any person or entity directly or indirectly associated with such corporation in a consulting or other capacity which may impair the security, honesty, or integrity of the operation or conduct of the activities for which the application is made or contract or license is held, and, if applicable, any person or entity holding in the aggregate ten percent or more of the debt or equity of the corporation. If any person or entity holding ten percent or more of the debt or equity of the applicant, contractor, or licensee corporation is a corporation, partnership, or limited liability company, every partner of such partnership, every member of such limited liability company, every officer or director of such corporation or partnership, every person or entity holding ten percent or more of the debt or equity of such corporation, partnership, or limited liability company, and every person or entity directly or indirectly associated with such corporation, partnership, or limited liability company in a consulting or other capacity which may impair the security, honesty, or integrity of the operation or conduct of the activities for which the application is made or contract or license is held may also be subject to such requirements. If the applicant, party to the contract, or licensee is a partnership, the persons subject to such requirements shall include any partner, his or her spouse, any officer or director of the partnership, or any person or entity directly or indirectly associated with such partnership in a consulting or other capacity which may impair the security, honesty, or integrity of the operation or conduct of the activities for which the application is made or contract or license is held. If the applicant, party to the contract, or licensee is a limited liability company, the persons subject to such requirement shall include any member and his or her spouse. If the applicant, party to the contract, or licensee is a nonprofit organization or nonprofit corporation, the person subject to such requirement

shall be the person designated by such nonprofit organization or nonprofit corporation as the manager.

(b) Notwithstanding the provisions of this section, background investigations shall not be required of any debt holder which is a financial institution organized or chartered under the laws of this state, any other state, or the United States relating to banks, savings institutions, trust companies, savings and loan associations, credit unions, installment loan licensees, or similar associations organized under the laws of this state and subject to supervision by the Department of Banking and Finance.

(c) Notwithstanding the provisions of this section, if an applicant for or party holding a license as a pickle card operator, sales agent, gaming manager, lottery operator, lottery worker, or sales outlet location is issued a license by the Nebraska Liquor Control Commission, the Department of Revenue may waive the fingerprinting requirements for criminal history record investigation purposes.

(3)(a) The applicant, party to the contract, or licensee shall pay the actual cost of any fingerprinting or check of his or her criminal history record information.

(b) The Department of Revenue may require an applicant or licensee subjected to a background investigation, a facilities inspection, or both to pay the actual costs incurred by the department in conducting the investigation or inspection. The department may require payment of the estimated costs in advance of beginning the investigation or inspection. If an applicant does not wish to pay the estimated costs, it may withdraw its application and its application fee will be refunded. After completion of the investigation or inspection, the department shall refund any overpayment or shall charge and collect an amount sufficient to reimburse the department for any underpayment of actual costs. The department may establish by rule and regulation the conditions and procedures for payment of the costs.

(4) Refusal to comply with this section by any person contracted with, licensed, or seeking a contract or license under the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Pickle Card Lottery Act, or the State Lottery Act shall be a violation of the act under which such person is contracted with, licensed, or seeking a contract or license.

Source: Laws 1989, LB 767, § 2; Laws 1991, LB 427, § 2; Laws 1991, LB 849, § 43; Laws 1993, LB 121, § 106; Laws 1993, LB 138, § 1; Laws 1993, LB 563, § 1; Laws 1994, LB 694, § 2; Laws 1994, LB 884, § 16; Laws 1997, LB 248, § 1; Laws 1997, LB 752, § 61; Laws 2000, LB 1086, § 2; Laws 2002, LB 545, § 1; Laws 2003, LB 131, § 18.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Pickle Card Lottery Act, see section 9-301.
State Lottery Act, see section 9-801.

9-1,105 Charitable Gaming Investigation Petty Cash Fund; authorized; use; records; investment.

(1) The Tax Commissioner may apply to the Director of Administrative Services and the Auditor of Public Accounts to establish and maintain a

Charitable Gaming Investigation Petty Cash Fund. The funds used to initiate and maintain the Charitable Gaming Investigation Petty Cash Fund shall be drawn solely from the Charitable Gaming Operations Fund. The Tax Commissioner shall determine the amount of money to be held in the Charitable Gaming Investigation Petty Cash Fund, consistent with carrying out the duties and responsibilities of the Charitable Gaming Division of the Department of Revenue but not to exceed five thousand dollars for the entire division. This restriction shall not apply to funds otherwise appropriated to the Charitable Gaming Operations Fund for investigative purposes. When the Director of Administrative Services and the Auditor of Public Accounts have approved the establishment of the Charitable Gaming Investigation Petty Cash Fund, a voucher shall be submitted to the Department of Administrative Services accompanied by such information as the department may require for the establishment of the fund. The Director of Administrative Services shall issue a warrant for the amount specified and deliver it to the Charitable Gaming Division. The fund may be replenished as necessary, but the total amount in the fund shall not exceed ten thousand dollars in any fiscal year. The fund shall be audited by the Auditor of Public Accounts.

(2) Any prize amounts won, less any charitable gaming investigative expenditures, by Charitable Gaming Division personnel with funds drawn from the Charitable Gaming Investigation Petty Cash Fund or reimbursed from the Charitable Gaming Operations Fund shall be deposited into the Charitable Gaming Investigation Petty Cash Fund.

(3) For the purpose of establishing and maintaining legislative oversight and accountability, the Department of Revenue shall maintain records of all expenditures, disbursements, and transfers of cash from the Charitable Gaming Investigation Petty Cash Fund.

(4) By September 15 of each year, the department shall report to the budget division of the Department of Administrative Services and to the Legislative Fiscal Analyst the unexpended balance existing on June 30 of the previous fiscal year relating to investigative expenses in the Charitable Gaming Investigation Petty Cash Fund and any funds existing on June 30 of the previous fiscal year in the possession of Charitable Gaming Division personnel involved in investigations. The report submitted to the Legislative Fiscal Analyst shall be submitted electronically. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1989, LB 815, § 5; Laws 1991, LB 427, § 3; Laws 1994, LB 1066, § 9; Laws 2012, LB782, § 12.

Cross References

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

9-1,106 Tribal-state compact governing gaming; Governor; powers.

(1) Upon request of an Indian tribe having jurisdiction over Indian lands in Nebraska, the Governor or his or her designated representative or representatives shall, pursuant to 25 U.S.C. 2710 of the federal Indian Gaming Regulatory Act, negotiate with such Indian tribe in good faith for the purpose of entering into a tribal-state compact governing the conduct of Class III gaming as defined

in the act. A compact which is negotiated pursuant to this section shall be executed by the Governor without ratification by the Legislature.

(2) It shall be the policy of this state that any compact negotiated pursuant to this section shall (a) protect the health, safety, and welfare of the public and (b) promote tribal economic development, tribal self-sufficiency, and strong tribal government.

(3) Such compact negotiations shall be conducted pursuant to the provisions of 25 U.S.C. 2710 of the federal Indian Gaming Regulatory Act.

Source: Laws 1993, LB 231, § 1.

ARTICLE 2

BINGO

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9-233.04. Repealed. Laws 1994, LB 694, § 126.
9-233.05. Repealed. Laws 1994, LB 694, § 126.
9-234. Repealed. Laws 1994, LB 694, § 126.
9-234.01. Repealed. Laws 1994, LB 694, § 126.
9-235. Repealed. Laws 1994, LB 694, § 126.
9-235.01. Repealed. Laws 1994, LB 694, § 126.
9-235.02. Repealed. Laws 1994, LB 694, § 126.
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9-245. Repealed. Laws 1994, LB 694, § 126.
9-246. Repealed. Laws 1994, LB 694, § 126.
9-247. Repealed. Laws 1994, LB 694, § 126.
9-248. Repealed. Laws 1994, LB 694, § 126.
9-249. Repealed. Laws 1994, LB 694, § 126.
9-250. Repealed. Laws 1994, LB 694, § 126.
9-251. Repealed. Laws 1994, LB 694, § 126.
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9-256. Repealed. Laws 1994, LB 694, § 126.
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9-201 Act, how cited.

Sections 9-201 to 9-266 shall be known and may be cited as the Nebraska Bingo Act.

Source: Laws 1978, LB 351, § 50; Laws 1979, LB 164, § 18; Laws 1983, LB 259, § 34; Laws 1984, LB 949, § 46; Laws 1985, LB 486, § 2; Laws 1985, LB 408, § 17; R.S.Supp.,1985, § 9-173; Laws 1986, LB 1027, § 2; Laws 1988, LB 295, § 1; Laws 1989, LB 767, § 3; Laws 1991, LB 427, § 4; Laws 1994, LB 694, § 3; Laws 2002, LB 545, § 2; Laws 2003, LB 429, § 1.

9-202 Purpose and intent.

(1) The purpose of the Nebraska Bingo Act is to protect the health and welfare of the public, to protect the economic welfare and interest in the fair play of bingo, to insure that the gross receipts derived from the conduct of bingo are accurately reported in order that their revenue-raising potential be fully exposed, to insure that the profits of bingo are used for lawful purposes, and to prevent the purposes for which the profits of bingo are to be used from being subverted by improper elements. Bingo shall be played and conducted only by those methods permitted by the act or by rules and regulations adopted pursuant to the act. No other form, means of selection, or method of play shall be authorized or permitted.

(2) The purpose of the act is also to completely and fairly regulate each level of the marketing, conducting, and playing of bingo to insure fairness, quality, and compliance with the Constitution of Nebraska. To accomplish such purpose, the regulation and licensure of manufacturers and distributors of bingo equipment, nonprofit organizations, utilization-of-funds members, gaming managers, commercial lessors, and any other person involved in the marketing, conducting, and promoting of bingo are necessary.

(3) The intent of the act is that if facilities or equipment used for bingo occasions regulated by the act are leased or rented pursuant to the act (a) they shall be leased or rented at not more than their fair market value, (b) no lease or rental agreement shall provide a means for providing or obtaining a percentage of the receipts or a portion of the profits from the bingo operation,

and (c) rental or lease agreements entered into for facilities shall be separate and apart from lease and rental agreements for bingo equipment.

Source: Laws 1978, LB 351, § 1; Laws 1983, LB 259, § 1; Laws 1984, LB 949, § 1; Laws 1985, LB 408, § 1; R.S.Supp.,1985, § 9-124; Laws 1986, LB 1027, § 3; Laws 1989, LB 767, § 4; Laws 1994, LB 694, § 4.

9-203 Definitions, where found.

For purposes of the Nebraska Bingo Act, unless the context otherwise requires, the definitions found in sections 9-204 to 9-225.02 shall be used.

Source: Laws 1978, LB 351, § 2; Laws 1983, LB 259, § 2; Laws 1984, LB 949, § 2; Laws 1985, LB 408, § 2; R.S.Supp.,1985, § 9-125; Laws 1986, LB 1027, § 4; Laws 1988, LB 295, § 2; Laws 1989, LB 767, § 5; Laws 1991, LB 427, § 5; Laws 1994, LB 694, § 5; Laws 2003, LB 3, § 1; Laws 2003, LB 429, § 2.

9-204 Bingo, defined.

(1) Bingo shall mean that form of gambling in which:

(a) The winning numbers are determined by random selection from a pool of seventy-five or ninety numbered designators; and

(b) Players mark by physically daubing or covering or, with the aid of a bingo card monitoring device, otherwise concealing those randomly selected numbers which match on bingo cards which they have purchased or leased only at the time and place of the bingo occasion.

(2) Bingo shall not mean or include:

(a) Any scheme which uses any mechanical gaming device, computer gaming device, electronic gaming device, or video gaming device which has the capability of awarding something of value, free games redeemable for something of value, or tickets or stubs redeemable for something of value;

(b) Any activity which is authorized or regulated under the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, section 9-701, or Chapter 2, article 12; or

(c) Any activity which is prohibited under Chapter 28, article 11.

Source: Laws 1978, LB 351, § 4; Laws 1982, LB 602A, § 1; Laws 1983, LB 259, § 3; R.S.1943, (1983), § 9-127; Laws 1986, LB 1027, § 5; Laws 1991, LB 849, § 44; Laws 1993, LB 138, § 2; Laws 1994, LB 694, § 6; Laws 2003, LB 429, § 3.

Cross References

Nebraska County and City Lottery Act, see section 9-601.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

9-204.01 Bingo card, defined.

Bingo card shall mean:

(1) In the case of seventy-five-number bingo, a disposable paper bingo card, a facsimile of a bingo card electronically displayed on a bingo card monitoring

device, or a reusable hard bingo card or shutter card, which has letters and numbers preprinted or predetermined by a manufacturer and which:

(a) Contains five columns with five squares in each column;

(b) Identifies the five columns from left to right by the letters B-I-N-G-O; and

(c) Contains in each square, except for the center square identified as ''free'', one number from a pool of seventy-five numbers; or

(2) In the case of ninety-number bingo, a disposable paper bingo card or facsimile of a bingo card electronically displayed on a bingo card monitoring device which has numbers preprinted or predetermined by a manufacturer and which:

(a) Contains six faces with each face containing twenty-seven squares arranged in nine columns of three squares each; and

(b) Contains in fifteen squares of each face a number from one to ninety which is not repeated on the same card.

The department may approve variations to the card formats described in subdivisions (1) and (2) of this section if such variations result in a bingo game which is conducted in a manner that is consistent with section 9-204.

Source: Laws 1994, LB 694, § 7; Laws 2000, LB 1086, § 3; Laws 2003, LB 429, § 4.

9-204.02 Bingo chairperson, defined.

Bingo chairperson shall mean one individual member of a licensed organization who is designated as responsible for overseeing the organization's bingo activities.

Source: Laws 1994, LB 694, § 8.

9-204.03 Bingo equipment, defined.

Bingo equipment shall mean all devices, machines, and parts used in and which are an integral part of the conduct of bingo, including, but not limited to, bingo cards, disposable paper bingo cards, bingo balls, bingo blower devices, and computerized accounting systems.

Source: Laws 1994, LB 694, § 9; Laws 2002, LB 545, § 3.

9-204.04 Bingo card monitoring device, defined.

Bingo card monitoring device shall mean a technological aid which allows a bingo player to enter bingo numbers as they are announced at a bingo occasion and which marks or otherwise conceals those numbers on bingo cards which are electronically stored in and displayed on the device. A bingo card monitoring device shall not mean or include any device into which currency, coins, or tokens may be inserted or from which currency, coins, tokens, or any receipt for monetary value can be dispensed or which, once provided to a bingo player, is capable of communicating with any other bingo card monitoring device or any other form of electronic device or computer.

Source: Laws 2003, LB 429, § 5.

9-205 Bingo occasion, defined.

Bingo occasion shall mean a single gathering or session at which a bingo game or series of successive bingo games are played.

Source: Laws 1978, LB 351, § 5; Laws 1984, LB 949, § 4; R.S.Supp.,1984, § 9-128; Laws 1986, LB 1027, § 6.

9-206 Bingo supplies, defined.

Bingo supplies shall mean any items other than bingo equipment which may be used by a player to assist in the playing of bingo, including, but not limited to, daubers, chips, and glue sticks.

Source: Laws 1978, LB 351, § 6; R.S.1943, (1983), § 9-129; Laws 1986, LB 1027, § 7; Laws 1994, LB 694, § 10.

9-207 Cancel, defined.

Cancel shall mean to discontinue all rights and privileges to hold a license or permit for up to three years.

Source: Laws 1983, LB 259, § 12; Laws 1985, LB 408, § 6; R.S.Supp.,1985, § 9-140.08; Laws 1986, LB 1027, § 8; Laws 1994, LB 694, § 11.

9-207.01 Commercial lessor, defined.

Commercial lessor shall mean a person, partnership, limited liability company, corporation, or organization which owns or is a lessee of premises which are offered for leasing to a licensed organization on which bingo is or will be conducted.

Source: Laws 1988, LB 295, § 3; Laws 1991, LB 427, § 6; Laws 1993, LB 121, § 107.

9-208 Department, defined.

Department shall mean the Department of Revenue.

Source: Laws 1984, LB 949, § 19; R.S.Supp.,1984, § 9-140.12; Laws 1986, LB 1027, § 9.

9-209 Distributor, defined.

Distributor shall mean any person who purchases or otherwise obtains bingo equipment from a licensed manufacturer to sell, lease, distribute, or otherwise provide in this state to a licensed organization or licensed commercial lessor for use in a bingo occasion regulated by the Nebraska Bingo Act.

Source: Laws 1983, LB 259, § 8; Laws 1984, LB 949, § 14; R.S.Supp.,1984, § 9-140.04; Laws 1986, LB 1027, § 10; Laws 1988, LB 929, § 1; Laws 1989, LB 767, § 6; Laws 1994, LB 694, § 12.

9-209.01 Gaming manager, defined.

Gaming manager shall mean any person who is licensed by a Class II bingo licensee to be responsible for the supervision and operation of all gaming activities authorized and regulated under Chapter 9 which are conducted at the bingo occasions of a Class II bingo licensee.

Source: Laws 1988, LB 295, § 4; Laws 1994, LB 694, § 13.

9-209.02 Excursion or dinner train, defined.

Excursion or dinner train shall mean a train which has all of its passengers board and depart from the same location and is operated for trips of short duration for sightseeing, dining, entertainment, or other recreational purposes.

Source: Laws 1991, LB 427, § 7.

9-210 Gross receipts, defined.

Gross receipts shall mean the total receipts received from admissions to the premises where bingo is conducted, when such admissions are directly related to the participation in bingo, and from the sale, rental, or use of all bingo cards.

Source: Laws 1978, LB 351, § 9; Laws 1984, LB 949, § 5; R.S.Supp.,1984, § 9-132; Laws 1986, LB 1027, § 11; Laws 1994, LB 694, § 14.

9-211 Lawful purpose, defined.

(1) Lawful purpose, for a licensed organization or a qualifying nonprofit organization making a donation of its profits derived from the conduct of bingo solely for its own organization, shall mean donating such profits for any activity which benefits and is conducted by the organization, including any charitable, benevolent, humane, religious, philanthropic, youth sports, educational, civic, or fraternal activity conducted by the organization for the benefit of its members.

(2) Lawful purpose, for a licensed organization or a qualifying nonprofit organization making a donation of its profits derived from the conduct of bingo outside of its organization, shall mean donating such profits only to:

(a) The State of Nebraska or any political subdivision of the state but only if the donation is made exclusively for public purposes;

(b) A corporation, trust, community chest, fund, or foundation:

(i) Created or organized under the laws of Nebraska which has been in existence for five consecutive years immediately preceding the date of the donation and which has its principal office located in Nebraska;

(ii) Organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, for the prevention of cruelty to children or animals, or to foster national or international amateur sports competition;

(iii) No part of the net earnings of which inures to the benefit of any private shareholder or individual;

(iv) Which is not disqualified for tax exemption under section 501(c)(3) of the Internal Revenue Code by reason of attempting to influence legislation; and

(v) Which does not participate in any political campaign on behalf of any candidate for political office;

(c) A post or organization of war veterans or an auxiliary unit or society of, trust for, or foundation for any such post or organization:

(i) Organized in the United States or in any territory or possession thereof; and

(ii) No part of the net earnings of which inures to the benefit of any private shareholder or individual; or

(d) A volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad serving any city, village, county, township or rural or suburban fire protection district in Nebraska.

(3) No donation of profits under this section shall (a) inure to the benefit of any individual member of the organization making the donation except to the extent it is in furtherance of the purposes described in this section or (b) be used for any activity which attempts to influence legislation or for any political campaign on behalf of any elected official or person who is or has been a candidate for public office.

Source: Laws 1978, LB 351, § 3; Laws 1979, LB 164, § 1; Laws 1984, LB 949, § 4; Laws 1985, LB 408, § 3; R.S.Supp.,1985, § 9-126; Laws 1986, LB 1027, § 12; Laws 1988, LB 295, § 5; Laws 1994, LB 694, § 15; Laws 1995, LB 344, § 1; Laws 1995, LB 574, § 5; Laws 2002, LB 545, § 4.

Facilitating the recruitment and retention of volunteer firefighters cannot be said to constitute a charitable activity, and therefore, retirement plan contributions inuring to the benefit of individual members do not constitute a use for a lawful purpose. Southeast Rur. Vol. Fire Dept. v. Neb. Dept. of Rev., 251 Neb. 852, 560 N.W.2d 436 (1997).

9-212 License, defined.

License shall mean any license to conduct bingo as provided in section 9-233, any license for a utilization-of-funds member as provided in section 9-232.01, any manufacturer's license as provided in section 9-255.09, any distributor's license as provided in section 9-255.07, any gaming manager's license as provided in section 9-232.01, or any commercial lessor's license as provided in section 9-255.06.

Source: Laws 1983, LB 259, § 14; R.S.1943, (1983), § 9-140.10; Laws 1986, LB 1027, § 13; Laws 1988, LB 295, § 6; Laws 1989, LB 767, § 7; Laws 1994, LB 694, § 16.

9-213 Licensed organization, defined.

Licensed organization shall mean a nonprofit organization or volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad licensed to conduct bingo under the Nebraska Bingo Act.

Source: Laws 1978, LB 351, § 10; Laws 1983, LB 259, § 4; Laws 1984, LB 949, § 6; R.S.Supp.,1984, § 9-133; Laws 1986, LB 1027, § 14; Laws 2002, LB 545, § 5.

9-214 Limited period bingo, defined.

Limited period bingo shall mean a bingo occasion, authorized by the department to be conducted, which is in addition to a licensed organization's regularly scheduled bingo occasions.

Source: Laws 1978, LB 351, § 11; Laws 1984, LB 949, § 7; R.S.Supp.,1984, § 9-134; Laws 1986, LB 1027, § 15; Laws 1994, LB 694, § 17.

9-214.01 Manufacturer, defined.

(1) Manufacturer shall mean any person who assembles, produces, makes, or prints any bingo equipment.

(2) Manufacturer shall not mean or include a licensed distributor who places, finishes, or configures disposable paper bingo cards, which have been produced by a licensed manufacturer, into a looseleaf or book form or some other format for distribution to an organization licensed to conduct bingo.

Source: Laws 1989, LB 767, § 8; Laws 1991, LB 427, § 8; Laws 1994, LB 694, § 18; Laws 2002, LB 545, § 6.

9-215 Member, defined.

Member shall mean a person who has qualified for and been admitted to membership in a licensed organization pursuant to its bylaws, articles of incorporation, charter, rules, or other written statement for purposes other than conducting activities under the Nebraska Bingo Act. Member shall not include social or honorary members.

Source: Laws 1985, LB 408, § 11; R.S.Supp.,1985, § 9-140.16; Laws 1986, LB 1027, § 16; Laws 1988, LB 295, § 7.

9-215.01 Permit, defined.

Permit shall mean a special event bingo permit as provided in section 9-230.01.

Source: Laws 1994, LB 694, § 19.

9-216 Premises, defined.

Premises shall mean a building, a distinct portion of a building, or a railroad coach car of an excursion or dinner train in which bingo is being played and shall not include any area of land surrounding the building or excursion or dinner train.

No premises shall be subdivided to provide multiple premises where games of bingo are managed, operated, or conducted whether or not such premises have different mailing addresses or legal descriptions.

Source: Laws 1978, LB 351, § 12; R.S.1943, (1983), § 9-135; Laws 1986, LB 1027, § 17; Laws 1988, LB 295, § 8; Laws 1991, LB 427, § 9.

9-217 Profit, defined.

Profit shall mean the gross receipts collected from one or more bingo games, less reasonable sums necessarily and actually expended for prizes, taxes, license and permit fees, bingo equipment, the cost of renting or leasing a premises for the conduct of bingo, and other allowable expenses.

Source: Laws 1978, LB 351, § 13; Laws 1979, LB 164, § 2; Laws 1984, LB 949, § 8; R.S.Supp.,1984, § 9-136; Laws 1986, LB 1027, § 18; Laws 1994, LB 694, § 20.

9-217.01 Qualifying nonprofit organization, defined.

(1) Qualifying nonprofit organization, for the purpose of special event bingo, shall mean a nonprofit organization:

(a) Which holds a certificate of exemption under section 501 of the Internal Revenue Code or the major activities of which, exclusive of conducting gaming activities regulated under Chapter 9, are conducted for charitable or community betterment purposes; and

(b) Which has been in existence in this state for a period of at least five years immediately preceding its application for a permit.

(2) Qualifying nonprofit organization shall not mean or include any organization which holds a license pursuant to the Nebraska Bingo Act.

Source: Laws 1994, LB 694, § 21; Laws 1995, LB 574, § 6.

9-218 Repealed. Laws 1994, LB 694, § 126.

9-219 Repealed. Laws 1994, LB 694, § 126.

9-220 Revoke, defined.

Revoke shall mean to permanently void and recall all rights and privileges of an organization or a person to obtain a license or a permit.

Source: Laws 1983, LB 259, § 13; Laws 1984, LB 949, § 17; Laws 1985, LB 408, § 7; R.S.Supp.,1985, § 9-140.09; Laws 1986, LB 1027, § 21; Laws 1994, LB 694, § 22.

9-221 Repealed. Laws 1994, LB 694, § 126.

9-222 Repealed. Laws 1994, LB 694, § 126.

9-223 Repealed. Laws 1994, LB 694, § 126.

9-224 Special event bingo, defined.

Special event bingo shall mean the conduct of bingo as provided in section 9-230.01 by a qualifying nonprofit organization in conjunction with a special event.

Source: Laws 1994, LB 694, § 23.

9-225 Suspend, defined.

Suspend shall mean to cause a temporary interruption of all rights and privileges of a license or the renewal thereof and all rights and privileges to obtain a permit.

Source: Laws 1983, LB 259, § 11; Laws 1985, LB 408, § 5; R.S.Supp.,1985, § 9-140.07; Laws 1986, LB 1027, § 26; Laws 1994, LB 694, § 24.

9-225.01 Utilization-of-funds member, defined.

Utilization-of-funds member shall mean a member of the organization who shall be responsible for the proper utilization of the gross receipts derived from the conduct of bingo by the licensed organization.

Source: Laws 1994, LB 694, § 25.

9-225.02 Volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad, defined.

Volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad shall mean a volunteer association or organization serving any city, village, county, township, or rural or suburban fire protection district in

Nebraska by providing fire protection or emergency response services for the purpose of protecting human life, health, or property.

Source: Laws 2002, LB 545, § 7.

9-226 Department; powers, functions, and duties.

The department shall have the following powers, functions, and duties:

(1) To issue licenses, temporary licenses, and permits;

(2) To deny any license or permit application or renewal license application for cause. Cause for denial of an application or renewal of a license shall include instances in which the applicant individually or, in the case of a business entity or a nonprofit organization, any officer, director, employee, or limited liability company member of the applicant, licensee, or permittee, other than an employee whose duties are purely ministerial in nature, any other person or entity directly or indirectly associated with such applicant, licensee, or permittee which directly or indirectly receives compensation other than distributions from a bona fide retirement or pension plan established pursuant to Chapter 1, subchapter D of the Internal Revenue Code from such applicant for past or present services in a consulting capacity or otherwise, the licensee, or any person with a substantial interest in the applicant, licensee, or permittee:

(a) Violated the provisions, requirements, conditions, limitations, or duties imposed by the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, or the State Lottery Act or any rules or regulations adopted and promulgated pursuant to the acts;

(b) Knowingly caused, aided, abetted, or conspired with another to cause any person to violate any of the provisions of such acts or any rules or regulations adopted and promulgated pursuant to such acts;

(c) Obtained a license or permit pursuant to such acts by fraud, misrepresentation, or concealment;

(d) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any offense or crime, whether a felony or misdemeanor, involving any gambling activity or fraud, theft, willful failure to make required payments or reports, or filing false reports with a governmental agency at any level;

(e) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any felony other than those described in subdivision (d) of this subdivision within the ten years preceding the filing of the application;

(f) Denied the department or its authorized representatives, including authorized law enforcement agencies, access to any place where bingo activity required to be licensed or for which a permit is required under the Nebraska Bingo Act is being conducted or failed to produce for inspection or audit any book, record, document, or item required by law, rule, or regulation;

(g) Made a misrepresentation of or failed to disclose a material fact to the department;

(h) Failed to prove by clear and convincing evidence his, her, or its qualifications to be licensed or granted a permit in accordance with the Nebraska Bingo Act;

(i) Failed to pay any taxes and additions to taxes, including penalties and interest, required by the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act or any other taxes imposed pursuant to the Nebraska Revenue Act of 1967;

(j) Failed to pay an administrative fine levied pursuant to the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act;

(k) Failed to demonstrate good character, honesty, and integrity;

(l) Failed to demonstrate, either individually or, in the case of a business entity or a nonprofit organization, through its managers, employees, or agents, the ability, experience, or financial responsibility necessary to establish or maintain the activity for which the application is made; or

(m) Was cited and whose liquor license was suspended, canceled, or revoked by the Nebraska Liquor Control Commission for illegal gambling activities that occurred on or after July 20, 2002, on or about a premises licensed by the commission pursuant to the Nebraska Liquor Control Act or the rules and regulations adopted and promulgated pursuant to such act.

No renewal of a license under the Nebraska Bingo Act shall be issued when the applicant for renewal would not be eligible for a license upon a first application;

(3) To revoke, cancel, or suspend for cause any license or permit. Cause for revocation, cancellation, or suspension of a license or permit shall include instances in which the licensee or permittee individually or, in the case of a business entity or a nonprofit organization, any officer, director, employee, or limited liability company member of the licensee or permittee, other than an employee whose duties are purely ministerial in nature, any other person or entity directly or indirectly associated with such licensee or permittee which directly or indirectly receives compensation other than distributions from a bona fide retirement or pension plan established pursuant to Chapter 1, subchapter D of the Internal Revenue Code from such licensee or permittee for past or present services in a consulting capacity or otherwise, or any person with a substantial interest in the licensee or permittee:

(a) Violated the provisions, requirements, conditions, limitations, or duties imposed by the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or any rules or regulations adopted and promulgated pursuant to such acts;

(b) Knowingly caused, aided, abetted, or conspired with another to cause any person to violate any of the provisions of the Nebraska Bingo Act or any rules or regulations adopted and promulgated pursuant to the act;

(c) Obtained a license or permit pursuant to the Nebraska Bingo Act by fraud, misrepresentation, or concealment;

(d) Was convicted of, forfeited bond upon the charge of, or pleaded guilty or nolo contendere to any offense or crime, whether a felony or a misdemeanor, involving any gambling activity or fraud, theft, willful failure to make required payments or reports, or filing false reports with a governmental agency at any level;

(e) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any felony other than those described in subdivision (d) of this subdivision within the ten years preceding the filing of the application;

(f) Denied the department or its authorized representatives, including authorized law enforcement agencies, access to any place where bingo activity required to be licensed or for which a permit is required under the Nebraska Bingo Act is being conducted or failed to produce for inspection or audit any book, record, document, or item required by law, rule, or regulation;

(g) Made a misrepresentation of or failed to disclose a material fact to the department;

(h) Failed to pay any taxes and additions to taxes, including penalties and interest, required by the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act or any other taxes imposed pursuant to the Nebraska Revenue Act of 1967;

(i) Failed to pay an administrative fine levied pursuant to the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act;

(j) Failed to demonstrate good character, honesty, and integrity;

(k) Failed to demonstrate, either individually or, in the case of a business entity or a nonprofit organization, through its managers, employees, or agents, the ability, experience, or financial responsibility necessary to maintain the activity for which the license was issued; or

(l) Was cited and whose liquor license was suspended, canceled, or revoked by the Nebraska Liquor Control Commission for illegal gambling activities that occurred on or after July 20, 2002, on or about a premises licensed by the commission pursuant to the Nebraska Liquor Control Act or the rules and regulations adopted and promulgated pursuant to such act;

(4) To issue an order requiring a licensee, permittee, or other person to cease and desist from violations of the Nebraska Bingo Act or any rules and regulations adopted and promulgated pursuant to such act. The order shall give reasonable notice of the rights of the licensee, permittee, or other person to request a hearing and shall state the reason for the entry of the order. The notice of order to cease and desist shall be mailed to or personally served upon the licensee, permittee, or other person. If the notice of order is mailed, the date the notice is mailed shall be deemed to be the date of service of notice to the licensee, permittee, or other person. A request for a hearing by the licensee, permittee, or other person shall be in writing and shall be filed with the department within thirty days after the service of the cease and desist order. If a request for hearing is not filed within the thirty-day period, the cease and desist order shall become permanent at the expiration of such period. A hearing shall be held not later than thirty days after the request for the hearing is received by the Tax Commissioner, and within twenty days after the date of the hearing, the Tax Commissioner shall issue an order vacating the cease and desist order or making it permanent as the facts require. All hearings shall be held in accordance with the rules and regulations adopted and promulgated by the department. If the licensee, permittee, or other person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, the licensee, permittee, or other person shall be deemed in default and the proceeding may be determined against the licensee, permittee, or other person upon

consideration of the cease and desist order, the allegations of which may be deemed to be true;

(5) To levy an administrative fine on an individual, partnership, limited liability company, corporation, or organization for cause. For purposes of this subdivision, cause shall include instances in which the individual, partnership, limited liability company, corporation, or organization violated the provisions, requirements, conditions, limitations, or duties imposed by the act or any rule or regulation adopted and promulgated pursuant to the act. In determining whether to levy an administrative fine and the amount of the fine if any fine is levied, the department shall take into consideration the seriousness of the violation, the intent of the violator, whether the violator voluntarily reported the violation, whether the violator derived financial gain as a result of the violation and the extent thereof, and whether the violator has had previous violations of the act, rules, or regulations. A fine levied on a violator under this section shall not exceed one thousand dollars for each violation of the act or any rule or regulation adopted and promulgated pursuant to the act plus the financial benefit derived by the violator as a result of each violation. If an administrative fine is levied, the fine shall not be paid from bingo gross receipts of an organization and shall be remitted by the violator to the department within thirty days after the date of the order issued by the department levying such fine;

(6) To enter or to authorize any law enforcement officer to enter at any time upon any premises where bingo activity required to be licensed or for which a permit is required under the act is being conducted to determine whether any of the provisions of the act or any rules or regulations adopted and promulgated under the act have been or are being violated and at such time to examine such premises;

(7) To require periodic reports of bingo activity from licensees under the act as the department deems necessary to carry out the act;

(8) To examine or to cause to have examined, by any agent or representative designated by the department for such purpose, any books, papers, records, or memoranda relating to bingo activities of any licensee or permittee, to require by administrative order or summons the production of such documents or the attendance of any person having knowledge in the premises, to take testimony under oath, and to acquire proof material for its information. If any such person willfully refuses to make documents available for examination by the department or its agent or representative or willfully fails to attend and testify, the department may apply to a judge of the district court of the county in which such person resides for an order directing such person to comply with the department's request. If any documents requested by the department are in the custody of a corporation, the court order may be directed to any principal officer of the corporation. If the documents requested by the department are in the custody of a limited liability company, the court order may be directed to any member when management is reserved to the members or otherwise to any manager. Any person who fails or refuses to obey such a court order shall be guilty of contempt of court;

(9) Unless specifically provided otherwise, to compute, determine, assess, and collect the amounts required to be paid to the state as taxes imposed by the act in the same manner as provided for sales and use taxes in the Nebraska Revenue Act of 1967;

(10) To collect license application, license renewal application, and permit fees imposed by the Nebraska Bingo Act and to prorate license fees on an annual basis. The department shall establish by rule and regulation the conditions and circumstances under which such fees may be prorated;

(11) To confiscate and seize bingo supplies and equipment pursuant to section 9-262.01; and

(12) To adopt and promulgate such rules and regulations, prescribe such forms, and employ such staff, including inspectors, as are necessary to carry out the act.

Source: Laws 1983, LB 259, § 52; Laws 1984, LB 949, § 58; Laws 1985, LB 408, § 36; R.S.Supp.,1985, § 9-187; Laws 1986, LB 1027, § 27; Laws 1988, LB 295, § 11; Laws 1989, LB 767, § 14; Laws 1991, LB 427, § 10; Laws 1991, LB 849, § 45; Laws 1993, LB 138, § 3; Laws 1994, LB 694, § 26; Laws 1995, LB 344, § 2; Laws 1995, LB 574, § 7; Laws 1997, LB 248, § 2; Laws 2000, LB 1086, § 4; Laws 2002, LB 545, § 8; Laws 2002, LB 1126, § 1; Laws 2012, LB727, § 1.

Cross References

Nebraska County and City Lottery Act, see section 9-601.
Nebraska Liquor Control Act, see section 53-101.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Revenue Act of 1967, see section 77-2701.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

The Department of Revenue has the authority to deny licenses for reasons of unlawful donations to a retirement plan and unlawful salary advances. Southeast Rur. Vol. Fire Dept. v. Neb. Dept. of Rev., 251 Neb. 852, 560 N.W.2d 436 (1997).

9-226.01 Denial of application; procedure.

(1) Before any application is denied pursuant to section 9-226, the department shall notify the applicant in writing by mail of the department's intention to deny the application and the reasons for the denial. Such notice shall inform the applicant of his or her right to request an administrative hearing for the purpose of reconsideration of the intended denial of the application. The date the notice is mailed shall be deemed to be the date of service of notice to the applicant.

(2) A request for hearing by the applicant shall be in writing and shall be filed with the department within thirty days after the service of notice to the applicant of the department's intended denial of the application. If a request for hearing is not filed within the thirty-day period, the application denial shall become final at the expiration of such period.

(3) If a request for hearing is filed within the thirty-day period, the Tax Commissioner shall grant the applicant a hearing and shall, at least ten days before the hearing, serve notice upon the applicant by mail of the time, date, and place of the hearing. Such proceedings shall be considered contested cases pursuant to the Administrative Procedure Act.

Source: Laws 1988, LB 295, § 12; Laws 1994, LB 694, § 27; Laws 2002, LB 545, § 9; Laws 2012, LB727, § 2.

Cross References

Administrative Procedure Act, see section 84-920.

Administrative bodies have only that authority specifically conferred upon them by statute or by construction necessary to achieve the purpose of the relevant act, and as such, the Department of Revenue is not statutorily authorized to grant motions for summary judgment. Southeast Rur. Vol. Fire Dept. v. Neb. Dept. of Rev., 251 Neb. 852, 560 N.W.2d 436 (1997).

9-226.02 Administrative fines; disposition; collection.

(1) All money collected by the department as an administrative fine shall be remitted on a monthly basis to the State Treasurer for credit to the permanent school fund.

(2) Any administrative fine levied under section 9-226 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 1991, LB 427, § 11; Laws 1994, LB 694, § 28.

9-227 Suspension of license or permit; limitation; procedure.

(1) The Tax Commissioner may suspend any license or permit, except that no order to suspend any license or permit shall be issued unless the department determines that the licensee or permittee is not operating in accordance with the purposes and intent of the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or any rules or regulations adopted and promulgated pursuant to such acts.

(2) Before any license or permit is suspended prior to a hearing, notice of an order to suspend a license or permit shall be mailed to or personally served upon the licensee or permittee at least fifteen days before the order of suspension takes effect.

(3) The order of suspension may be withdrawn if the licensee or permittee provides the department with evidence that any prior findings or violations have been corrected and that the licensee or permittee is now in full compliance, whether before or after the effective date of the order of suspension.

(4) The Tax Commissioner may issue an order of suspension pursuant to subsections (1) and (2) of this section when an action for suspension, cancellation, or revocation is pending. The Tax Commissioner may also issue an order of suspension after a hearing for a limited time of up to one year without an action for cancellation or revocation pending.

(5) The hearing for suspension, cancellation, or revocation of the license or permit shall be held within twenty days after the date the suspension takes effect. A request by the licensee or permittee to hold the hearing after the end of the twenty-day period shall extend the suspension until the hearing.

(6) The decision of the department shall be made within twenty days after the conclusion of the hearing. The suspension shall continue in effect until the decision is issued. If the decision is that an order of suspension, revocation, or cancellation is not appropriate, the suspension shall terminate immediately by order of the Tax Commissioner. If the decision is an order for the suspension, revocation, or cancellation of the license or permit, the suspension shall continue pending an appeal of the decision of the department.

(7) Any period of suspension prior to the issuance of an order of suspension issued by the Tax Commissioner shall count toward the total amount of time a licensee or permittee shall be suspended from gaming activities under the

Nebraska Bingo Act. Any period of suspension prior to the issuance of an order of cancellation shall not reduce the period of the cancellation. Any period of suspension after the issuance of the order and during an appeal shall be counted as a part of the period of cancellation.

Source: Laws 1985, LB 408, § 28; R.S.Supp.,1985, § 9-187.01; Laws 1986, LB 1027, § 28; Laws 1988, LB 295, § 13; Laws 1991, LB 427, § 12; Laws 1994, LB 694, § 29; Laws 1995, LB 344, § 3.

Cross References

Nebraska County and City Lottery Act, see section 9-601.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

9-228 Hearing; required; when; notice.

Before the adoption, amendment, or repeal of any rule or regulation, the suspension, revocation, or cancellation of any license or permit, or the levying of any administrative fine pursuant to section 9-226, the department shall set the matter for hearing. Such suspension, revocation, or cancellation proceedings or proceedings to levy an administrative fine shall be considered contested cases pursuant to the Administrative Procedure Act.

At least ten days before the hearing, the department shall (1) in the case of suspension, revocation, or cancellation proceedings or proceedings to levy an administrative fine, serve notice upon the licensee, permittee, or violator by personal service or mail of the time, date, and place of any hearing or (2) in the case of adoption, amendment, or repeal of any rule or regulation, issue a public notice of the time, date, and place of such hearing.

This section shall not apply to an order of suspension by the Tax Commissioner prior to a hearing as provided in section 9-227.

Source: Laws 1983, LB 259, § 53; Laws 1984, LB 949, § 59; Laws 1985, LB 408, § 37; R.S.Supp.,1985, § 9-188; Laws 1986, LB 1027, § 29; Laws 1988, LB 295, § 14; Laws 1991, LB 427, § 13; Laws 1994, LB 694, § 30; Laws 1995, LB 344, § 4; Laws 2012, LB727, § 3.

Cross References

Administrative Procedure Act, see section 84-920.

9-229 Proceeding before department; service; security; appeal.

(1) A copy of the order or decision of the department in any proceeding before it, certified under the seal of the department, shall be served upon each party of record to the proceeding before the department. Service upon any attorney of record for any such party shall be deemed to be service upon such party. Each party appearing before the department shall enter his or her appearance and indicate to the department his or her address for the service of a copy of any order, decision, or notice. The mailing of any copy of any order or decision or of any notice in the proceeding to such party at such address shall be deemed to be service upon such party.

(2) At the time of making an appearance before the department, each party shall deposit in cash or furnish a sufficient security for costs in an amount the department deems adequate to cover all costs liable to accrue, including costs

for (a) reporting the testimony to be adduced, (b) making up a complete transcript of the hearing, and (c) extending reporter's original notes in typewriting.

(3) Any decision of the department in any proceeding before it may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1983, LB 259, § 54; Laws 1984, LB 949, § 60; Laws 1985, LB 408, § 38; R.S.Supp.,1985, § 9-189; Laws 1986, LB 1027, § 30; Laws 1988, LB 352, § 14; Laws 1988, LB 295, § 15.

Cross References

Administrative Procedure Act, see section 84-920.

9-230 Operation without license; public nuisance; penalties.

No person, except a licensed organization or qualifying nonprofit organization operating pursuant to the Nebraska Bingo Act, shall conduct any game of bingo for which a charge is made, and no person except a licensed organization shall award any prize with a value in excess of twenty-five dollars for any bingo game. Any such game conducted in violation of this section is hereby declared to be a public nuisance. Any person violating the provisions of this section shall be guilty of a Class III misdemeanor for the first offense and a Class I misdemeanor for the second or subsequent offense.

Source: Laws 1978, LB 351, § 48; Laws 1984, LB 949, § 44; R.S.Supp.,1984, § 9-171; Laws 1986, LB 1027, § 31; Laws 1988, LB 295, § 16; Laws 1994, LB 694, § 31.

9-230.01 Special event bingo; permit; application; form; fee; issuance; restrictions.

(1) A qualifying nonprofit organization may apply to the department for a permit to conduct a special event bingo in conjunction with a special event at which bingo is not the primary function. Such special event bingo shall be exempt from (a) the licensing requirements found in the Nebraska Bingo Act for Class I and Class II licenses, (b) the record-keeping and reporting requirements found in the act for licensed organizations, and (c) any tax on the gross receipts derived from the conduct of bingo as provided in the act for licensed organizations.

(2) A qualifying nonprofit organization may apply for and obtain two special event bingo permits per calendar year, not to exceed a total of fourteen days in duration. An application for a permit shall be made, on a form prescribed by the department, at least ten days prior to the desired starting date of the special event bingo. The form shall be accompanied by a permit fee of fifteen dollars and shall contain:

(a) The name and address of the nonprofit organization applying for the permit;

(b) Sufficient facts relating to the nature of the organization to enable the department to determine if the organization is eligible for the permit;

(c) The date, time, place, duration, and nature of the special event at which the special event bingo will be conducted;

(d) The name, address, and telephone number of the individual who will be in charge of the special event bingo; and

(e) Any other information which the department deems necessary.

(3) An organization must have a permit issued by the department before it can conduct a special event bingo. The permit shall be clearly posted and visible to all participants at the special event bingo.

(4) Special event bingo shall be subject to the following:

(a) Special event bingo shall be conducted only within the county in which the qualifying nonprofit organization has its principal office;

(b) Bingo equipment, other than disposable paper bingo cards, necessary to conduct bingo may be obtained from any source. Disposable paper bingo cards may be obtained only from (i) a licensed distributor or (ii) a licensed organization as provided in subdivision (4)(e) of section 9-241.05;

(c) No bingo card used at a special event bingo shall be sold, rented, or leased for more than twenty-five cents per card;

(d) No single prize shall be offered or awarded at a special event bingo which exceeds twenty-five dollars in value;

(e) A special event bingo shall be conducted by individuals who are at least eighteen years of age. The qualifying nonprofit organization may permit individuals under eighteen years of age to play special event bingo when no alcoholic beverages are served, sold, or consumed in the immediate vicinity of where the special event bingo is conducted;

(f) No wage, commission, or salary shall be paid to any person in connection with the conduct of a special event bingo; and

(g) The gross receipts from the conduct of a special event bingo shall be used solely for the awarding of prizes and reasonable and necessary expenses associated with the conduct of the special event bingo such as the permit fee and the purchase or rental of bingo cards or other equipment needed to conduct bingo. The remaining receipts shall be used solely for a lawful purpose.

Source: Laws 1994, LB 694, § 32; Laws 2001, LB 268, § 1; Laws 2002, LB 545, § 10.

9-231 License; qualified applicants.

(1) Any nonprofit organization holding a certificate of exemption under section 501(c)(3), (c)(4), (c)(5), (c)(8), (c)(10), or (c)(19) of the Internal Revenue Code or any volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad may apply for a license to conduct bingo.

(2) Prior to applying for any license, an organization shall:

(a) Be incorporated in this state as a not-for-profit corporation or organized in this state as a religious or not-for-profit organization. For purposes of this subsection, a domesticated foreign corporation shall not be considered incorporated in this state as a not-for-profit corporation;

(b) Conduct activities within this state in addition to the conduct of bingo;

(c) Be authorized by its constitution, articles, charter, or bylaws to further in this state a lawful purpose;

(d) Operate without profit to its members, and no part of the net earnings of such organization shall inure to the benefit of any private shareholder or individual; and

(e) Have been in existence for five years immediately preceding its application for a license, and shall have had during that five-year period a bona fide membership actively engaged in furthering a lawful purpose. A society defined in section 21-608 which is chartered in Nebraska under a state, grand, supreme, national, or other governing body may use the charter date of its parent organization to satisfy such five-year requirement.

(3) None of the provisions of this section shall prohibit a senior citizens group from organizing and conducting bingo pursuant to the Nebraska Bingo Act when bingo is played only by members of the senior citizens group conducting the bingo. For purposes of this section, senior citizens group shall mean any organization the membership of which consists entirely of persons who are at least sixty years old.

Source: Laws 1978, LB 351, § 18; Laws 1983, LB 259, § 15; Laws 1984, LB 949, § 20; R.S.Supp.,1984, § 9-141; Laws 1986, LB 1027, § 32; Laws 1988, LB 295, § 17; Laws 1989, LB 767, § 16; Laws 2002, LB 545, § 11.

9-232 Repealed. Laws 1994, LB 694, § 126.

9-232.01 License; application; contents; restrictions on conduct of bingo; gaming manager license; fee; utilization-of-funds member; license.

(1) Each organization applying for a license to conduct bingo shall file with the department an application on a form prescribed by the department. Each application shall include:

(a) The name and address of the applicant organization;

(b) Sufficient facts relating to the incorporation or organization of the applicant organization to enable the department to determine if the organization is eligible for a license pursuant to section 9-231;

(c) The name and address of each officer of the applicant organization;

(d) The name, address, social security number, years of membership, and date of birth of one bona fide and active member of the organization who will serve as the organization's bingo chairperson; and

(e) The name, address, social security number, years of membership, and date of birth of no more than three bona fide and active members of the organization who will serve as alternate bingo chairpersons.

(2) In addition, each applicant organization shall include with the application:

(a) The name, address, social security number, date of birth, and years of membership of an active and bona fide member of the applicant organization to be licensed as the utilization-of-funds member. Such person shall have been an active and bona fide member of the applicant organization for at least one year preceding the date the application is filed with the department unless the applicant organization can provide evidence that the one-year requirement would impose an undue hardship on the organization. All utilization-of-funds members shall sign a sworn statement indicating that they agree to comply with all provisions of the Nebraska Bingo Act and all rules and regulations adopted

pursuant to the act, that they will insure that no commission, fee, rent, salary, profits, compensation, or recompense will be paid to any person or organization, except payments authorized by the act, and that all profits will be spent only for lawful purposes. A fee of forty dollars shall be charged for a license for each utilization-of-funds member, and the department may prescribe a separate application form for such license;

(b) For a Class II license only, the name, address, social security number, and date of birth of the individual to be licensed as the gaming manager. Such person shall sign a sworn statement indicating that he or she agrees to comply with all provisions of the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, and all rules and regulations adopted pursuant to such acts. A fee of one hundred dollars shall be charged for a license for each gaming manager, and the department may prescribe a separate application form for such license;

(c) The name and address of the owner or lessor of the premises in which bingo will be conducted; and

(d) Any other information which the department deems necessary, including, but not limited to, copies of any and all lease or rental agreements and contracts entered into by the organization relative to its bingo activities.

(3) The information required by this section shall be kept current. A licensed organization shall notify the department within thirty days if any information in the application is no longer correct and shall supply the correct information.

(4) Except for a limited period bingo, a licensed organization shall not conduct any bingo game or occasion at any time, on any day, at any location, or in any manner different from that described in its most recent filing with the department unless prior approval has been obtained from the department. A request for approval to change the day, time, or location of a bingo occasion shall be made by the bingo chairperson, in writing, at least thirty days in advance of the date the proposed change is to become effective.

(5) No bingo chairperson, alternate bingo chairperson, utilization-of-funds member, or gaming manager for an organization shall be connected with, interested in, or otherwise concerned directly or indirectly with any party licensed as a manufacturer, distributor, or commercial lessor pursuant to the Nebraska Bingo Act or with any party licensed as a manufacturer or distributor pursuant to the Nebraska Pickle Card Lottery Act.

(6) No person shall act as a gaming manager until he or she has received a license from the department. A gaming manager may apply for a license to act as a gaming manager for more than one licensed organization by completing a separate application and paying the license fee for each organization for which he or she intends to act as a gaming manager. No gaming manager shall be a bingo chairperson or alternate bingo chairperson, and no gaming manager shall hold any other type of license issued under the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act.

(7) No person shall act as a utilization-of-funds member until he or she has received a license from the department. A utilization-of-funds member shall not hold any other type of license issued under the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, and the Nebraska Pickle Card Lottery Act,

except that a utilization-of-funds member may also be designated as the bingo chairperson or alternate bingo chairperson for the same organization.

Source: Laws 1994, LB 694, § 34; Laws 1995, LB 344, § 5; Laws 2002, LB 545, § 12; Laws 2007, LB638, § 2.

Cross References

Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Small Lottery and Raffle Act, see section 9-501.

9-232.02 Licenses; renewal; procedure; fee.

(1) All licenses to conduct bingo and licenses issued to utilization-of-funds members, gaming managers, or commercial lessors shall expire as provided in this section and may be renewed biennially. An application for license renewal shall be submitted at least forty-five days prior to the expiration date of the license. The department may prescribe a separate application form for renewal purposes for any license application required by the Nebraska Bingo Act. The renewal application may require such information as the department deems necessary for the proper administration of the act.

(2) A license to conduct bingo issued to a nonprofit organization holding a certificate of exemption under section 501(c)(3) or (c)(4) of the Internal Revenue Code and any license issued to a utilization-of-funds member or gaming manager for such nonprofit organization shall expire on September 30 of each odd-numbered year or on such other date as the department may prescribe by rule and regulation. The biennial license fee for a utilization-of-funds member shall be forty dollars and the biennial license fee for a gaming manager shall be one hundred dollars.

(3) A license to conduct bingo issued to a nonprofit organization holding a certificate of exemption under section 501(c)(5), (c)(8), (c)(10), or (c)(19) of the Internal Revenue Code or any volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad and any license issued to a utilization-of-funds member or gaming manager for such nonprofit organization or volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad shall expire on September 30 of each even-numbered year or on such other date as the department may prescribe by rule and regulation. The biennial license fee for a utilization-of-funds member shall be forty dollars and the biennial license fee for a gaming manager shall be one hundred dollars.

(4) A license issued to a commercial lessor shall expire on September 30 of each odd-numbered year or on such other date as the department may prescribe by rule and regulation.

Source: Laws 1994, LB 694, § 35; Laws 1997, LB 248, § 3; Laws 2000, LB 1086, § 5; Laws 2002, LB 545, § 13; Laws 2007, LB638, § 3.

9-232.03 Limited period bingo; authorization.

A licensed organization may request authorization from the department to conduct a limited period bingo. A licensed organization may conduct no more than four limited period bingos with an aggregate total of no more than twelve days in any twelve-month period commencing October 1 of each year or such other date as the department may prescribe by rule and regulation.

The request shall be in writing and shall contain the date and time when and the location where the limited period bingo is to be conducted. The request

shall be submitted to the department at least ten days prior to the desired starting date of the limited period bingo.

Except as otherwise provided in the Nebraska Bingo Act, a limited period bingo shall be conducted in the same manner as prescribed for regular bingo occasions.

Source: Laws 1994, LB 694, § 36; Laws 2000, LB 1086, § 6.

9-233 Licenses; classes; fees.

(1) The department may issue an applicant organization one of the following classes of bingo licenses:

(a) A Class I license which shall include organizations with gross receipts from the conduct of bingo which are less than one hundred thousand dollars per twelve-month period commencing October 1 of each year or such other date as the department may prescribe by rule and regulation; or

(b) A Class II license which shall include organizations with gross receipts from the conduct of bingo equal to or greater than one hundred thousand dollars per twelve-month period commencing October 1 of each year or such other date as the department may prescribe by rule and regulation.

(2) For purposes of this section, when bingo occasions are conducted on a joint basis by two or more licensed organizations, the class of license required shall be determined based upon the combined gross receipts of all licensed organizations involved in the conduct of the bingo occasion.

(3) A biennial fee of thirty dollars shall be charged for a Class I license, and a biennial fee of one hundred dollars shall be charged for a Class II license.

(4) The department shall adopt and promulgate rules and regulations to establish reporting requirements for each class of license issued.

Source: Laws 1978, LB 351, § 20; Laws 1982, LB 928, § 4; Laws 1983, LB 259, § 17; Laws 1984, LB 949, § 22; R.S.Supp.,1984, § 9-143; Laws 1986, LB 1027, § 34; Laws 1988, LB 295, § 19; Laws 1991, LB 427, § 14; Laws 1994, LB 694, § 33; Laws 2000, LB 1086, § 7; Laws 2002, LB 545, § 14; Laws 2007, LB638, § 4.

9-233.01 Repealed. Laws 1994, LB 694, § 126.

9-233.02 Repealed. Laws 1994, LB 694, § 126.

9-233.03 Repealed. Laws 1994, LB 694, § 126.

9-233.04 Repealed. Laws 1994, LB 694, § 126.

9-233.05 Repealed. Laws 1994, LB 694, § 126.

9-234 Repealed. Laws 1994, LB 694, § 126.

9-234.01 Repealed. Laws 1994, LB 694, § 126.

9-235 Repealed. Laws 1994, LB 694, § 126.

9-235.01 Repealed. Laws 1994, LB 694, § 126.

9-235.02 Repealed. Laws 1994, LB 694, § 126.

9-235.03 Repealed. Laws 1994, LB 694, § 126.

9-236 Repealed. Laws 2007, LB 638, § 21.

9-237 Information; copies; with whom filed.

A copy of all information filed with the department pursuant to section 9-232.01 shall also be filed with the county clerk of the county in which the bingo is to be conducted, and if the bingo is conducted within the limits of an incorporated city or village, a copy shall also be filed with the city or village clerk. Such information shall be filed within five days after its filing with the department.

Source: Laws 1978, LB 351, § 41; Laws 1983, LB 259, § 28; Laws 1984, LB 949, § 38; R.S.Supp.,1984, § 9-164; Laws 1986, LB 1027, § 38; Laws 1994, LB 694, § 37.

9-238 Repealed. Laws 1994, LB 694, § 126.

9-239 Bingo; taxation.

(1) The department shall collect a state tax of three percent on the gross receipts received from the conducting of bingo within the state. The tax shall be remitted to the department. The department shall remit the tax to the State Treasurer for credit to the Charitable Gaming Operations Fund. The tax shall be remitted quarterly, not later than thirty days after the close of the preceding quarter, together with any other reports as may be required by the department.

(2) Unless otherwise provided in the Nebraska Bingo Act, no occupation tax on any receipts derived from the conduct of bingo shall be levied, assessed, or collected from any licensee under the act by any county, township, district, city, village, or other governmental subdivision or body having power to levy, assess, or collect such tax.

Source: Laws 1978, LB 351, § 42; Laws 1979, LB 164, § 13; Laws 1983, LB 259, § 29; Laws 1984, LB 949, § 39; R.S.Supp.,1984, § 9-165; Laws 1986, LB 1027, § 40; Laws 1990, LB 1055, § 4; Laws 1991, LB 427, § 21; Laws 1997, LB 99, § 1; Laws 2007, LB638, § 5.

9-240 Tax; deficiency; interest; penalty.

All deficiencies of the tax prescribed in subsection (1) of section 9-239 shall accrue interest and be subject to a penalty as provided for sales and use taxes in the Nebraska Revenue Act of 1967.

Source: Laws 1984, LB 949, § 71; R.S.Supp.,1984, § 9-197; Laws 1986, LB 1027, § 41.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

9-241 Repealed. Laws 1989, LB 767, § 97.

9-241.01 Conduct of bingo; authorized location.

A licensed organization shall conduct bingo only within the county in which the licensed organization has its principal office.

Source: Laws 1994, LB 694, § 38.

9-241.02 Bingo occasion; restrictions; exceptions.

(1) A licensed organization shall not hold more than ten bingo occasions per calendar month nor shall a licensed organization use any premises more than two times per calendar week for the conduct of bingo.

(2) No bingo occasion, except for a limited period bingo or a special event bingo, shall last for longer than six consecutive hours, and no bingo occasion, except for a limited period bingo or special event bingo, shall begin within three hours of the completion of another bingo occasion conducted within the same premises.

(3) Bingo occasions held as part of a limited period bingo shall not be counted in determining whether a licensed organization has complied with subsection (1) of this section.

(4) Nothing in this section or section 9-241.03 shall prohibit the department from approving a request by a licensed organization to reschedule a bingo occasion that was canceled due to an act of God. Such request shall be made in writing by the organization's bingo chairperson at least thirty days prior to the desired reschedule date.

Source: Laws 1994, LB 694, § 39.

9-241.03 Bingo occasions; additional restrictions; department; powers.

(1) Irrespective of the number of organizations authorized to hold bingo occasions within a premises:

(a) No more than two bingo occasions per calendar week shall be held within a premises except as otherwise provided in subsection (3) of this section; and

(b) No more than four limited period bingos with an aggregate of no more than twelve days per twelve-month period commencing October 1 of each year or such other date as the department may prescribe by rule and regulation and no more than two special event bingos with an aggregate of no more than fourteen days per calendar year shall be held within a premises.

(2) Bingo occasions held as part of a limited period bingo or special event bingo, or a bingo occasion that was canceled due to an act of God and rescheduled pursuant to section 9-241.02, shall not be counted in determining whether the use of a premises is in compliance with subdivision (1)(a) of this section.

(3) Notwithstanding the restriction contained in subdivision (1)(a) of this section, the department may authorize more than two bingo occasions per calendar week to be held within a premises if a licensed organization or commercial lessor can demonstrate in writing to the department that utilizing the premises for the conduct of bingo more than two times per calendar week will result in a cost savings for each of the licensed organizations who would be utilizing the premises. If the department authorizes a premises to be used more than two times per calendar week, the department shall not permit more than one bingo occasion per calendar day to be held in a premises except when one of the occasions is a limited period bingo or a special event bingo.

Source: Laws 1994, LB 694, § 40; Laws 1997, LB 248, § 4; Laws 2000, LB 1086, § 8; Laws 2001, LB 268, § 2; Laws 2007, LB638, § 6.

9-241.04 Premises; rental or lease; requirements.

A premises may be rented or leased by a licensed organization for the purpose of conducting bingo. Such rental or lease agreement shall be in writing

and may include the rental or lease of personal property, excluding bingo equipment, which is necessary in order to conduct a bingo occasion. Such rental or lease agreement shall be in accordance with the rules and regulations adopted by the department and the following:

(1) Except as provided in section 9-255.06, the premises must be rented or leased from a licensed commercial lessor;

(2) All bingo occasions shall be conducted only by the organization which holds the rental or lease agreement;

(3) No rental or lease payments shall be based on a percentage of the gross receipts or profits from bingo or on the number of persons attending or playing at any bingo occasion;

(4) No rental or lease agreement for real or personal property shall be in excess of fair market value;

(5) No rental or lease agreement for a premises shall contain any right to use bingo supplies or bingo equipment. A rental or lease agreement for bingo equipment shall be separate and distinct from that for a premises; and

(6) All rental and lease agreements shall be subject to prior approval by the department.

Source: Laws 1994, LB 694, § 41.

9-241.05 Bingo equipment; obtain from licensed distributor; exceptions.

(1) A licensed organization shall purchase or otherwise obtain bingo equipment only from a licensed distributor, except that a licensed organization may rent or lease bingo equipment, excluding disposable paper bingo cards, only from:

(a) A licensed distributor; or

(b) The licensed commercial lessor from whom the organization is leasing a premises for the conduct of bingo.

(2) All rental or lease agreements for bingo equipment shall be in writing and shall be subject to prior approval by the department.

(3) No purchase, rental, or lease of bingo equipment shall be in excess of fair market value.

(4) Nothing in this section shall prohibit:

(a) Two licensed organizations which may be conducting bingo within the same premises from equally sharing the cost of purchasing bingo equipment, excluding disposable paper bingo cards, and sharing its use;

(b) A licensed organization from lending its bingo equipment, excluding disposable paper bingo cards, without charge to another licensed organization in an emergency situation or to a qualifying nonprofit organization to use at a special event bingo;

(c) A licensed organization which has purchased or intends to purchase new bingo equipment from selling or donating its old bingo equipment to another licensed organization if prior written approval has been obtained from the department;

(d) An organization which has voluntarily canceled or allowed its license to conduct bingo to lapse or an organization which has had its license to conduct bingo suspended, canceled, or revoked from selling or donating its bingo

equipment to another licensed organization if prior written approval has been obtained from the department; or

(e) A licensed organization from selling or donating its disposable paper bingo cards, when authorization has been obtained from the department, to another licensed organization in an emergency situation or to a qualifying nonprofit organization to use at a special event bingo.

Source: Laws 1994, LB 694, § 42; Laws 2002, LB 545, § 15.

9-241.06 Bingo occasion; alcoholic beverages prohibited; exception; food; beverages; sale; expenses.

No alcoholic beverages shall be sold or served to the public during a bingo occasion unless it is a limited period bingo or special event bingo at which no one under eighteen years of age is permitted to play bingo. Nonalcoholic beverages, as well as food, may be served and sold during any bingo occasion conducted by a licensed organization if all of the profits from the sales are paid to such licensed organization. The proceeds from the sale of such food and beverage items shall not be commingled with the organization's bingo receipts or placed in the bingo checking account. No expense associated with the purchase, preparation, serving, or selling of such food and beverage items shall be paid using bingo receipts.

Source: Laws 1994, LB 694, § 43.

9-241.07 Advertising; limitations; exception.

Only a licensed organization or a qualifying nonprofit organization may advertise a bingo occasion, a limited period bingo, or a special event bingo. No advertising for any bingo occasion or occasions conducted by any organization shall include any reference to an aggregate value of bingo prizes exceeding four thousand dollars.

Source: Laws 1994, LB 694, § 44.

9-241.08 Bingo game; participation; conduct of bingo; restrictions.

(1) No person under eighteen years of age shall play or participate in any bingo game, except that any person may play bingo at a limited period bingo or special event bingo if (a) no alcoholic beverages are served and (b) no prize or prizes to be awarded exceed twenty-five dollars in value per game.

(2) All persons involved in the conduct of bingo must be at least eighteen years of age.

(3) No person who is conducting or assisting in the conduct of a bingo occasion shall be permitted to participate as a player at that bingo occasion.

(4) No licensed commercial lessor, distributor, or manufacturer, person having a substantial interest in a licensed commercial lessor, distributor, or manufacturer, or employee or agent of a licensed commercial lessor, distributor, or manufacturer shall operate, manage, conduct, advise, or assist in the operating, managing, conducting, promoting, or administering of any bingo game or occasion. For purposes of this subsection, the term assist shall include, but not be limited to, the payment of any expense of a licensed organization, whether such payment is by loan or otherwise.

(5) No person, licensee, or permittee or employee or agent thereof shall knowingly permit an individual under eighteen years of age to play or partici-

pate in any way in a bingo game conducted pursuant to the Nebraska Bingo Act, excluding those individuals allowed by law to play at a limited period bingo or special event bingo when (a) no alcoholic beverages are served and (b) no prize or prizes that will be awarded exceed twenty-five dollars in value per game.

Source: Laws 1994, LB 694, § 45; Laws 1997, LB 248, § 5.

9-241.09 Bingo chairperson or alternate bingo chairperson; licensed gaming manager; presence during bingo occasion; when required.

(1) A bingo chairperson or another member of the licensed organization who has been designated as an alternate bingo chairperson shall be present during the duration of each bingo occasion conducted pursuant to a Class I license.

(2) A licensed gaming manager shall be present during the duration of each bingo occasion conducted pursuant to a Class II license, except that in the case of an emergency, the licensed organization's bingo chairperson or alternate bingo chairperson may substitute for the gaming manager.

Source: Laws 1994, LB 694, § 46; Laws 1995, LB 344, § 6.

9-241.10 Bingo cards; requirements; department; rules and regulations.

(1) An organization licensed to conduct bingo under a Class II license shall not use any reusable hard bingo card or shutter card to conduct bingo.

(2) All licensed organizations shall accurately account for and report the sale, use, rental, or lease of all bingo cards used at each bingo occasion. The department shall prescribe by rule and regulation the method by which such sale, use, rental, or lease is to be recorded, including, but not limited to, the manner in which all bingo cards are to be issued and receipted at a bingo occasion.

(3) The department shall establish by rule and regulation the manner in which bingo shall be conducted, including rules for the methods of conducting and playing bingo and for the utilization of bingo supplies and bingo equipment to insure that each player is afforded a fair and equal opportunity to win.

Source: Laws 1994, LB 694, § 47; Laws 2003, LB 429, § 6.

9-242 Repealed. Laws 1994, LB 694, § 126.

9-243 Repealed. Laws 1994, LB 694, § 126.

9-244 Repealed. Laws 1994, LB 694, § 126.

9-245 Repealed. Laws 1994, LB 694, § 126.

9-246 Repealed. Laws 1994, LB 694, § 126.

9-247 Repealed. Laws 1994, LB 694, § 126.

9-248 Repealed. Laws 1994, LB 694, § 126.

9-249 Repealed. Laws 1994, LB 694, § 126.

9-250 Repealed. Laws 1994, LB 694, § 126.

9-251 Repealed. Laws 1994, LB 694, § 126.

9-252 Repealed. Laws 1994, LB 694, § 126.

9-253 Repealed. Laws 1994, LB 694, § 126.

9-254 Repealed. Laws 1994, LB 694, § 126.

9-255 Bingo games; selection of designators.

Only the following means of random selection of the numbered designators shall be used in the conduct of any bingo game:

(1) An electrically operated blower machine containing balls which the operator may take from the air one at a time while the blower is in operation, or which provides a trap or other mechanical means for automatically catching not more than one ball at a time while the blower is in operation; or

(2) A mechanically or manually operated cage which provides a trap or other mechanical means for automatically catching not more than one ball at a time while the cage is in operation.

For any means of selection permitted by subdivisions (1) and (2) of this section, the balls to be drawn shall be essentially the same in size, shape, weight, balance, and all other characteristics so that at all times during the conduct of bingo each ball possesses the capacity for equal agitation with any other ball within the receptacle. All balls within the total set shall be subject to random selection at the beginning of each bingo game.

Source: Laws 1978, LB 351, § 39; Laws 1983, LB 259, § 26; R.S.1943, (1983), § 9-162; Laws 1986, LB 1027, § 56; Laws 1994, LB 694, § 48.

9-255.01 Bingo cards, equipment, and supplies; requirements.

All bingo cards and any other bingo equipment or supplies furnished, sold, rented, or leased for use at any bingo occasion subject to regulation under the Nebraska Bingo Act shall conform in all respects to the specifications imposed by rule and regulation by the department, including, but not limited to, the proper manufacture, assembly, packaging, and numbering of bingo cards. All bingo cards and any other bingo equipment or supplies which do not conform to such specifications shall be considered contraband goods pursuant to section 9-262.01.

Source: Laws 1994, LB 694, § 49.

9-255.02 Prizes; limitations.

(1) Irrespective of whether a bingo game or a bingo occasion is conducted jointly by two or more licensed organizations, no prize for a single bingo game shall exceed one thousand dollars in value and the aggregate value of all bingo prizes at any bingo occasion shall not exceed four thousand dollars.

(2) A winner shall be determined for each bingo game, and each winner shall be awarded and delivered the prize on the same day that the bingo occasion is conducted.

(3) At least fifty percent of the gross receipts derived from the conduct of bingo shall be awarded in bingo prizes during each quarterly reporting period. The licensed organization shall clearly post at each bingo occasion the percentage of gross receipts paid out in prizes for the last preceding quarter.

(4) In addition to the prizes permitted by subsection (1) of this section, a licensed organization may award promotional prizes in cash or merchandise to players at a bingo occasion if:

(a) No consideration is charged in order to be eligible to win a promotional prize except that given to participate as a player in the bingo occasion;

(b) The total fair market value of all promotional prizes awarded at a bingo occasion does not exceed one hundred dollars in value or, in the case of a limited period bingo, does not exceed two hundred fifty dollars in value;

(c) The winner of any promotional prize is a bingo player who is present at the bingo occasion; and

(d) The winners are determined by an element of chance or some other factor which does not involve any scheme which utilizes any type of pickle card, the game of keno, a scratch-off or rub-off ticket, any promotional game tickets authorized by section 9-701, any non-telecommunication-related, player-activated electronic or electromechanical facsimile of any game of chance, or any slot machine of any kind.

(5) The total fair market value of all promotional prizes awarded at a bingo occasion shall be excluded from determination of the fifty-percent prize payout requirement in subsection (3) of this section.

(6) The licensed organization's cost of promotional prizes permitted by subsection (4) of this section shall not be included in determining compliance with the expense limitation of fourteen percent of bingo gross receipts provided in section 9-255.04.

Source: Laws 1994, LB 694, § 50; Laws 1995, LB 344, § 7; Laws 2002, LB 545, § 16.

9-255.03 Gross receipts; segregation; books and records; commingling of funds.

(1) The gross receipts, less the amount awarded in prizes at each bingo occasion, shall be segregated from all other revenue of a licensed organization and placed in a separate bingo checking account of the licensed organization. All lawful purpose donations and all bingo expenses, including expenses for the management, operation, or conduct of bingo but excluding the payment of prizes, shall be paid by a check from such account. Prizes may be paid out in cash by the licensed organization if prize payments in cash of five hundred dollars or more are receipted in a manner prescribed by the department in rule and regulation.

(2) Separate books of the bingo operations shall be maintained by the licensed organization. Records, reports, lists, and all other information required by the Nebraska Bingo Act and any rules and regulations adopted pursuant to the act shall be preserved for at least three years.

(3) A licensed organization may commingle funds received from the conduct of bingo with any general operating funds of the licensed organization by means of a check or electronic funds transfer, but the burden of proof shall be on the licensed organization to demonstrate that such commingled funds are not used to make any payments associated with the conduct of bingo and are used for a lawful purpose.

Source: Laws 1994, LB 694, § 51.

9-255.04 Expenses; limitations; allocation; payment of workers; expenses; how paid.

(1) No expense shall be incurred or amounts paid in connection with the conduct of bingo by a licensed organization except those which are reasonable and necessary.

(2) A licensed organization shall not spend more than fourteen percent of its bingo gross receipts to pay the expenses of conducting bingo. The actual cost of (a) license and local permit fees, (b) any taxes authorized by the Nebraska Bingo Act, (c) bingo and promotional prizes, (d) the purchase, rental, or lease of bingo equipment, and (e) the rental or lease of a premises for the conduct of bingo and the purchase, rental, or lease of personal property as allowed by the department in rule and regulation which is necessary for the conduct of bingo shall not be included in determining compliance with the expense limitation contained in this section.

(3) A licensed organization which is also licensed to conduct a lottery by the sale of pickle cards pursuant to the Nebraska Pickle Card Lottery Act may allocate a portion of the expenses associated with the conduct of its bingo occasions to its lottery by the sale of pickle cards conducted at such bingo occasions. Such allocation shall be based upon the percentage that pickle card gross proceeds derived from the sale of pickle cards at the bingo occasions represents to the total of bingo gross receipts and pickle card gross proceeds derived from such bingo occasions for the previous annual reporting period. An organization licensed to conduct bingo that has not been previously licensed shall determine such allocation based upon the percentage that pickle card gross proceeds derived from the sale of pickle cards at the bingo occasions represents to the total of bingo gross receipts and pickle card gross proceeds derived from such bingo occasions for the initial three consecutive calendar months of operation.

(4) The total amount of expenses that may be allocated to the organization's lottery by the sale of pickle cards shall be subject to the limitations on bingo expenses as provided for in the Nebraska Bingo Act with respect to the fourteen-percent expense limitation and the fair-market-value limitation on the purchase, rental, or lease of bingo equipment and the rental or lease of personal property or of a premises for the conduct of bingo. No portion of the twelve percent of the definite profit of a pickle card unit as allowed by section 9-347 to pay the allowable expenses of operating a lottery by the sale of pickle cards shall be used to pay any expenses associated with the sale of pickle cards at a bingo occasion.

(5) All persons paid for working at a bingo occasion, including pickle card sellers but excluding concession workers, shall be paid only by a check written from the licensed organization's bingo checking account and shall not receive any other compensation or payment for working at a bingo occasion from any other source. Such wages shall be at an hourly or occasion rate and shall be included in the amount allowed by the expense limitation provided in subsection (2) of this section. No person shall receive any compensation or payment from a licensed organization based upon a percentage of the organization's bingo gross receipts or profit.

(6) No expenses associated with the conduct of bingo may be paid directly from the licensed organization's pickle card checking account. A licensed organization may transfer funds from its pickle card checking account to its

bingo checking account as permitted by subsection (3) of this section by a check drawn on the pickle card checking account or by electronic funds transfer as provided only by section 9-347.

Source: Laws 1994, LB 694, § 52; Laws 1995, LB 344, § 8; Laws 2002, LB 545, § 17; Laws 2009, LB286, § 1.

Cross References

Nebraska Pickle Card Lottery Act, see section 9-301.

9-255.05 Licensed organization; reports required.

(1) A licensed organization shall report annually to the department, on a form prescribed by the department, a complete and accurate accounting of its gross receipts. The annual report shall demonstrate that the gross receipts less cash prizes paid have been retained in the organization's bingo checking account or expended solely for authorized expenses pursuant to section 9-255.04 or lawful purpose donations.

(2) The annual report shall cover the organization's bingo activities from July 1 through June 30 of each year or such other period as the department may prescribe by rule and regulation. Such report shall be submitted to the department by August 15 of each year or such other date as the department may prescribe by rule and regulation.

(3) A copy of the report shall be submitted to the organization's membership.

(4) Upon dissolution of a licensed organization or if a previously licensed organization does not renew its license to conduct bingo, its license renewal application is denied, or its license is canceled or revoked, all remaining profits derived from the conduct of bingo shall be utilized for a lawful purpose and shall not be distributed to any private individual or shareholder. A complete and accurate report of the organization's bingo activity shall be filed with the department, on a form prescribed by the department, no later than forty-five days after the date the organization is dissolved or no later than forty-five days after the expiration date of the license or the effective date of the license renewal application denial or license cancellation or revocation. The report shall cover the period from the end of the organization's most recent annual report filed through the date the organization is dissolved or the date the license renewal application has been denied or the license has been canceled or revoked or has otherwise expired. The organization shall include with the report a plan for the disbursement of any remaining profits which shall be subject to approval by the department. Such plan shall identify the specific purposes for which the remaining profits will be utilized.

(5) In addition to the reports required by subsections (1) and (4) of this section, the department may prescribe by rule and regulation the filing of a bingo revenue status report by August 15 of each year or such other date as the department may prescribe by rule and regulation, on a form prescribed by the department, listing all disbursements of bingo revenue until all such revenue has been expended either for allowable expenses or for a lawful purpose.

Source: Laws 1994, LB 694, § 53; Laws 2002, LB 545, § 18.

9-255.06 Commercial lessor's license; when required; application; form; contents; fee; bingo equipment; restrictions; conduct of bingo; restrictions; exemption.

(1) An individual, partnership, limited liability company, corporation, or organization which will be leasing a premises to one or more organizations for the conduct of bingo and which will receive more than two hundred fifty dollars per month as aggregate total rent from leasing such premises for the conduct of bingo shall first obtain a commercial lessor's license from the department. The license shall be applied for on a form prescribed by the department and shall contain:

(a) The name and home address of the applicant;

(b) If the applicant is an individual, the applicant's social security number;

(c) If the applicant is not a resident of this state or is not a corporation, the full name, business address, and home address of a natural person, at least nineteen years of age, who is a resident of and living in this state designated by the applicant as a resident agent for the purpose of receipt and acceptance of service of process and other communications on behalf of the applicant;

(d) A designated mailing address and legal description of the premises intended to be covered by the license sought;

(e) The lawful capacity of the premises for public assembly purposes;

(f) The amount of rent to be paid or other consideration to be given directly or indirectly for each bingo occasion to be conducted; and

(g) Any other information which the department deems necessary.

(2) An application for a commercial lessor's license shall be accompanied by a biennial fee of two hundred dollars for each premises the applicant is seeking to lease pursuant to subsection (1) of this section. A commercial lessor who desires to lease more than one premises for the conduct of bingo shall file a separate application and pay a separate fee for each such premises.

(3) The information required by this section shall be kept current. The commercial lessor shall notify the department within thirty days of any changes to the information contained on or with the application.

(4) A commercial lessor who will be leasing or renting bingo equipment in conjunction with his or her premises shall obtain such equipment only from a licensed distributor, except that a commercial lessor shall not purchase or otherwise obtain disposable paper bingo cards from any source.

(5) A commercial lessor, the owner of a premises, and all parties who lease or sublease a premises which ultimately is leased to an organization for the conduct of bingo shall not be involved directly with the conduct of any bingo occasion regulated by the Nebraska Bingo Act which may include, but not be limited to, the managing, operating, promoting, advertising, or administering of bingo. Such persons shall not derive any financial gain from any gaming activities regulated by Chapter 9 except as provided in subsection (4) of section 9-347 if the individual is licensed as a pickle card operator, if the individual is licensed as a lottery operator or authorized sales outlet location pursuant to the Nebraska County and City Lottery Act, or if the individual is contracted with as a lottery game retailer pursuant to the State Lottery Act.

(6) A nonprofit organization owning its own premises which in turn rents or leases its premises solely to its own auxiliary shall be exempt from the licensing requirements contained in this section.

Source: Laws 1994, LB 694, § 54; Laws 1997, LB 752, § 62; Laws 2000, LB 1086, § 9; Laws 2002, LB 545, § 19; Laws 2007, LB638, § 7.

Cross References

Nebraska County and City Lottery Act, see section 9-601.
State Lottery Act, see section 9-801.

9-255.07 Distributor's license; application; form; contents; renewal; fee; exemption; distributor, spouse, or employee; restrictions on activities.

(1) Any individual, partnership, limited liability company, or corporation which desires to sell, lease, distribute, or otherwise provide bingo equipment in this state to a licensed commercial lessor or a licensed organization for use in a bingo occasion which is regulated by the Nebraska Bingo Act shall first apply for and obtain a distributor's license from the department. Distributors' licenses may be renewed biennially. The expiration date shall be September 30 of every odd-numbered year or such other date as the department may prescribe by rule and regulation. An application for license renewal shall be submitted to the department at least forty-five days prior to the expiration date of the license. An applicant for a distributor's license shall have its principal office located within this state. The license shall be applied for on a form prescribed by the department and shall contain:

(a) The name and home address of the applicant;

(b) If the applicant is an individual, the applicant's social security number;

(c) The address and legal description of each location where the applicant stores or distributes bingo equipment;

(d) A sworn statement by the applicant or appropriate officer of the applicant that the applicant will comply with all provisions of the act and all rules and regulations adopted pursuant to the act; and

(e) Any other information which the department deems necessary.

(2) The information required by this section shall be kept current. The distributor shall notify the department within thirty days of any changes to the information contained on or with the application.

(3) The application shall be accompanied by a biennial license fee of three thousand fifty dollars.

(4) Any person licensed as a distributor pursuant to section 9-330 may act as a distributor pursuant to this section without filing a separate application or submitting the license fee required by this section.

(5) A licensed distributor or person having a substantial interest therein shall not hold any other type of license issued pursuant to Chapter 9 except as provided in sections 9-330 and 9-632.

(6) No distributor or spouse or employee of any distributor shall participate in the conduct or operation of any bingo game or occasion or any other kind of gaming activity which is authorized or regulated under Chapter 9 except to the exclusive extent of his or her statutory duties as a licensed distributor as provided by this section and except as provided in sections 9-330 and 9-632. No distributor or employee or spouse of any distributor shall have a substantial interest in another distributor, a manufacturer, a manufacturer-distributor as defined in section 9-616 other than itself, a licensed organization, or any other licensee regulated under Chapter 9. Membership in a licensed organization shall not be deemed a violation of this section.

Source: Laws 1994, LB 694, § 55; Laws 1997, LB 248, § 6; Laws 1997, LB 752, § 63.

9-255.08 Distributor; purchase or sale of bingo equipment; restrictions; records; reporting.

(1) A licensed distributor shall purchase or otherwise obtain bingo equipment only from a licensed manufacturer.

(2) A licensed distributor shall sell or otherwise supply bingo equipment for use in a bingo game regulated by the Nebraska Bingo Act only to a licensed organization, a qualifying nonprofit organization, a licensed commercial lessor, or a federally recognized Indian tribe, except that a licensed distributor shall not sell disposable paper bingo cards in this state to anyone other than a licensed organization, a qualifying nonprofit organization, or a federally recognized Indian tribe. Notwithstanding the restrictions in this subsection, a licensed distributor may, with prior authorization from the department, sell disposable paper bingo cards for use in a bingo game not regulated by the Nebraska Bingo Act.

(3) A licensed distributor shall keep and maintain a complete set of records which shall include all details of all activities of the distributor related to the conduct of the licensed activity as may be required by the department, including the quantities and types of all bingo equipment purchased and sold. Such records shall be available upon request for inspection by the department. All records required by the department shall be maintained for at least three years after the last day of the distributor's fiscal year.

(4) The department may require by rule and regulation periodic reporting from the licensed distributor relative to its bingo activities in this state.

Source: Laws 1994, LB 694, § 56; Laws 2002, LB 545, § 20.

9-255.09 Manufacturer's license; application; form; contents; renewal; fee; exemption; manufacturer, spouse, or employee; restriction on activities.

(1) Any individual, partnership, limited liability company, or corporation which desires to sell or otherwise supply bingo equipment in this state to a licensed distributor shall first apply for and obtain a manufacturer's license from the department. Manufacturers' licenses may be renewed biennially. The expiration date shall be September 30 of every odd-numbered year or such other date as the department may prescribe by rule and regulation. An application for license renewal shall be submitted to the department at least forty-five days prior to the expiration date of the license. The license shall be applied for on a form prescribed by the department and shall contain:

(a) The business name and address of the applicant and the name and address of each of the applicant's separate locations which manufacture or store bingo equipment and any location from which the applicant distributes or promotes bingo equipment;

(b) The name and home address of the applicant;

(c) If the applicant is an individual, the applicant's social security number;

(d) If the applicant is not a resident of this state or is not a corporation, the full name, business address, and home address of a natural person, at least nineteen years of age, who is a resident of and living in this state designated by the applicant as a resident agent for the purpose of receipt and acceptance of service of process and other communications on behalf of the applicant;

(e) A sworn statement by the applicant or appropriate officer of the applicant that the applicant will comply with all provisions of the Nebraska Bingo Act and all rules and regulations adopted pursuant to the act; and

(f) Any other information which the department deems necessary.

(2) The application shall be accompanied by a biennial license fee of three thousand fifty dollars.

(3) The information required by this section shall be kept current. The manufacturer shall notify the department within thirty days of any changes to the information contained on or with the application.

(4) Any person licensed as a manufacturer pursuant to section 9-332 may act as a manufacturer pursuant to this section without filing a separate application or submitting the license fee required by this section.

(5) A licensed manufacturer shall not hold any other type of license issued pursuant to Chapter 9 except as provided in sections 9-332 and 9-632.

(6) No manufacturer or spouse or employee of the manufacturer shall participate in the conduct or operation of any bingo game or occasion or any other kind of gaming activity which is authorized or regulated under Chapter 9 except to the exclusive extent of his or her statutory duties as a licensed manufacturer or employee thereof as provided by this section and except as provided in sections 9-332 and 9-632 and the State Lottery Act. No manufacturer or employee or spouse of any manufacturer shall have a substantial interest in another manufacturer, a distributor, a manufacturer-distributor as defined in section 9-616 other than itself, a licensed organization, or any other licensee regulated under Chapter 9.

Source: Laws 1994, LB 694, § 57; Laws 1997, LB 248, § 7; Laws 1997, LB 752, § 64.

Cross References

State Lottery Act, see section 9-801.

9-255.10 Manufacturer; sale of bingo equipment; restrictions; records; department; powers.

(1) A licensed manufacturer shall sell or otherwise supply bingo equipment in this state only to a licensed distributor or a federally recognized Indian tribe, except that nothing in this section shall prohibit a licensed manufacturer from selling or otherwise supplying bingo equipment, excluding disposable paper bingo cards, to a qualifying nonprofit organization as provided for in section 9-230.01.

(2) A licensed manufacturer shall keep and maintain a complete set of records which shall include all details of all activities of the licensee relating to the conduct of the licensed activity as may be required by the department, including the quantities and types of all bingo equipment sold to each Nebraska-licensed distributor. Such records shall be made available for inspection upon request by the department. All records required by the department shall be maintained for a period of at least three years after the last day of the licensee's fiscal year.

(3) The department may require, by rule and regulation, periodic reporting from the manufacturer relative to its bingo activities in this state.

(4) The department may require departmental approval of bingo equipment prior to the manufacturer offering or marketing such equipment in this state. Approval by the department shall be based upon conformance with specifications imposed by the department by rule and regulation adopted pursuant to the Nebraska Bingo Act.

(5) The department may require a manufacturer seeking approval of any bingo equipment to pay the actual costs incurred by the department in examining the equipment. If required, the anticipated costs shall be paid in advance by the manufacturer. After completion of the examination, the department shall refund overpayments or charge and collect amounts sufficient to reimburse the department for underpayment of actual costs.

Source: Laws 1994, LB 694, § 58.

9-256 Repealed. Laws 1994, LB 694, § 126.

9-257 Repealed. Laws 1994, LB 694, § 126.

9-258 Repealed. Laws 1994, LB 694, § 126.

9-259 Repealed. Laws 1994, LB 694, § 126.

9-260 Repealed. Laws 1994, LB 694, § 126.

9-261 Repealed. Laws 1994, LB 694, § 126.

9-262 Violations; penalties; enforcement; venue.

(1) Except when another penalty is specifically provided, any person, licensee, or permittee, or employee or agent thereof, who violates any provision of the Nebraska Bingo Act, or who causes, aids, abets, or conspires with another to cause any person, licensee, or permittee, or any employee or agent thereof, to violate the act, shall be guilty of a Class I misdemeanor for the first offense and a Class IV felony for any second or subsequent violation. Any licensee guilty of violating any provision of the act more than once in a twelve-month period may have its license canceled or revoked.

(2) Each of the following violations of the Nebraska Bingo Act shall be a Class IV felony:

(a) Giving, providing, or offering to give or provide, directly or indirectly, to any public official, employee, or agent of this state, or any agencies or political subdivisions of the state, any compensation or reward or share of the money for property paid or received through gambling activities regulated under Chapter 9 in consideration for obtaining any license, authorization, permission, or privilege to participate in any gaming operation except as authorized by the Nebraska Bingo Act or any rules or regulations adopted and promulgated pursuant to such act;

(b) Knowingly filing a false report under the Nebraska Bingo Act; or

(c) Knowingly falsifying or making any false entry in any books or records with respect to any transaction connected with the conduct of bingo activity.

(3) Intentionally employing or possessing any device to facilitate cheating in a bingo game or using any fraudulent scheme or technique in connection with any bingo game is a violation of the Nebraska Bingo Act. The offense is a:

(a) Class II misdemeanor when the amount gained or intended to be gained through the use of such items, schemes, or techniques is less than five hundred dollars;

(b) Class I misdemeanor when the amount gained or intended to be gained through the use of such items, schemes, or techniques is five hundred dollars or more but less than one thousand five hundred dollars; and

(c) Class IV felony when the amount gained or intended to be gained through the use of such items, schemes, or techniques is one thousand five hundred dollars or more.

(4) In all proceedings initiated in any court or otherwise under the Nebraska Bingo Act, it shall be the duty of the Attorney General and appropriate county attorney to prosecute and defend all such proceedings.

(5) The failure to do any act required by or under the Nebraska Bingo Act shall be deemed an act in part in the principal office of the department. Any prosecution under such act may be conducted in any county where the defendant resides or has a place of business or in any county in which any violation occurred.

(6) In the enforcement and investigation of any offense committed under the Nebraska Bingo Act, the department may call to its aid any sheriff, deputy sheriff, or other peace officer in the state.

Source: Laws 1978, LB 351, § 47; Laws 1983, LB 259, § 32; Laws 1984, LB 949, § 43; Laws 1985, LB 408, § 16; R.S.Supp.,1985, § 9-170; Laws 1986, LB 1027, § 63; Laws 1987, LB 523, § 1; Laws 1988, LB 295, § 33; Laws 1995, LB 344, § 9; Laws 1997, LB 248, § 8; Laws 2015, LB605, § 1.

9-262.01 Tax Commissioner; power to seize contraband; effect.

(1) The Tax Commissioner or his or her agents or employees, at the direction of the Tax Commissioner, or any peace officer of this state may seize, without a warrant, the following contraband goods found any place in this state:

(a) Any bingo supplies and equipment which do not conform in all respects to specifications imposed by the Nebraska Bingo Act or any rules or regulations adopted and promulgated pursuant to the act;

(b) Any bingo equipment purchased by any licensed organization from any source other than a licensed distributor or as provided in section 9-241.05; and

(c) Any bingo equipment furnished, sold, or rented for use in a bingo occasion subject to regulation under the act without the proper licenses or approval.

(2) The Tax Commissioner may, upon satisfactory proof, direct return of any confiscated bingo supplies and equipment when he or she has reason to believe that the owner has not willfully or intentionally failed to comply with the act.

(3) The Tax Commissioner may, upon finding that an owner of contraband goods has willfully or intentionally failed to comply with the act, confiscate such goods. Any bingo supplies and equipment confiscated may be destroyed.

(4) The seizure and destruction of bingo supplies and equipment shall not relieve any person from a fine, imprisonment, or other penalty for violation of the act.

(5) The Tax Commissioner or his or her agents or employees, when directed to do so by the Tax Commissioner, or any peace officer of this state shall not be responsible for negligence in any court for the seizure or confiscation of any bingo supplies and equipment pursuant to this section.

Source: Laws 1989, LB 767, § 25; Laws 1994, LB 694, § 59.

9-263 Violations; standing to sue.

Any person in this state, including any law enforcement official, who has cause to believe that (1) any licensed organization, (2) any lessor of facilities or bingo equipment and supplies used for a bingo occasion, (3) any person conducting any game of bingo, (4) any employee or agent of such licensed organization, lessor, or person, or (5) any person acting in concert with such licensed organization, lessor, or person has engaged in or is engaging in any conduct in violation of the Nebraska Bingo Act or has aided or is aiding another in any conduct in violation of such act may commence a civil action in any district court of this state.

Source: Laws 1978, LB 351, § 49; Laws 1979, LB 164, § 14; Laws 1983, LB 259, § 33; Laws 1984, LB 949, § 45; R.S.Supp.,1984, § 9-172; Laws 1986, LB 1027, § 64.

9-264 Civil action; relief permitted.

In any civil action commenced pursuant to section 9-263, a court may allow:

(1) A temporary restraining order or injunction, with or without a bond as the court may direct, prohibiting a party to the action from continuing or engaging in such conduct, aiding in such conduct, or doing any act in furtherance of such conduct;

(2) A declaration that the conduct by a licensed organization or a qualifying nonprofit organization or employee or agent of the organization, which is a party to the action, constitutes a violation of the Nebraska Bingo Act and a determination of the number and times of violations for certification to the department for appropriate license or permit revocation purposes;

(3) A permanent injunction under principles of equity and on reasonable terms;

(4) An accounting of the profits, earnings, or gains resulting directly and indirectly from such violations, with restitution or a distribution of such profits, earnings, or gains to all licensed organizations or qualifying nonprofit organizations affected by such violations which apply to the court and show that they suffered monetary losses by reason of such violations and with distribution of any remaining profits, earnings, or gains to the state; and

(5) Reasonable attorney's fees and court costs.

Source: Laws 1979, LB 164, § 15; Laws 1983, LB 259, § 35; Laws 1984, LB 949, § 47; R.S.Supp.,1984, § 9-174; Laws 1986, LB 1027, § 65; Laws 1991, LB 427, § 27; Laws 1994, LB 694, § 60.

9-265 Civil procedure statutes; applicability.

Proceedings under section 9-263 shall be subject to and governed by the district court civil procedure statutes. Issues properly raised shall be tried and

determined as in other civil actions in equity. All orders, judgments, and decrees may be reviewed as other orders, judgments, and decrees.

Source: Laws 1979, LB 164, § 16; R.S.1943, (1983), § 9-175; Laws 1986, LB 1027, § 66.

Cross References

Appeals, procedure, see section 25-1901 et seq.
Civil procedure statutes, see section 25-101 et seq.

9-266 Reports and records; disclosure; limitations; violation; penalty.

(1) Except in accordance with a proper judicial order or as otherwise provided by this section or other law, it shall be a Class I misdemeanor for the Tax Commissioner or any employee or agent of the Tax Commissioner to make known, in any manner whatsoever, the contents of any reports or records submitted by a licensed distributor or manufacturer or the contents of any personal history reports submitted by any licensee or license applicant to the department pursuant to the Nebraska Bingo Act and any rules and regulations adopted and promulgated pursuant to such act.

(2) Nothing in this section shall be construed to prohibit (a) the delivery to a licensee, his or her duly authorized representative, or his or her successors, receivers, trustees, personal representatives, administrators, assignees, or guarantors, if directly interested, a certified copy of any report or record, (b) the publication of statistics so classified as to prevent the identification of particular reports or records, (c) the inspection by the Attorney General, a county attorney, or other legal representative of the state of reports or records submitted by a licensed distributor or manufacturer when information on the reports or records is considered by the Attorney General, county attorney, or other legal representative to be relevant to any action or proceeding instituted by the licensee or against whom an action or proceeding is being considered or has been commenced by any state agency or county, (d) the furnishing of any information to the United States Government or to states allowing similar privileges to the Tax Commissioner, (e) the disclosure of information and records to a collection agency contracting with the Tax Commissioner for the collection of delinquent taxes under the Nebraska Bingo Act, (f) the publication or disclosure of final administrative opinions and orders made by the Tax Commissioner in the adjudication of license or permit denials, suspensions, cancellations, or revocations, (g) the release of any application, without the contents of any submitted personal history report or social security number, filed with the department to obtain a license or permit to conduct activities under the act, which shall be deemed a public record, (h) the release of any report filed pursuant to section 9-255.05 or any other report filed by a licensee pursuant to the act, which shall be deemed a public record, or (i) the notification of an applicant, a licensee, or a licensee's duly authorized representative of the existence of and the grounds for an administrative action to deny the license application of, to revoke, cancel, or suspend the license of, or to levy an administrative fine upon any agent or employee of the applicant, the licensee, or any other person upon whom the applicant or licensee relies to conduct activities authorized by the act.

(3) Nothing in this section shall prohibit the Tax Commissioner or any employee or agent of the Tax Commissioner from making known the names of persons, firms, or corporations licensed or issued a permit to conduct activities

under the act, the locations at which such activities are conducted by licensees or permittees, or the dates on which such licenses or permits were issued.

(4) Notwithstanding subsection (1) of this section, the Tax Commissioner may permit the Postal Inspector of the United States Postal Service or his or her delegates to inspect reports or records submitted by a licensed distributor or manufacturer pursuant to the act when information on the reports or records is relevant to any action or proceeding instituted or being considered by the United States Postal Service against such person for the fraudulent use of the mails to carry and deliver false and fraudulent tax returns to the Tax Commissioner with the intent to defraud the State of Nebraska or to evade the payment of Nebraska state taxes.

(5) Notwithstanding subsection (1) of this section, the Tax Commissioner may permit other tax officials of this state to inspect reports or records submitted pursuant to the act, but such inspection shall be permitted only for purposes of enforcing a tax law and only to the extent and under the conditions prescribed by the rules and regulations of the Tax Commissioner.

Source: Laws 1988, LB 295, § 34; Laws 1989, LB 767, § 27; Laws 1991, LB 427, § 28; Laws 1994, LB 694, § 61; Laws 1995, LB 344, § 10; Laws 2007, LB638, § 8.

ARTICLE 3

PICKLE CARDS

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9-301 Act, how cited.

Sections 9-301 to 9-356 shall be known and may be cited as the Nebraska Pickle Card Lottery Act.

Source: Laws 1986, LB 1027, § 67; Laws 1988, LB 1232, § 4; Laws 1991, LB 795, § 1; Laws 1994, LB 694, § 62; Laws 1996, LB 1277, § 2; Laws 2002, LB 545, § 21.

9-302 Purposes of act.

(1) The purpose of the Nebraska Pickle Card Lottery Act is to protect the health and welfare of the public, to protect the economic welfare and interest in pickle card sales and winnings, to insure that the profits derived from the operation of lottery by the sale of pickle cards are accurately reported in order that their revenue-raising potential be fully exposed, to insure that the profits are used for legitimate purposes, and to prevent the purposes for which the profits of lottery by the sale of pickle cards are to be used from being subverted by improper elements. Lottery by the sale of pickle cards shall be played and conducted only by those methods permitted in the Nebraska Pickle Card Lottery Act. No other form, means of selection, or method of play shall be authorized or permitted.

(2) The purpose of the Nebraska Pickle Card Lottery Act is also to completely and fairly regulate each level of the traditional marketing scheme of pickle cards to insure fairness, quality, and compliance with the Constitution of the State of Nebraska. To accomplish such purpose, the regulation and licensure of manufacturers of pickle cards, nonprofit organizations, distributors, sales agents, pickle card operators, and any other person involved in the marketing scheme are necessary.

Source: Laws 1986, LB 1027, § 68; Laws 1988, LB 1232, § 5.

9-303 Definitions, where found.

For purposes of the Nebraska Pickle Card Lottery Act, unless the context otherwise requires, the definitions found in sections 9-304 to 9-321.03 shall be used.

Source: Laws 1986, LB 1027, § 69; Laws 1988, LB 1232, § 6; Laws 1994, LB 694, § 63; Laws 2003, LB 3, § 2.

9-304 Allowable expenses, defined.

Allowable expenses shall mean:

(1) All costs associated with the purchasing, printing, or manufacturing of any items to be used or distributed to participants;

(2) All office expenses;

(3) All promotional expenses;

(4) All salaries of persons employed to operate the lottery by the sale of pickle cards;

(5) Any rental or lease expense;

(6) Any fee paid to any person associated with the operation of any lottery by the sale of pickle cards, including any commission paid to a sales agent and any expense for which a sales agent is reimbursed;

(7) Any delivery or shipping charge incurred by a licensed organization in connection with the lottery by the sale of pickle cards;

(8) Any license fees paid to the department to license the organization, each utilization-of-funds member, and each sales agent and any pickle card dispensing device registration fees paid to the department to register devices utilized at the licensed organization's designated premises or its bingo occasions; and

(9) Any pickle card dispensing device repairs or maintenance paid by the licensed organization.

Source: Laws 1986, LB 1027, § 70; Laws 1988, LB 1232, § 7; Laws 1994, LB 694, § 64; Laws 2002, LB 545, § 22.

9-305 Cancel, defined.

Cancel shall mean to discontinue all rights and privileges to hold a license for up to three years.

Source: Laws 1986, LB 1027, § 71.

9-305.01 Definite profit, defined.

Definite profit shall mean the gross proceeds from a pickle card unit less all of the possible prizes in the unit.

Source: Laws 1988, LB 1232, § 8; Laws 1989, LB 767, § 28.

9-306 Department, defined.

Department shall mean the Department of Revenue.

Source: Laws 1986, LB 1027, § 72.

9-306.01 Designated premises, defined.

Designated premises shall mean one location selected by a licensed organization at which individual pickle cards may be sold as opportunities for participation in a lottery by the sale of pickle cards. Only one of the following types of locations may be selected as a designated premises: (1) In the case of an organization holding a certificate of exemption under section 501(c)(3), (c)(4), or (c)(5) of the Internal Revenue Code or a volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad, one piece of real property which is owned, leased, or used by the organization as its principal office, which is in use by the organization primarily for purposes other than the conduct of gaming activities, and which is not used in connection with any other type of retail business activity other than an occasional sale as defined in section 77-2701.24; or (2) in the case of an organization holding a certificate of exemption under section 501(c)(7), (c)(8), (c)(10), or (c)(19) of the Internal Revenue Code, one piece of real property which is owned, leased, or used by the organization as its principal office and which is in use by the organization primarily for purposes other than the conduct of gaming activities. For purposes of this section, principal office shall mean the place where the principal affairs and business of the licensed organization are transacted, including where the officers and members assemble to discuss and transact the business of the organization, where its meetings are held, and generally where its records are kept.

Source: Laws 1988, LB 1232, § 9; Laws 1989, LB 767, § 29; Laws 1991, LB 427, § 29; Laws 1992, LB 871, § 1; Laws 1996, LB 1277, § 3; Laws 2002, LB 545, § 23; Laws 2003, LB 282, § 1.

9-307 Distributor, defined.

Distributor shall mean any person licensed pursuant to section 9-330, who purchases or otherwise obtains pickle card units from manufacturers and sells,

distributes, or otherwise provides pickle card units in this state to licensed organizations.

Source: Laws 1986, LB 1027, § 73; Laws 1994, LB 694, § 65.

9-308 Gross proceeds, defined.

Gross proceeds shall mean the total possible receipts from the sale of all pickle cards in any pickle card unit.

Source: Laws 1983, LB 259, § 7; Laws 1984, LB 949, § 13; R.S.Supp.,1984, § 9-140.03; Laws 1986, LB 1027, § 74.

9-308.01 Gross profit, defined.

Gross profit shall mean the definite profit from the sale of a pickle card unit less any commission paid by a licensed organization to a pickle card operator selling individual pickle cards on behalf of the licensed organization.

Source: Laws 1988, LB 1232, § 10.

9-309 Lawful purpose, defined.

(1) Lawful purpose, for a licensed organization making a donation of its net profits derived from its lottery by the sale of pickle cards solely for its own organization, shall mean donating such net profits for any activity which benefits and is conducted by the organization, including any charitable, benevolent, humane, religious, philanthropic, youth sports, educational, civic, or fraternal activity conducted by the organization for the benefit of its members.

(2) Lawful purpose, for a licensed organization making a donation of its net profits derived from its lottery by the sale of pickle cards outside of its organization, shall mean donating such net profits only to:

(a) The State of Nebraska or any political subdivision thereof, but only if the contribution or gift is made exclusively for public purposes;

(b) A corporation, trust, community chest, fund, or foundation:

(i) Created or organized under the laws of Nebraska which has been in existence for five consecutive years immediately preceding the date of the donation and which has its principal office located in Nebraska;

(ii) Organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, for the prevention of cruelty to children or animals, or to foster national or international amateur sports competition;

(iii) No part of the net earnings of which inures to the benefit of any private shareholder or individual;

(iv) Which is not disqualified for tax exemption under section 501(c)(3) of the Internal Revenue Code by reason of attempting to influence legislation; and

(v) Which does not participate in any political campaign on behalf of any candidate for political office;

(c) A post or organization of war veterans or an auxiliary unit or society of, trust for, or foundation for any such post or organization:

(i) Organized in the United States or in any territory or possession thereof; and

(ii) No part of the net earnings of which inures to the benefit of any private shareholder or individual; or

(d) A volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad serving any city, village, county, township, or rural or suburban fire protection district in Nebraska.

(3) No donation of net profits under this section shall (a) inure to the benefit of any individual member of the licensed organization making the donation except to the extent it is in furtherance of the purposes described in this section or (b) be used for any activity which attempts to influence legislation or for any political campaign on behalf of any elected official or person who is or has been a candidate for public office.

Source: Laws 1986, LB 1027, § 75; Laws 1988, LB 1232, § 11; Laws 1994, LB 694, § 66; Laws 1995, LB 344, § 11; Laws 1995, LB 574, § 8; Laws 2002, LB 545, § 24.

Facilitating the recruitment and retention of volunteer firefighters cannot be said to constitute a charitable activity, and therefore, retirement plan contributions inuring to the benefit of individual members do not constitute a use for a lawful purpose. Southeast Rur. Vol. Fire Dept. v. Neb. Dept. of Rev., 251 Neb. 852, 560 N.W.2d 436 (1997).

9-310 License, defined.

License shall mean any license to conduct a lottery by the sale of pickle cards as provided in section 9-326, any license for a utilization-of-funds member as provided in section 9-327, any sales agent's license as provided in section 9-329, any pickle card operator's license as provided in section 9-329.02, any distributor's license as provided in section 9-330, or any manufacturer's license as provided in section 9-332.

Source: Laws 1986, LB 1027, § 76; Laws 1989, LB 767, § 30; Laws 1994, LB 694, § 67.

9-311 Licensed organization, defined.

Licensed organization shall mean a nonprofit organization or volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad licensed to conduct a lottery by the sale of pickle cards under the Nebraska Pickle Card Lottery Act.

Source: Laws 1986, LB 1027, § 77; Laws 2002, LB 545, § 25.

9-312 Lottery by the sale of pickle cards, defined.

Lottery by the sale of pickle cards shall mean any gambling scheme in which participants pay or agree to pay something of value for a pickle card. Any lottery by the sale of pickle cards shall be conducted pursuant to and in accordance with the Nebraska Pickle Card Lottery Act.

Lottery by the sale of pickle cards shall not mean or include any activity authorized or regulated under the Nebraska Bingo Act, except as provided in section 9-346, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, section 9-701, or Chapter 2, article 12, nor shall lottery by the sale of pickle cards mean or include any activity prohibited under Chapter 28, article 11.

Source: Laws 1986, LB 1027, § 78; Laws 1991, LB 849, § 46; Laws 1993, LB 138, § 4; Laws 2000, LB 658, § 1.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.

Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

9-313 Manufacturer, defined.

Manufacturer shall mean any person who assembles from raw materials or subparts a completed piece or pieces of pickle cards and pickle card units.

Source: Laws 1985, LB 408, § 10; R.S.Supp.,1985, § 9-140.15; Laws 1986, LB 1027, § 79.

9-314 Member, defined.

Member shall mean a person who has qualified for and been admitted to membership in a licensed organization pursuant to its bylaws, articles of incorporation, charter, rules, or other written statement for purposes other than conducting activities under the Nebraska Pickle Card Lottery Act. Member shall not include social or honorary members.

Source: Laws 1986, LB 1027, § 80; Laws 1988, LB 1232, § 12.

9-314.01 Net profit, defined.

Net profit shall mean the gross profit from the sale of a pickle card unit less the unit cost and allowable expenses incurred by a licensed organization in connection with the sale of a pickle card unit.

Source: Laws 1988, LB 1232, § 13.

9-315 Pickle card, defined.

Pickle card shall mean any disposable card, board, or ticket which accords a person an opportunity to win a cash prize by opening, pulling, detaching, or otherwise removing one or more tabs from the card, board, or ticket to reveal a set of numbers, letters, symbols, or configurations, or any combination thereof, and shall include, but not be limited to, any card known as a pickle ticket, pickle, break-open, pull-tab, pull-tab board, punchboard, seal card, pull card, or any other similar card, board, or ticket which is included under this section, whether referred to by any other name.

Pickle card shall not mean or include any:

(1) Card used in connection with bingo conducted pursuant to the Nebraska Bingo Act, except as provided in section 9-346;

(2) Racing ticket or wager in connection with any horserace conducted pursuant to Chapter 2, article 12;

(3) Scrape-off or rub-off ticket;

(4) Card, ticket, or other device used in connection with any kind of gambling, lottery, raffle, or gift enterprise authorized or regulated under the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or section 9-701; or

(5) Card, ticket, or other device prohibited under Chapter 28, article 11.

Source: Laws 1986, LB 1027, § 81; Laws 1991, LB 849, § 47; Laws 1993, LB 138, § 5; Laws 1994, LB 694, § 68; Laws 1996, LB 1277, § 4; Laws 2000, LB 658, § 2.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

9-316 Pickle card operator, defined.

Pickle card operator shall mean any sole proprietorship, partnership, limited liability company, or corporation which sells individual pickle cards on behalf of the licensed organization.

Source: Laws 1985, LB 408, § 9; R.S.Supp.,1985, § 9-140.14; Laws 1986, LB 1027, § 82; Laws 1988, LB 1232, § 14; Laws 1993, LB 121, § 109.

9-317 Pickle card unit, defined.

Pickle card unit shall mean a series or complete set of pickle cards, which consists of all winning and losing cards in a particular unit, set, series, deal, or scheme for a lottery by the sale of pickle cards, in the receptacle or box in and with which the unit of pickle cards is sold by a distributor.

Source: Laws 1983, LB 259, § 9; Laws 1984, LB 949, § 15; R.S.Supp.,1984, § 9-140.05; Laws 1986, LB 1027, § 83.

9-317.01 Premises, defined.

Premises shall mean a building or a distinct portion of a building and shall not include any area of land surrounding the building.

Source: Laws 1988, LB 1232, § 15.

9-318 Repealed. Laws 1988, LB 1232, § 54.

9-319 Revoke, defined.

Revoke shall mean to permanently void and recall all rights and privileges of an organization or a person to obtain a license.

Source: Laws 1986, LB 1027, § 85.

9-320 Sales agent, defined.

Sales agent shall mean any person who markets, sells, or delivers any pickle card unit on behalf of a licensed organization to any licensed pickle card operator.

Source: Laws 1985, LB 408, § 8; R.S.Supp.,1985, § 9-140.13; Laws 1986, LB 1027, § 86; Laws 1988, LB 1232, § 16.

9-321 Suspend, defined.

Suspend shall mean to cause a temporary interruption of all rights and privileges of a license or the renewal thereof.

Source: Laws 1986, LB 1027, § 87.

9-321.01 Unit cost, defined.

Unit cost shall mean the total cost of a pickle card unit paid by a licensed organization to a distributor. Unit cost shall include the tax on definite profit

prescribed in section 9-344 and any applicable sales tax. Unit cost shall also include any applicable federal gaming tax for which the licensed organization is liable in connection with its purchase or sale of a pickle card unit.

Source: Laws 1988, LB 1232, § 17.

9-321.02 Utilization-of-funds member, defined.

Utilization-of-funds member shall mean a member of the organization who shall be responsible for supervising the conduct of the lottery by the sale of pickle cards and for the proper utilization of the gross proceeds derived from the conduct of the lottery by the sale of pickle cards.

Source: Laws 1994, LB 694, § 69.

9-321.03 Volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad, defined.

Volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad shall mean a volunteer association or organization serving any city, village, county, township, or rural or suburban fire protection district in Nebraska by providing fire protection or emergency response services for the purpose of protecting human life, health, or property.

Source: Laws 2002, LB 545, § 26.

9-322 Department; powers, functions, and duties.

The department shall have the following powers, functions, and duties:

(1) To issue licenses and temporary licenses;

(2) To deny any license application or renewal application for cause. Cause for denial of an application for or renewal of a license shall include instances in which the applicant individually or, in the case of a business entity or a nonprofit organization, any officer, director, employee, or limited liability company member of the applicant or licensee, other than an employee whose duties are purely ministerial in nature, any other person or entity directly or indirectly associated with such applicant or licensee which directly or indirectly receives compensation other than distributions from a bona fide retirement or pension plan established pursuant to Chapter 1, subchapter D of the Internal Revenue Code, from such applicant or licensee for past or present services in a consulting capacity or otherwise, the licensee, or any person with a substantial interest in the applicant or licensee:

(a) Violated the provisions, requirements, conditions, limitations, or duties imposed by the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, or the State Lottery Act or any rules or regulations adopted and promulgated pursuant to such acts;

(b) Knowingly caused, aided, abetted, or conspired with another to cause any person to violate any of the provisions of such acts or any rules or regulations adopted and promulgated pursuant to such acts;

(c) Obtained a license or permit pursuant to such acts by fraud, misrepresentation, or concealment;

(d) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any offense or crime, whether a felony or misdemeanor,

involving any gambling activity or fraud, theft, willful failure to make required payments or reports, or filing false reports with a governmental agency at any level;

(e) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any felony other than those described in subdivision (d) of this subdivision within the ten years preceding the filing of the application;

(f) Denied the department or its authorized representatives, including authorized law enforcement agencies, access to any place where pickle card activity required to be licensed under the Nebraska Pickle Card Lottery Act is being conducted or failed to produce for inspection or audit any book, record, document, or item required by law, rule, or regulation;

(g) Made a misrepresentation of or failed to disclose a material fact to the department;

(h) Failed to prove by clear and convincing evidence his, her, or its qualifications to be licensed in accordance with the Nebraska Pickle Card Lottery Act;

(i) Failed to pay any taxes and additions to taxes, including penalties and interest, required by the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act or any other taxes imposed pursuant to the Nebraska Revenue Act of 1967;

(j) Failed to pay an administrative fine levied pursuant to the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act;

(k) Failed to demonstrate good character, honesty, and integrity;

(l) Failed to demonstrate, either individually or, in the case of a business entity or a nonprofit organization, through its managers, employees, or agents, the ability, experience, or financial responsibility necessary to establish or maintain the activity for which the application is made; or

(m) Was cited and whose liquor license was suspended, canceled, or revoked by the Nebraska Liquor Control Commission for illegal gambling activities that occurred on or after July 20, 2002, on or about a premises licensed by the commission pursuant to the Nebraska Liquor Control Act or the rules and regulations adopted and promulgated pursuant to such act.

No renewal of a license under the Nebraska Pickle Card Lottery Act shall be issued when the applicant for renewal would not be eligible for a license upon a first application;

(3) To revoke, cancel, or suspend for cause any license. Cause for revocation, cancellation, or suspension of a license shall include instances in which the licensee individually or, in the case of a business entity or a nonprofit organization, any officer, director, employee, or limited liability company member of the licensee, other than an employee whose duties are purely ministerial in nature, any other person or entity directly or indirectly associated with such licensee which directly or indirectly receives compensation other than distributions from a bona fide retirement or pension plan established pursuant to Chapter 1, subchapter D of the Internal Revenue Code from such licensee for past or present services in a consulting capacity or otherwise, or any person with a substantial interest in the licensee:

(a) Violated the provisions, requirements, conditions, limitations, or duties imposed by the Nebraska Bingo Act, the Nebraska County and City Lottery Act,

the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or any rules or regulations adopted and promulgated pursuant to such acts;

(b) Knowingly caused, aided, abetted, or conspired with another to cause any person to violate any of the provisions of the Nebraska Pickle Card Lottery Act or any rules or regulations adopted and promulgated pursuant to the act;

(c) Obtained a license pursuant to the Nebraska Pickle Card Lottery Act by fraud, misrepresentation, or concealment;

(d) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any offense or crime, whether a felony or misdemeanor, involving any gambling activity or fraud, theft, willful failure to make required payments or reports, or filing false reports with a governmental agency at any level;

(e) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any felony other than those described in subdivision (d) of this subdivision within the ten years preceding the filing of the application;

(f) Denied the department or its authorized representatives, including authorized law enforcement agencies, access to any place where pickle card activity required to be licensed under the act is being conducted or failed to produce for inspection or audit any book, record, document, or item required by law, rule, or regulation;

(g) Made a misrepresentation of or failed to disclose a material fact to the department;

(h) Failed to pay any taxes and additions to taxes, including penalties and interest, required by the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act or any other taxes imposed pursuant to the Nebraska Revenue Act of 1967;

(i) Failed to pay an administrative fine levied pursuant to the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act;

(j) Failed to demonstrate good character, honesty, and integrity;

(k) Failed to demonstrate, either individually or, in the case of a business entity or a nonprofit organization, through its managers, employees, or agents, the ability, experience, or financial responsibility necessary to maintain the activity for which the license was issued; or

(l) Was cited and whose liquor license was suspended, canceled, or revoked by the Nebraska Liquor Control Commission for illegal gambling activities that occurred on or after July 20, 2002, on or about a premises licensed by the commission pursuant to the Nebraska Liquor Control Act or the rules and regulations adopted and promulgated pursuant to such act;

(4) To issue an order requiring a licensee or other person to cease and desist from violations of the Nebraska Pickle Card Lottery Act or any rules or regulations adopted and promulgated pursuant to such act. The order shall give reasonable notice of the rights of the licensee or other person to request a hearing and shall state the reason for the entry of the order. The notice of order shall be mailed to or personally served upon the licensee or other person. If the notice of order is mailed, the date the notice is mailed shall be deemed to be the date of service of notice to the licensee or other person. A request for a hearing

by the licensee or other person shall be in writing and shall be filed with the department within thirty days after the service of the cease and desist order. If a request for hearing is not filed within the thirty-day period, the cease and desist order shall become permanent at the expiration of such period. A hearing shall be held not later than thirty days after the request for the hearing is received by the Tax Commissioner, and within twenty days after the date of the hearing, the Tax Commissioner shall issue an order vacating the cease and desist order or making it permanent as the facts require. All hearings shall be held in accordance with the rules and regulations adopted and promulgated by the department. If the licensee or other person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, the licensee or other person shall be deemed in default and the proceeding may be determined against the licensee or other person upon consideration of the cease and desist order, the allegations of which may be deemed to be true;

(5) To levy an administrative fine on an individual, partnership, limited liability company, corporation, or organization for cause. For purposes of this subdivision, cause shall include instances in which the individual, partnership, limited liability company, corporation, or organization violated the provisions, requirements, conditions, limitations, or duties imposed by the act or any rule or regulation adopted and promulgated pursuant to the act. In determining whether to levy an administrative fine and the amount of the fine if any fine is levied, the department shall take into consideration the seriousness of the violation, the intent of the violator, whether the violator voluntarily reported the violation, whether the violator derived financial gain as a result of the violation and the extent thereof, and whether the violator has had previous violations of the act, rules, or regulations. A fine levied on a violator under this section shall not exceed one thousand dollars for each violation of the act or any rule or regulation adopted and promulgated pursuant to the act plus the financial benefit derived by the violator as a result of each violation. If an administrative fine is levied, the fine shall not be paid from pickle card lottery gross proceeds of an organization and shall be remitted by the violator to the department within thirty days after the date of the order issued by the department levying such fine;

(6) To enter or to authorize any law enforcement officer to enter at any time upon any premises where lottery by the sale of pickle cards activity required to be licensed under the act is being conducted to determine whether any of the provisions of such act or any rules or regulations adopted and promulgated under such act have been or are being violated and at such time to examine such premises;

(7) To require periodic reports of lottery by the sale of pickle cards activity from licensed manufacturers, distributors, nonprofit organizations, sales agents, pickle card operators, and any other persons, organizations, limited liability companies, or corporations as the department deems necessary to carry out the act;

(8) To require annual registration of coin-operated and currency-operated devices used for the dispensing of pickle cards, to issue registration decals for such devices, to prescribe all forms necessary for the registration of such devices, and to impose administrative penalties for failure to properly register such devices;

(9) To examine or to cause to have examined, by any agent or representative designated by the department for such purpose, any books, papers, records, or memoranda relating to the conduct of lottery by the sale of pickle cards of any licensee, to require by administrative order or summons the production of such documents or the attendance of any person having knowledge in the premises, to take testimony under oath, and to require proof material for its information. If any such person willfully refuses to make documents available for examination by the department or its agent or representative or willfully fails to attend and testify, the department may apply to a judge of the district court of the county in which such person resides for an order directing such person to comply with the department's request. If any documents requested by the department are in the custody of a corporation, the court order may be directed to any principal officer of the corporation. If the documents requested by the department are in the custody of a limited liability company, the court order may be directed to any member when management is reserved to the members or otherwise to any manager. Any person who fails or refuses to obey such a court order shall be guilty of contempt of court;

(10) Unless specifically provided otherwise, to compute, determine, assess, and collect the amounts required to be paid as taxes imposed by the act in the same manner as provided for sales and use taxes in the Nebraska Revenue Act of 1967;

(11) To collect license application and license renewal application fees imposed by the Nebraska Pickle Card Lottery Act and to prorate license fees on an annual basis. The department shall establish by rule and regulation the conditions and circumstances under which such fees may be prorated;

(12) To inspect pickle cards and pickle card units as provided in section 9-339;

(13) To confiscate, seize, or seal pickle cards, pickle card units, or coin-operated or currency-operated pickle card dispensing devices pursuant to section 9-350;

(14) To adopt and promulgate such rules and regulations and prescribe all forms as are necessary to carry out the Nebraska Pickle Card Lottery Act; and

(15) To employ staff, including auditors and inspectors, as necessary to carry out the act.

Source: Laws 1986, LB 1027, § 88; Laws 1988, LB 1232, § 18; Laws 1989, LB 767, § 31; Laws 1991, LB 427, § 30; Laws 1991, LB 849, § 48; Laws 1993, LB 138, § 6; Laws 1994, LB 694, § 70; Laws 1995, LB 344, § 12; Laws 1995, LB 574, § 9; Laws 1997, LB 248, § 9; Laws 2000, LB 1086, § 10; Laws 2002, LB 545, § 27; Laws 2002, LB 1126, § 2; Laws 2012, LB727, § 4.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Liquor Control Act, see section 53-101.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Revenue Act of 1967, see section 77-2701.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

Documents belonging to a donee of pickle card proceeds that describe the donee's disposition of those proceeds are documents relating to the conduct of lottery by the sale of pickle cards within the meaning of subsection (9) of this section. This section requires that a contested hearing be held before judicial enforcement of a request for documents may be obtained. Central States Found. v. Balka, 256 Neb. 369, 590 N.W.2d 832 (1999).

9-322.01 Administrative fine; disposition; collection.

(1) All money collected by the department as an administrative fine shall be transmitted on a monthly basis to the State Treasurer who shall deposit such money in the permanent school fund.

(2) Any administrative fine levied under section 9-322 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 1988, LB 1232, § 19; Laws 1994, LB 694, § 71.

9-322.02 Denial of application; procedure.

(1) Before any application is denied pursuant to section 9-322, the department shall notify the applicant in writing by mail of the department's intention to deny the application and the reasons for the denial. Such notice shall inform the applicant of his or her right to request an administrative hearing for the purpose of reconsideration of the intended denial of the application. The date the notice is mailed shall be deemed to be the date of service of notice to the applicant.

(2) A request for a hearing by the applicant shall be in writing and shall be filed with the department within thirty days after the service of notice to the applicant of the department's intended denial of the application. If a request for hearing is not filed within the thirty-day period, the application denial shall become final at the expiration of such period.

(3) If a request for hearing is filed within the thirty-day period, the Tax Commissioner shall grant the applicant a hearing and shall, at least ten days before the hearing, serve notice upon the applicant by mail of the time, date, and place of the hearing. Such proceedings shall be considered contested cases pursuant to the Administrative Procedure Act.

Source: Laws 1988, LB 1232, § 20; Laws 2002, LB 545, § 28; Laws 2012, LB727, § 5.

Cross References

Administrative Procedure Act, see section 84-920.

Administrative bodies have only that authority specifically conferred upon them by statute or by construction necessary to achieve the purpose of the relevant act, and as such, the Department of Revenue is not statutorily authorized to grant motions for summary judgment. Southeast Rur. Vol. Fire Dept. v. Neb. Dept. of Rev., 251 Neb. 852, 560 N.W.2d 436 (1997).

9-322.03 Repealed. Laws 2007, LB 638, § 21.

9-323 Suspension of license; limitation; procedure.

(1) The Tax Commissioner may suspend any license issued pursuant to the Nebraska Pickle Card Lottery Act except a license issued pursuant to section 9-326, except that no order to suspend any license shall be issued unless the department determines that the licensee is not operating in accordance with the purposes and intent of the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or

any rules or regulations adopted and promulgated pursuant to such acts. The Tax Commissioner may suspend a license issued pursuant to section 9-326 after a hearing upon a finding by the department that the licensee is not operating in accordance with the purposes and intent of such acts.

(2) Before any license is suspended prior to a hearing, notice of an order to suspend a license shall be mailed to or personally served upon the licensee at least fifteen days before the order of suspension takes effect.

(3) The order of suspension may be withdrawn if the licensee provides the department with evidence that any prior findings or violations have been corrected and that the licensee is now in full compliance, whether before or after the effective date of the order of suspension.

(4) The Tax Commissioner may issue an order of suspension pursuant to subsections (1) and (2) of this section when an action for suspension, cancellation, or revocation is pending. The Tax Commissioner may also issue an order of suspension after a hearing for a limited time of up to one year without an action for cancellation or revocation pending.

(5) The hearing for suspension, cancellation, or revocation of the license shall be held within twenty days after the date the suspension takes effect. A request by the licensee to hold the hearing after the end of the twenty-day period shall extend the suspension until the hearing.

(6) The decision of the department shall be made within twenty days after the conclusion of the hearing. The suspension shall continue in effect until the decision is issued. If the decision is that an order of suspension, revocation, or cancellation is not appropriate, the suspension shall terminate immediately by order of the Tax Commissioner. If the decision is an order for the suspension, revocation, or cancellation of the license, the suspension shall continue pending an appeal of the decision of the department.

(7) Any period of suspension prior to the issuance of an order of suspension issued by the Tax Commissioner shall count toward the total amount of time a licensee shall be suspended from gaming activities under the Nebraska Pickle Card Lottery Act. Any period of suspension prior to the issuance of an order of cancellation shall not reduce the period of the cancellation. Any period of suspension after the issuance of the order and during an appeal shall be counted as a part of the period of cancellation.

Source: Laws 1986, LB 1027, § 89; Laws 1988, LB 1232, § 21; Laws 1991, LB 427, § 31; Laws 1995, LB 344, § 13.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

9-324 Hearing; required; when; notice.

Before the adoption, amendment, or repeal of any rule or regulation, the suspension, revocation, or cancellation of any license pursuant to section 9-322, or the levying of an administrative fine pursuant to section 9-322, the department shall set the matter for hearing. Such suspension, revocation, or cancellation proceedings or proceedings to levy an administrative fine shall be contested cases pursuant to the Administrative Procedure Act.

At least ten days before the hearing, the department shall (1) in the case of suspension, revocation, or cancellation proceedings or proceedings to levy an administrative fine, serve notice upon the licensee or violator by personal service or mail of the time, date, and place of any hearing or (2) in the case of adoption, amendment, or repeal of any rule or regulation, issue a public notice of the time, date, and place of such hearing.

This section shall not apply to an order of suspension by the Tax Commissioner prior to a hearing as provided in section 9-323.

Source: Laws 1986, LB 1027, § 90; Laws 1988, LB 1232, § 22; Laws 1991, LB 427, § 32; Laws 1994, LB 694, § 72; Laws 1995, LB 344, § 14; Laws 2012, LB727, § 6.

Cross References

Administrative Procedure Act, see section 84-920.

9-325 Proceeding before department; service; security; appeal.

(1) A copy of the order or decision of the department in any proceeding before it, certified under the seal of the department, shall be served upon each party of record to the proceeding before the department. Service upon any attorney of record for any such party shall be deemed to be service upon such party. Each party appearing before the department shall enter his or her appearance and indicate to the department his or her address for the service of a copy of any order, decision, or notice. The mailing of any copy of any order or decision or of any notice in the proceeding, to such party at such address, shall be deemed to be service upon such party.

(2) At the time of making an appearance before the department, each party shall deposit in cash or furnish a sufficient security for costs in an amount the department deems adequate to cover all costs liable to accrue, including costs for (a) reporting the testimony to be adduced, (b) making up a complete transcript of the hearing, and (c) extending reporter's original notes in typewriting.

(3) Any decision of the department in any proceeding before it may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1986, LB 1027, § 91; Laws 1988, LB 352, § 15; Laws 1988, LB 1232, § 23.

Cross References

Administrative Procedure Act, see section 84-920.

9-326 License; qualified applicants.

(1) Any nonprofit organization holding a certificate of exemption under section 501(c)(3), (c)(4), (c)(5), (c)(7), (c)(8), (c)(10), or (c)(19) of the Internal Revenue Code or any volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad may apply for a license to conduct a lottery by the sale of pickle cards.

(2) Prior to applying for any license, an organization shall:

(a) Be incorporated in this state as a not-for-profit corporation or organized in this state as a religious or not-for-profit organization. For purposes of this

subsection, a domesticated foreign corporation shall not be considered incorporated in this state as a not-for-profit corporation;

(b) Conduct activities within this state in addition to the conduct of lottery by the sale of pickle cards;

(c) Be authorized by its constitution, articles, charter, or bylaws to further in this state a lawful purpose;

(d) Operate without profit to its members, and no part of the net earnings of such organization shall inure to the benefit of any private shareholder or individual; and

(e) With the exception of a volunteer fire company, a volunteer first-aid, rescue, ambulance, or emergency squad, or a not-for-profit corporation whose primary purpose is to support a volunteer fire company, first-aid squad, rescue squad, ambulance squad, or emergency squad, have been in existence in this state for five years immediately preceding its application for a license and have had during that five-year period a bona fide membership actively engaged in furthering a lawful purpose. A society defined in section 21-608 which is chartered in Nebraska under a state, grand, supreme, national, or other governing body may use the charter date of its parent organization to satisfy such five-year requirement.

Source: Laws 1986, LB 1027, § 92; Laws 1988, LB 1232, § 24; Laws 1989, LB 767, § 32; Laws 1996, LB 1277, § 5; Laws 2002, LB 545, § 29; Laws 2012, LB979, § 1.

9-327 License; application; contents; enumerated; duty to keep current.

(1) Each applicant for a license to conduct a lottery by the sale of pickle cards shall file with the department an application on a form prescribed by the department.

(2) Each application shall include:

(a) The name and address of the applicant;

(b) Sufficient facts relating to the incorporation or organization of the applicant to enable the department to determine if the applicant is eligible for a license under section 9-326;

(c) The name and address of each officer of the applicant organization;

(d) The name, address, social security number, date of birth, and years of membership of a bona fide and active member of the applicant organization to be licensed as a utilization-of-funds member. Such person shall have been an active and bona fide member of the applicant organization for at least one year preceding the date the application is filed with the department unless the applicant organization can provide evidence that the one-year requirement would impose an undue hardship on the organization. Such person shall sign a sworn statement indicating that he or she agrees to comply with all provisions of the Nebraska Pickle Card Lottery Act and all rules and regulations adopted pursuant to the act, that no commission, fee, rent, salary, profits, compensation, or recompense will be paid to any person or organization, except payments authorized by the Nebraska Pickle Card Lottery Act, and that all net profits will be spent only for lawful purposes. The department may prescribe a separate application for such license;

(e) A roster of members if the department deems it necessary and proper; and

(f) Other information which the department deems necessary.

(3) The information required by this section shall be kept current. An organization shall notify the department within thirty days if any information in the application is no longer correct and shall supply the correct information.

(4) The department may prescribe a separate application form for renewal purposes.

Source: Laws 1986, LB 1027, § 93; Laws 1988, LB 1232, § 25; Laws 1994, LB 694, § 73.

9-328 Licenses; renewal; application; requirements; classes; fees.

(1) All licenses to conduct a lottery by the sale of pickle cards and licenses issued to utilization-of-funds members shall expire as provided in this section and may be renewed biennially. An application for license renewal shall be submitted to the department at least forty-five days prior to the expiration date of the license unless such application only pertains to the conduct of a lottery by the sale of pickle cards at a special function as provided in section 9-345.01.

(2) A license to conduct a lottery by the sale of pickle cards issued to a nonprofit organization holding a certificate of exemption under section 501(c)(3) or (c)(4) of the Internal Revenue Code and any license issued to a utilization-of-funds member for such nonprofit organization shall expire on September 30 of each odd-numbered year or on such other date as the department may prescribe by rule and regulation.

(3) A license to conduct a lottery by the sale of pickle cards issued to a nonprofit organization holding a certificate of exemption under section 501(c)(5), (c)(7), (c)(8), (c)(10), or (c)(19) of the Internal Revenue Code or any volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad and any license issued to a utilization-of-funds member for such nonprofit organization or volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad shall expire on September 30 of each even-numbered year or on such other date as the department may prescribe by rule and regulation.

(4) The department shall establish classes of licenses for licensed organizations based upon the manner in which the licensed organization intends to sell the pickle cards. The classes shall include:

(a) Class I licenses which shall include organizations which sell individual pickle cards only at the organization's designated premises and at the organization's licensed regularly scheduled bingo occasions pursuant to the Nebraska Bingo Act; and

(b) Class II licenses which shall include organizations which sell the pickle cards on the premises of one or more licensed pickle card operators.

A licensed organization holding a Class II license shall be required to market and deliver its pickle cards by a licensed sales agent.

(5) A biennial license fee of two hundred dollars shall be charged for each Class I license, three hundred dollars for each Class II license, and forty dollars for a license for each utilization-of-funds member.

(6) The department shall adopt and promulgate rules and regulations establishing reporting requirements for each class of license.

Source: Laws 1986, LB 1027, § 94; Laws 1988, LB 1232, § 26; Laws 1989, LB 767, § 33; Laws 1991, LB 427, § 33; Laws 1994, LB 694, § 74; Laws 2000, LB 1086, § 11; Laws 2002, LB 545, § 30; Laws 2007, LB638, § 9.

Cross References

Nebraska Bingo Act, see section 9-201.

9-329 Sales agent; license required; application; contents; fee; temporary license.

(1) Unless otherwise authorized by the department, no person shall market, sell, or deliver any pickle card unit to any pickle card operator without first obtaining a sales agent license.

(2) Any person wishing to operate as a sales agent in this state shall file an application with the department for a license on a form prescribed by the department. Each application for a license shall include (a) the name, address, and social security number of the person applying for the license, (b) the name and state identification number of the licensed organization for which any pickle card units are to be marketed or sold by the applicant, and (c) such other information which the department deems necessary.

(3) A statement signed by the person licensed as a utilization-of-funds member signifying that such licensed organization approves the applicant to act as a sales agent on behalf of such organization shall accompany each sales agent's application for a license. No person licensed as a utilization-of-funds member shall be licensed as a sales agent.

(4)(a) A biennial fee of one hundred dollars shall be charged for each license issued pursuant to this section. The department shall remit the proceeds from such fee to the State Treasurer for credit to the Charitable Gaming Operations Fund. Such licenses shall expire as prescribed in this section and may be renewed biennially. An application for license renewal shall be submitted to the department at least forty-five days prior to the expiration date of the license.

(b) A sales agent license issued to a person on behalf of a nonprofit organization holding a certificate of exemption under section 501(c)(3) or (c)(4) of the Internal Revenue Code shall expire on September 30 of each odd-numbered year or on such other date as the department may prescribe by rule and regulation. A sales agent license issued to a person on behalf of a nonprofit organization holding a certificate of exemption under section 501(c)(5), (c)(7), (c)(8), (c)(10), or (c)(19) of the Internal Revenue Code or any volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad shall expire on September 30 of each even-numbered year or on such other date as the department may prescribe by rule and regulation.

(5) The information required by this section shall be kept current. A sales agent shall notify the department within thirty days if any information in the application is no longer correct and shall supply the correct information.

(6) The department may prescribe a separate application form for renewal purposes.

(7) The department may issue a temporary license pending receipt of additional information or further inquiry.

Source: Laws 1985, LB 408, § 18; R.S.Supp.,1985, § 9-143.01; Laws 1986, LB 1027, § 95; Laws 1988, LB 1232, § 31; Laws 1991, LB 427, § 34; Laws 1994, LB 694, § 75; Laws 2000, LB 1086, § 12; Laws 2002, LB 545, § 31; Laws 2007, LB638, § 10.

9-329.01 Sales agent; license applicant; qualifications; licensee; limitations.

(1) Prior to applying for a license as a sales agent for a licensed organization, the applicant shall have been an active and bona fide member of the licensed organization for one year preceding the date the application is filed with the department.

(2) No person applying for a license under this section shall hold a license as a sales agent for more than one licensed organization. This subsection shall not prohibit a licensed sales agent from applying for a license to represent another licensed organization as a sales agent if he or she has ceased being a sales agent for and will not continue to market pickle card units on behalf of the organization for which he or she is currently licensed and has obtained a written release of any legal obligations he or she has to such licensed organization. Such release shall be signed by a person licensed as a utilization-of-funds member and an officer of the licensed organization and shall state that the sales agent has satisfied all legal obligations he or she has to the licensed organization in connection with the lottery by the sale of pickle cards. When applicable, a copy of the written release shall accompany any application for a license to become a sales agent.

(3) Any sales agent licensed under the Nebraska Pickle Card Lottery Act shall not be connected with or interested in, directly or indirectly, any person, partnership, limited liability company, firm, corporation, or other party licensed as a distributor, manufacturer, or pickle card operator under section 9-329.03, 9-330, or 9-332 and, unless such sales agent does not directly or indirectly receive payment of any commission, salary, or fee for the sale, marketing, or delivery of pickle cards on behalf of the licensed organization or any other service on behalf of the licensed organization, shall not be a director, manager, trustee, or member of any governing committee, board, or body of the licensed organization on behalf of which the sales agent sells pickle card units.

Source: Laws 1988, LB 1232, § 27; Laws 1993, LB 121, § 110; Laws 1994, LB 694, § 76.

9-329.02 Pickle card operator; license required; application; contents; fee; restrictions; authorization required; equipment requirements.

(1) A pickle card operator shall not be eligible to sell individual pickle cards as opportunities to participate in a lottery by the sale of pickle cards without first obtaining a license.

(2) Any sole proprietorship, partnership, limited liability company, or corporation wishing to operate as a pickle card operator in this state shall file an application with the department for a license on a form prescribed by the department. Each application for a license shall include (a) the name, address, and state identification number of the sole proprietorship, partnership, limited liability company, or corporation applying for the license, (b) a description of the premises on which the pickle cards will be sold or offered for sale, (c) if the

applicant is an individual, the applicant's social security number, and (d) such other information which the department deems necessary. The information required by this subsection shall be kept current. A pickle card operator shall notify the department within thirty days if any information in the application is no longer correct and shall supply the correct information.

(3) A biennial fee of one hundred dollars shall be charged for each license issued pursuant to this section and shall be paid for by the applicant. A licensed organization shall not pay the required licensing fees of a pickle card operator as an inducement for the pickle card operator to sell individual pickle cards on its behalf. Such licenses shall expire on September 30 of each odd-numbered year or on such other date as the department may prescribe by rule and regulation and may be renewed biennially. The department shall remit the proceeds from such license fees to the State Treasurer for credit to the Charitable Gaming Operations Fund. An application for license renewal shall be submitted to the department at least sixty days prior to the expiration date of the license.

(4) One license issued to any sole proprietorship, partnership, limited liability company, or corporation under this section as a pickle card operator shall cover the sole proprietorship, partnership, limited liability company, or corporation and the employees of the licensed pickle card operator. Any license issued pursuant to this section shall be valid only for the sole proprietorship, partnership, limited liability company, or corporation in the name of which it was issued and shall allow the sale of individual pickle cards only on the premises described in the pickle card operator's application for a license. A pickle card operator's license may not be transferred under any circumstances including change of ownership.

(5) The department may prescribe a separate application form for renewal purposes.

(6) A licensed pickle card operator shall not sell individual pickle cards on behalf of a licensed organization until an authorization has been obtained from the department by the licensed organization. The licensed organization shall file an application with the department for such authorization on a form prescribed by the department. Each application for an authorization shall include (a) the name, address, and state identification number of the licensed pickle card operator and (b) such other information which the department deems necessary. The application shall include a statement signed by a person licensed as a utilization-of-funds member signifying that such licensed organization approves the pickle card operator to sell individual pickle cards on behalf of such organization.

(7) A pickle card operator may sell individual pickle cards on behalf of more than one licensed organization. Each licensed organization for which the pickle card operator desires to sell individual pickle cards shall obtain the authorization described in subsection (6) of this section.

(8) A pickle card operator who sells individual pickle cards through a coin-operated or currency-operated dispensing device shall purchase, lease, or rent its own equipment. If such equipment is obtained from a licensed organization or distributor, it shall be purchased, leased, or rented at a rate not less than fair market value. A licensed organization or distributor shall not provide such equipment to a pickle card operator free of charge or at a rate less than fair market value as an inducement for the pickle card operator to sell a licensed

organization's individual pickle cards. The department may require a licensed organization, distributor, or pickle card operator to provide such documentation as the department deems necessary to verify that a pickle card operator has purchased, leased, or rented the equipment for a rate not less than fair market value.

(9) No pickle card operator shall generate revenue from the sale of individual pickle cards which exceeds the revenue generated from other retail sales on an annual basis. For purposes of this subsection, retail sales shall not include revenue generated from other charitable gaming activities authorized by Chapter 9.

Source: Laws 1988, LB 1232, § 33; Laws 1989, LB 767, § 34; Laws 1991, LB 427, § 35; Laws 1993, LB 121, § 111; Laws 1994, LB 694, § 77; Laws 1995, LB 344, § 15; Laws 1997, LB 752, § 65; Laws 2000, LB 1086, § 13; Laws 2007, LB638, § 11.

9-329.03 Pickle card operator; qualified applicant; licensee; limitations.

(1) Any sole proprietorship, partnership, limited liability company, or corporation, which holds a retail license for the sale of alcoholic liquor for consumption on the premises issued by the Nebraska Liquor Control Commission pursuant to the Nebraska Liquor Control Act or which holds a retail license for the sale of alcoholic liquor for consumption off the premises, may apply for a pickle card operator's license to sell individual pickle cards as opportunities to participate in a lottery by the sale of pickle cards.

(2) A pickle card operator licensed under the Nebraska Pickle Card Lottery Act shall not be connected with or interested in, directly or indirectly, any person, partnership, limited liability company, firm, corporation, or other party licensed as a distributor or manufacturer under section 9-330 or 9-332.

(3) A sole proprietor, partner in a partnership, member in a limited liability company, or officer or director of a corporation licensed as a pickle card operator shall not be licensed as a sales agent.

(4) A sole proprietor, partner in a partnership, member in a limited liability company, or officer or director of a corporation licensed as a pickle card operator shall not be a director, manager, trustee, or member of any governing committee, board, or body of the licensed organization on behalf of which the pickle card operator sells individual pickle cards.

Source: Laws 1988, LB 1232, § 32; Laws 1991, LB 795, § 3; Laws 1993, LB 121, § 112; Laws 1997, LB 248, § 10; Laws 2004, LB 485, § 1.

Cross References

Nebraska Liquor Control Act, see section 53-101.

9-329.04 Repealed. Laws 1997, LB 248, § 39.

9-330 Distributor's license; application; requirements; fee; renewal.

Any applicant for a distributor's license, including renewal thereof, shall file an application with the department on a form prescribed by the department. Each application shall be accompanied by a biennial license fee of three thousand fifty dollars. At a minimum, the application shall include the name and address of the applicant, including all shareholders who own ten percent or more of the outstanding stock if the applicant is a corporation, the location

of its office or business, a current list, if requested, of those organizations within the state to whom the applicant is selling pickle card units, and, if the applicant is an individual, the applicant's social security number. All applications shall include a sworn statement by the applicant or the appropriate officer thereof that the applicant will comply with all provisions of the Nebraska Pickle Card Lottery Act and all rules and regulations adopted and promulgated under such act.

The principal office of an applicant for a distributor's license or of a licensed distributor shall be located in Nebraska.

No person shall be issued a distributor's license if such person is not doing business or authorized to do business in this state.

Distributors' licenses shall expire on September 30 of every odd-numbered year or such other date as the department may prescribe by rule or regulation. Distributors' licenses may be renewed biennially. An application for license renewal shall be submitted to the department at least forty-five days prior to the expiration date of the license.

Source: Laws 1986, LB 1027, § 96; Laws 1991, LB 427, § 36; Laws 1994, LB 694, § 78; Laws 1997, LB 248, § 11; Laws 1997, LB 752, § 66.

9-331 Distributor; employee or spouse; participation in gambling; restrictions.

(1) No person, except a distributor operating pursuant to the Nebraska Pickle Card Lottery Act, shall sell or distribute any pickle card units to any licensed organization.

(2) No distributor shall hold a license to conduct a lottery by the sale of pickle cards or any other kind of gambling activity which is authorized or regulated under Chapter 9 or a license to act as a sales agent, pickle card operator, or manufacturer of pickle cards or pickle card units except as provided in sections 9-255.07 and 9-632.

(3) If a distributor delivers any pickle card unit, he or she shall deliver such unit only to a licensed utilization-of-funds member for pickle cards, a licensed sales agent, a licensed gaming manager, a bingo chairperson designated by an organization licensed to conduct bingo pursuant to the Nebraska Bingo Act, or a person who serves as a manager for a licensed organization which is exempt under section 501(c)(8), (c)(10), or (c)(19) of the Internal Revenue Code and shall not deliver any pickle card unit to any other person, including a pickle card operator.

(4) No distributor shall offer or agree to offer anything of value to any person in exchange for an agreement or commitment by such person to exclusively sell pickle cards sold by such distributor. Nothing in this section shall prohibit a licensed organization or pickle card operator from exclusively selling pickle cards sold by a single distributor. No licensed organization or pickle card operator shall accept or agree to accept anything of value from a distributor in exchange for an agreement or commitment by such licensed organization or pickle card operator to exclusively sell pickle cards sold by such distributor.

(5) No distributor or employee or spouse of any distributor shall participate in the conduct or operation of any lottery by the sale of pickle cards or any other kind of gambling activity which is authorized or regulated under Chapter

9 except to the exclusive extent of his or her statutory duties as a licensed distributor and as provided in sections 9-255.07 and 9-632. No distributor or employee or spouse of any distributor shall have a substantial interest in another distributor, a manufacturer, a manufacturer-distributor as defined in section 9-616 other than itself, or a licensed organization or any other licensee regulated under Chapter 9. Membership in any organization shall not be deemed a violation of this section.

(6) A distributor shall purchase or otherwise obtain pickle card units only from a licensed manufacturer and shall pay for such units by check within thirty days of delivery.

Source: Laws 1986, LB 1027, § 97; Laws 1988, LB 1232, § 34; Laws 1989, LB 767, § 35; Laws 1994, LB 694, § 79; Laws 1997, LB 248, § 12; Laws 2002, LB 545, § 32.

Cross References

Nebraska Bingo Act, see section 9-201.

9-332 Manufacturer of pickle cards; license required; application; fee; change in information; renewal.

A manufacturer shall obtain a license from the department prior to manufacturing or selling or supplying to any licensed distributor in this state any pickle cards or pickle card units or engaging in any interstate activities relating to such pickle cards or pickle card units, except that nothing in this section shall prohibit a manufacturer from marketing, selling, or otherwise providing pickle cards or pickle card units to a federally recognized Indian tribe for use in a Class II gaming activity authorized by the federal Indian Gaming Regulatory Act. The applicant shall include with the application form prescribed by the department a biennial license fee of three thousand fifty dollars, a sworn statement by the applicant or appropriate officer of the applicant that the applicant will comply with all provisions of the Nebraska Pickle Card Lottery Act and all rules and regulations adopted and promulgated pursuant to the act, and such other information as the department deems necessary. If the applicant is an individual, the application shall include the applicant's social security number.

The applicant shall notify the department within thirty days of any change in the information submitted on or with the application form. The applicant shall comply with all applicable laws of the United States and the State of Nebraska and all applicable rules and regulations of the department.

Manufacturers' licenses shall expire on September 30 of every odd-numbered year or such other date as the department may prescribe by rule and regulation. Manufacturers' licenses may be renewed biennially. An application for license renewal shall be submitted to the department at least forty-five days prior to the expiration date of the license.

Source: Laws 1985, LB 408, § 19; R.S.Supp.,1985, § 9-143.02; Laws 1986, LB 1027, § 98; Laws 1989, LB 767, § 36; Laws 1991, LB 427, § 37; Laws 1994, LB 694, § 80; Laws 1997, LB 248, § 13; Laws 1997, LB 752, § 67.

9-332.01 Manufacturer; preselling activities; approval required.

Each manufacturer shall receive departmental approval prior to selling in this state any type of pickle card, pickle card unit, punchboard, or other similar card, board, or ticket included in section 9-315 whether referred to by any other name intended for resale in Nebraska. Approval by the department shall be based upon, but not limited to, the manufacture, assembly, and packaging of pickle cards or pickle card units and any other specifications imposed by the Nebraska Pickle Card Lottery Act or any rule or regulation adopted and promulgated pursuant to the act.

Source: Laws 1988, LB 1232, § 30; Laws 1996, LB 1277, § 6.

9-333 Manufacturer; records.

Each manufacturer shall keep and maintain a complete set of records detailing the manufacturer's pickle card activities, including the name and state identification number of each distributor purchasing pickle card units, the quantity and type of each pickle card unit sold, and any other information concerning pickle card units which the department deems necessary. Such records shall be made available to the department upon request. The department may require by rule and regulation periodic reporting from a manufacturer relative to its pickle card activities.

Source: Laws 1985, LB 408, § 26; R.S.Supp.,1985, § 9-143.05; Laws 1986, LB 1027, § 99; Laws 1988, LB 1232, § 35; Laws 1997, LB 248, § 14.

9-334 Nonresident manufacturer; designated agent for service of process.

Each manufacturer selling pickle cards and pickle card units in this state that is not a resident or corporation shall designate a natural person who is a resident of and living in this state and is nineteen years of age or older as a resident agent for the purpose of receipt and acceptance of service of process and other communications on behalf of the manufacturer. The name, business address where service of process and delivery of mail can be made, and home address of such agent shall be filed with the department.

Source: Laws 1985, LB 408, § 21; R.S.Supp.,1985, § 9-143.06; Laws 1986, LB 1027, § 100; Laws 1994, LB 694, § 81.

9-335 Manufacturer; employee or spouse; restriction on activities.

No manufacturer shall be licensed to conduct any other activity under the Nebraska Pickle Card Lottery Act. No manufacturer shall hold a license to conduct any other kind of gambling activity which is authorized or regulated under Chapter 9 except as provided in sections 9-255.09 and 9-632. No manufacturer or employee or spouse of any manufacturer shall participate in the conduct or operation of any lottery by the sale of pickle cards or any other kind of gambling activity which is authorized or regulated under Chapter 9 except to the exclusive extent of his or her statutory duties as a licensed manufacturer or employee thereof, as a lottery contractor pursuant to the State Lottery Act, and as provided in sections 9-255.09 and 9-632. No manufacturer or employee or spouse of any manufacturer shall have a substantial interest in any other manufacturer, any distributor, any manufacturer-distributor as de-

fined in section 9-616 other than itself, or any licensed organization or any other licensee regulated under Chapter 9.

Source: Laws 1985, LB 408, § 27; R.S.Supp.,1985, § 9-143.03; Laws 1986, LB 1027, § 101; Laws 1989, LB 767, § 37; Laws 1994, LB 694, § 82.

Cross References

State Lottery Act, see section 9-801.

9-336 Pickle card or pickle card unit; serial number required; manufacturer; duties.

Each manufacturer of pickle cards or pickle card units shall assign a serial number to each unit of pickle cards he or she manufactures and place such number on each flare card supplied by such manufacturer and on each pickle card in the unit. No manufacturer shall sell or furnish to any person a unit of pickle cards with the same serial number as a unit which such manufacturer has previously distributed in this or any other state within the three years prior to such sale or furnishing.

Source: Laws 1985, LB 408, § 25; R.S.Supp.,1985, § 9-186.03; Laws 1986, LB 1027, § 102; Laws 1994, LB 694, § 83.

9-337 Pickle cards; construction standards.

(1) Pickle cards shall be constructed so that it is impossible to determine the covered or concealed number, letter, symbol, configuration, or combination thereof on the pickle card until it has been dispensed to and opened by the player, by any method or device, including, but not limited to, the use of a marking, variance in size, variance in paper fiber, or light.

(2) All pickle cards shall be constructed to ensure that, when offered for sale to the public, the pickle card is virtually opaque and free of security defects so that winning pickle cards cannot be determined, prior to being opened, through the use of high-intensity lights or any other method.

(3) All pickle cards shall be constructed to conform in all other respects to the provisions and specifications imposed by the Nebraska Pickle Card Lottery Act or by rule or regulation as to the manufacture, assembly, or packaging of pickle cards or pickle card units.

Source: Laws 1985, LB 408, § 23; R.S.Supp.,1985, § 9-186.01; Laws 1986, LB 1027, § 103.

9-338 Pickle card or pickle card unit; restrictions on manufacturer; contraband.

(1) No manufacturer or representative thereof, with knowledge or in circumstances under which he or she reasonably should have known, shall manufacture, possess, display, sell, or otherwise furnish to any person any pickle card or pickle card unit:

(a) In which the winning tab or tabs have not been completely and randomly distributed and mixed among all other tabs in a series;

(b) In which the location or approximate location of any of the winning tab or tabs can be determined in advance of opening the tab or tabs in any manner or by any device, including, but not limited to, any pattern in the manufacture,

assembly, or packaging of the tabs or pickle cards by the manufacturer, by any markings on the tabs or container, or by the use of a light;

(c) Which offers both a chance for an instant prize and a possible chance to participate in a subsequent lottery activity, except that pickle card units (i) may utilize a seal card to award prizes or (ii) may utilize numbers drawn or selected in the conduct of bingo pursuant to the Nebraska Bingo Act to award prizes; or

(d) Which does not conform in all other respects to the requirements of the Nebraska Pickle Card Lottery Act and any other specifications imposed by the department by rule and regulation as to the manufacture, assembly, or packaging of pickle cards.

Any such cards or units shall be contraband goods for purposes of section 9-350.

(2) No manufacturer or representative thereof shall use as a sales promotion any statement, demonstration, or implication that any certain portion of a series of pickle cards contains more winners than other portions of the series or that any series of pickle cards or pickle card units may be sold by the organization or its designated sales agent or pickle card operator in a particular manner that would give the seller any advantage in selling more of the pickle cards before having to pay out winners.

Source: Laws 1985, LB 408, § 24; R.S.Supp.,1985, § 9-186.02; Laws 1986, LB 1027, § 104; Laws 1996, LB 1277, § 7; Laws 2000, LB 658, § 3.

Cross References

Nebraska Bingo Act, see section 9-201.

9-339 Pickle card or pickle card unit; department; examination.

In addition to any other authority of the department and its authorized agents to conduct inspections, the department and its agents shall have the authority to select any pickle card or pickle card unit held by a distributor, licensed organization, sales agent, pickle card operator, or manufacturer and to examine the quality and integrity of such card or unit in any manner, including pulling all chances remaining thereon. If the pickle card or pickle card unit so inspected is thereby altered in any manner and no defect, alteration, deceptive condition, or other violation is discovered, the owner shall be reimbursed by the department for the cost of the pickle card or pickle card unit and the pickle card or pickle card unit shall become property of the department.

Source: Laws 1985, LB 408, § 22; R.S.Supp.,1985, § 9-186.04; Laws 1986, LB 1027, § 105.

9-340 Pickle card or pickle card unit; restrictions; costs of examination.

(1) No manufacturer shall sell or otherwise provide any pickle cards or pickle card units to any person in Nebraska except a licensed distributor or a federally recognized Indian tribe for use in a Class II gaming activity authorized by the federal Indian Gaming Regulatory Act. No distributor licensed in Nebraska shall purchase or otherwise obtain any pickle cards or pickle card units except from manufacturers licensed in Nebraska.

(2) No distributor shall sell or otherwise provide any pickle card units except to an organization licensed to conduct a lottery by the sale of pickle cards pursuant to the Nebraska Pickle Card Lottery Act or to a federally recognized

Indian tribe for use in a Class II gaming activity authorized by the federal Indian Gaming Regulatory Act. No pickle cards shall be sold by a distributor except in the form of pickle card units. No distributor shall market or sell any pickle card unit for use in this state:

(a) Which has not been approved and authorized by the department;

(b) Which has a card or play count in excess of six thousand per pickle card unit;

(c) Which offers less than sixty-five percent or more than eighty percent of the gross proceeds to be paid out in prizes;

(d) Which contains any pickle card or punch on a punchboard, the individual purchase price of which exceeds one dollar;

(e) In which any individual pickle card awards a prize or prizes in excess of one thousand dollars;

(f) Which may be used for any gift enterprise as defined in section 9-701;

(g) Unless and until a stamp obtained from the department containing an identifying number has been permanently and conspicuously affixed upon the flare card supplied by the manufacturer for identification purposes. Once placed, such stamp shall not be removed or tampered with by any person. The state identification stamp shall be placed on each punchboard such that the complete number, together with the symbol appearing thereon, is plainly visible. State identification stamps shall be obtained only from the department and only by a licensed distributor for ten cents each. Such stamps shall be placed by the licensed distributor only on items sold or furnished to licensed organizations in this state. Such stamps shall not be transferred or furnished to any other person unless already placed upon a punchboard or pickle card unit; or

(h) Without the information required in section 9-346.

(3) The department may require a manufacturer seeking approval of any pickle card unit to pay the actual costs incurred by the department in examining the unit. If required, the anticipated costs shall be paid in advance by the manufacturer. After completion of the examination, the department shall refund overpayments or charge and collect amounts sufficient to reimburse the department for underpayment of actual costs.

Source: Laws 1983, LB 259, § 51; Laws 1984, LB 949, § 57; Laws 1985, LB 408, § 35; R.S.Supp.,1985, § 9-186; Laws 1986, LB 1027, § 106; Laws 1988, LB 1232, § 36; Laws 1989, LB 767, § 38; Laws 1994, LB 694, § 84; Laws 1995, LB 762, § 1.

9-340.01 Distributor; provide purchaser with invoice.

Each distributor shall, in a manner prescribed by the department, provide each purchaser of a pickle card unit or punchboard with an invoice of sale. The invoice shall contain the purchaser's name and complete address and any other information the department deems necessary.

Source: Laws 1988, LB 1232, § 37.

9-340.02 Pickle card units; dispensing devices; payment; definite profit; how remitted; delivery; credit; limitations.

(1) All pickle card units purchased by a licensed organization from a licensed distributor shall be paid for by a check drawn on the pickle card bank account of the licensed organization either in advance of or upon delivery of the pickle card units.

(2) A licensed pickle card operator shall remit the definite profit, less not more than thirty percent of the definite profit as allowed by subsection (4) of section 9-347, of all pickle card units received to the sponsoring licensed organization by check either in advance of or upon delivery of the pickle card units from the sales agent to the pickle card operator. Upon delivery of the pickle card units, the sales agent shall issue the pickle card operator a standard receipt prescribed by the department.

(3) Unless otherwise authorized by the department, pickle card units shall be delivered to a pickle card operator only by a sales agent's personal delivery or by delivery arranged by a sales agent through the mail or by a common carrier.

(4) No licensed organization conducting a lottery by the sale of pickle cards shall extend credit in any form, including, but not limited to, the extension of any credit with regard to the receipt of the definite profit, less not more than thirty percent of the definite profit as allowed by subsection (4) of section 9-347, of a pickle card unit from a pickle card operator upon delivery of a pickle card unit to the pickle card operator and the extension of any credit with regard to the sale or lease of any equipment or coin-operated or currency-operated pickle card dispensing device used in connection with a lottery by the sale of pickle cards.

(5) All payments for the purchase, lease, or rental of a coin-operated or currency-operated pickle card dispensing device by a licensed organization shall be made by a check drawn on the organization's pickle card checking account.

(6) All payments for the purchase, lease, or rental of a coin-operated or currency-operated pickle card dispensing device by a licensed pickle card operator from a licensed organization shall be made by a check drawn on the business checking account of the pickle card operator or a personal checking account of an owner, partner, or officer of the pickle card operator, either at the time of or before placement of the device or on or before the first day of the period of the lease, whichever comes first.

(7) All lease or rental agreements between a licensed organization and a licensed pickle card operator for coin-operated or currency-operated pickle card dispensing devices shall be subject to approval by the department.

Source: Laws 1988, LB 1232, § 38; Laws 1989, LB 767, § 39; Laws 1991, LB 427, § 38; Laws 1995, LB 344, § 16; Laws 2002, LB 545, § 33.

9-341 Licensed manufacturer; duty to keep records.

Every licensed manufacturer shall keep and maintain a complete set of records which shall include all details of all activities of the licensee related to the conduct of the licensed activity as may be required by the department, including the total number of pickle card units sold to any Nebraska-licensed distributor. Such records shall be available for inspection by the department.

The records shall be maintained for a period of not less than three years from the date of the end of the licensee's fiscal year.

Source: Laws 1985, LB 408, § 20; R.S.Supp.,1985, § 9-143.04; Laws 1986, LB 1027, § 107.

9-342 Licensed organization; pickle cards; powers and duties; purchases; limitation.

(1) Any organization licensed to conduct a lottery by the sale of pickle cards shall purchase units for such purposes from a distributor and shall use the net profit from the sale of the pickle cards for a lawful purpose.

(2) When any organization licensed to conduct a lottery by the sale of pickle cards purchases units from a distributor, such organization shall provide the distributor with a copy of the organization's license or other adequate identification indicating that such organization has a valid license issued pursuant to section 9-327.

(3) Only a person (a) licensed pursuant to section 9-327 as a utilization-of-funds member, (b) licensed pursuant to section 9-329 as a sales agent, (c) licensed pursuant to section 9-232.01 as a gaming manager, (d) designated as a bingo chairperson by an organization licensed to conduct bingo pursuant to the Nebraska Bingo Act, or (e) who serves as a manager for a licensed organization which is exempt under section 501(c)(8), (c)(10), or (c)(19) of the Internal Revenue Code shall order pickle card units from a distributor on behalf of the organization. Only a person licensed as a utilization-of-funds member shall purchase pickle card units from a distributor on behalf of the organization. No pickle card operator shall order or purchase any pickle card or pickle card unit from a distributor.

Source: Laws 1983, LB 259, § 42; Laws 1984, LB 949, § 48; R.S.Supp.,1984, § 9-177; Laws 1986, LB 1027, § 108; Laws 1988, LB 1232, § 40; Laws 1994, LB 694, § 85; Laws 1997, LB 248, § 15.

Cross References

Nebraska Bingo Act, see section 9-201.

9-343 Distributor; records; reports.

(1) A distributor shall maintain records of total sales of pickle card units and, within thirty days after the end of the calendar month or by the last day of the month following each monthly period, whichever comes first, shall report to the department, in a manner prescribed by the department, detailed information concerning each sale, which information shall include, but not be limited to, (a) the total number of units sold by such distributor, (b) the aggregate price for which such cards will be sold by the purchasing organization, and (c) any other information the department deems necessary.

(2) A distributor shall maintain a record of the serial number of each unit sold and the corresponding state identification stamp number assigned to each unit. Such information shall be made available to the department upon request.

Source: Laws 1983, LB 259, § 48; Laws 1984, LB 949, § 54; Laws 1985, LB 408, § 32; R.S.Supp.,1985, § 9-183; Laws 1986, LB 1027, § 109; Laws 1988, LB 1232, § 41; Laws 1997, LB 248, § 16.

9-344 Distributor; taxation; deficiencies.

(1) Accompanying the monthly reports required in section 9-343, the distributor shall remit to the department a tax equal to ten percent of the definite profit of each pickle card unit sold by the distributor. Such tax shall be remitted with and reported on a form prescribed by the department on a monthly basis and shall be due and payable within thirty days after each monthly period or by the last day of the month following each monthly period, whichever comes first. The department shall remit the tax to the State Treasurer for credit to the Charitable Gaming Operations Fund. The distributor shall include the tax due under this section in the selling price of units and shall separately state such tax on the invoice. All deficiencies of the tax prescribed in this section shall accrue interest and be subject to a penalty as provided for sales and use taxes in the Nebraska Revenue Act of 1967.

(2) Unless otherwise provided in the Nebraska Pickle Card Lottery Act, no occupation tax on any proceeds derived from the conduct of a lottery by the sale of pickle cards shall be levied, assessed, or collected from any licensee under the act by any county, township, district, city, village, or other governmental subdivision or body having power to levy, assess, or collect such tax.

(3) For purposes of proper administration of the tax imposed by this section and to prevent evasion of the tax, it shall be presumed that each pickle card unit sold by a distributor or obtained from a manufacturer and not accounted for by a distributor is subject to the tax until the contrary is established. The burden of proving the contrary shall be upon the distributor.

Source: Laws 1983, LB 259, § 49; Laws 1984, LB 949, § 55; Laws 1985, LB 408, § 33; R.S.Supp.,1985, § 9-184; Laws 1986, LB 1027, § 110; Laws 1988, LB 1232, § 42; Laws 1989, LB 767, § 40; Laws 1990, LB 1055, § 5; Laws 1991, LB 427, § 39; Laws 1994, LB 694, § 86.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

9-345 Participation; age limitation.

(1) No person under eighteen years of age shall play or participate in any way in any lottery by the sale of pickle cards.

(2) No person or licensee, or employee or agent thereof, shall knowingly permit an individual under eighteen years of age to play or participate in any way in any lottery by the sale of pickle cards conducted pursuant to the Nebraska Pickle Card Lottery Act.

Source: Laws 1986, LB 1027, § 111; Laws 1997, LB 248, § 17.

9-345.01 Conduct of lottery; location; special function.

A licensed organization may conduct a lottery by the sale of pickle cards only at its designated premises, at its regularly scheduled bingo occasion and its limited period bingo conducted pursuant to the Nebraska Bingo Act, and at the premises of one or more pickle card operators.

A licensed organization may obtain an authorization from the department to sell its individual pickle cards at a festival, bazaar, picnic, carnival, or similar special function conducted by the licensed organization outside of the organization's designated premises one time per twelve-month period commencing

October 1 of each year or such other date as the department may prescribe by rule and regulation not to exceed seven consecutive days if the special function is conducted within the county in which the licensed organization has its principal office and the pickle cards are sold only by volunteer members of the licensed organization. A licensed organization shall make written request to the department for such authorization at least ten days prior to the start of the special function.

Source: Laws 1988, LB 1232, § 28; Laws 1994, LB 694, § 87; Laws 2000, LB 1086, § 14.

Cross References

Nebraska Bingo Act, see section 9-201.

9-345.02 Flare cards; punchboards; posting; identification.

(1) Licensed organizations and pickle card operators selling individual pickle cards or punchboards shall conspicuously post the flare card for each pickle card unit in play at that location.

(2) Licensed organizations and pickle card operators shall identify each flare card or punchboard in a manner prescribed by the department indicating the name and state identification number of each nonprofit organization on behalf of which individual pickle cards and punches from punchboards are sold at such location.

Source: Laws 1988, LB 1232, § 29; Laws 1989, LB 767, § 41.

9-345.03 Pickle cards; dispensing device; registration; application; fee; decal; nontransferable; access; violations; penalties.

(1) Any person who places a coin-operated or currency-operated pickle card dispensing device in operation in this state without a current registration decal affixed permanently and conspicuously to the device shall be subject to an administrative penalty of thirty dollars for each violation. The department shall remit the proceeds from such penalties to the State Treasurer for credit to the Charitable Gaming Operations Fund.

(2) Registration of the device with the department shall be made by application to the department and shall be the responsibility of the licensed organization when such device is to be used in a licensed organization's designated premises or at the location of its regularly scheduled bingo occasion or of the licensed pickle card operator when such device is to be used on the premises of the pickle card operator.

(3) Each application for registration shall include (a) the name and address of the licensed pickle card operator or licensed organization registering the device, (b) the state identification number of the licensed pickle card operator or licensed organization registering the device, (c) a detailed description of the physical appearance and operation of the device, and (d) such other information which the department deems necessary.

(4) A fee of fifty dollars shall be charged for each decal issued pursuant to this section. The department shall remit the proceeds from the fee to the State Treasurer for credit to the Charitable Gaming Operations Fund. All decals issued by the department pursuant to this section shall expire on December 31 of each year or such other date as the department may prescribe by rule and regulation and shall be renewed annually.

(5) The registration decal issued by the department pursuant to this section shall not be transferable.

(6) Upon request by the Tax Commissioner or his or her agents or employees, the licensed organization or pickle card operator responsible for registering the device shall provide the requesting individual immediate access to any pickle cards contained within such device.

(7) Any person violating any provision of this section shall be deemed guilty of a Class II misdemeanor. Each day on which any person engages in or conducts the business of operating any device subject to this section without having paid the penalty or the registration as provided constitutes a separate offense.

Source: Laws 1988, LB 1232, § 43; Laws 1991, LB 427, § 40; Laws 1995, LB 344, § 17; Laws 2000, LB 1086, § 15.

9-345.04 Seal cards; authorized; requirements.

A lottery by the sale of pickle cards may be conducted utilizing a seal card comprised of a board or placard that contains a seal or seals which, when removed or opened, reveal predesignated winning numbers, letters, symbols, or any combination thereof. All rules governing the handling of prizes awarded in conjunction with seal cards shall be posted prominently in the area where such pickle card units are played.

Source: Laws 1996, LB 1277, § 1.

9-346 Determination of winner; pickle cards; requirements.

(1) The winning cards, boards, or tickets in any lottery by the sale of pickle cards shall be determined by a comparison of those numbers, letters, symbols, or configurations, or combination thereof, which are revealed on the pickle cards, to a set of numbers, letters, symbols, or configurations, or combination thereof, which has been previously specified as a winning combination. Whenever the winning combinations do not comprise a statement of the cash prize won, the winning combinations shall be printed on every pickle card that is wider than one inch or longer than two and one-half inches. Pickle cards that are smaller than such dimensions shall have the winning combinations printed on a flare card that is publicly displayed at the point of sale of the pickle cards.

(2) The winning chances of any pickle card shall not be determined or otherwise known until after its purchase and only upon opening, pulling, detaching, breaking open, or otherwise removing the tab or tabs to clearly reveal or otherwise appropriately revealing the combination. The winning chances shall be determined by and based upon an element of chance.

(3) Any person possessing a winning pickle card shall receive the appropriate cash prize previously determined and specified for that winning combination.

(4) All pickle cards shall legibly bear on the outside of each pickle card the name of the licensed organization conducting the lottery by the sale of pickle cards and such organization's state identification number.

(5) Nothing in this section shall prohibit (a) punchboards which allow the person who purchases the last punch on the punchboard to receive a cash prize predetermined by the manufacturer as a result of purchasing the last punch, (b) pickle card units which utilize a seal card which allows a seal card winner to receive a cash prize predetermined by the manufacturer, (c) pickle card units

which utilize a seal card as described in this section which allow the person who purchases the last pickle card of such a unit to receive a cash prize predetermined by the manufacturer as a result of purchasing the last pickle card, or (d) pickle card units which are designed by a manufacturer to utilize bingo numbers drawn during the conduct of bingo to determine a winning combination. Such pickle card units shall be sold by a licensed distributor only to an organization licensed to conduct a lottery by the sale of pickle cards which is also licensed to conduct bingo and shall be played only at the bingo premises of the licensed organization during a bingo occasion conducted pursuant to the Nebraska Bingo Act.

Source: Laws 1983, LB 259, § 5; Laws 1984, LB 949, § 11; Laws 1985, LB 408, § 4; R.S.Supp.,1985, § 9-140.01; Laws 1986, LB 1027, § 112; Laws 1988, LB 1232, § 44; Laws 1989, LB 767, § 42; Laws 1994, LB 694, § 88; Laws 1996, LB 1277, § 8; Laws 1997, LB 248, § 18; Laws 2000, LB 658, § 4.

Cross References

Nebraska Bingo Act, see section 9-201.

9-347 Gross proceeds; definite profit; use; restrictions; allocation of expenses.

(1) The gross proceeds of any lottery by the sale of pickle cards shall be used solely for lawful purposes, awarding of prizes, payment of the unit cost, any commission paid to a pickle card operator, allowable expenses, and allocations for bingo expenses as provided by subsection (5) of this section.

(2) Not less than sixty-five percent or more than eighty percent of the gross proceeds of any lottery by the sale of pickle cards shall be used for the awarding of prizes.

(3) Not more than twelve percent of the definite profit of a pickle card unit shall be used by the licensed organization to pay the allowable expenses of operating a lottery by the sale of pickle cards, except that license fees paid to the department to license the organization, each utilization-of-funds member, and any sales agent and pickle card dispensing device registration fees shall not be included in determining the twelve-percent limitation on expenses and no portion of such twelve percent shall be used to pay any expenses associated with the sale of pickle cards at a bingo occasion conducted pursuant to the Nebraska Bingo Act, and of such twelve percent not more than six percent of the definite profit may be used by the licensed organization for the payment of any commission, salary, or fee to a sales agent in connection with the marketing, sale, and delivery of a pickle card unit. When determining the twelve percent of definite profit that is permitted to pay the allowable expenses of operating a lottery by the sale of pickle cards, the definite profit from the sale of pickle cards at the organization's bingo occasions shall not be included.

(4) Not more than thirty percent of the definite profit of a pickle card unit shall be used by a licensed organization to pay a pickle card operator a commission, fee, or salary for selling individual pickle cards as opportunities for participation in a lottery by the sale of pickle cards on behalf of the licensed organization.

(5) An organization licensed to conduct bingo pursuant to the Nebraska Bingo Act may allocate a portion of the expenses associated with the conduct of its bingo occasions to its lottery by the sale of pickle cards conducted at such

bingo occasions. Such allocation shall be based upon the percentage that pickle card gross proceeds derived from the sale of pickle cards at the bingo occasions represents to the total of bingo gross receipts and pickle card gross proceeds derived from such bingo occasions for the previous annual reporting period. An organization licensed to conduct bingo that has not been previously licensed shall determine such allocation based upon the percentage that pickle card gross proceeds derived from the sale of pickle cards at the bingo occasions represents to the total of bingo gross receipts and pickle card gross proceeds derived from such bingo occasions for the initial three consecutive calendar months of operation. The total amount of expenses that may be allocated to the organization's lottery by the sale of pickle cards shall be subject to the limitations on bingo expenses as provided for in the Nebraska Bingo Act with respect to the fourteen-percent expense limitation and the fair-market-value limitation on the purchase, rental, or lease of bingo equipment and the rental or lease of personal property or of a premises for the conduct of bingo. No expenses associated with the conduct of bingo may be paid directly from the pickle card checking account. A licensed organization which needs to allocate a portion of the expenses associated with the conduct of its bingo occasions to its lottery by the sale of pickle cards conducted at such bingo occasions to pay bingo expenses as provided by this section shall transfer funds from the pickle card checking account to the bingo checking account by a check drawn on the pickle card checking account or by electronic funds transfer.

Source: Laws 1986, LB 1027, § 113; Laws 1988, LB 1232, § 45; Laws 1989, LB 767, § 43; Laws 1994, LB 694, § 89; Laws 1995, LB 344, § 18; Laws 2002, LB 545, § 34; Laws 2009, LB286, § 2.

Cross References

Nebraska Bingo Act, see section 9-201.

9-347.01 Definite profit; distribution; net profit; use.

(1) For each type of pickle card unit marketed in this state, the department shall determine the following: (a) When a licensed organization sells pickle cards through pickle card operators, the portion of the definite profit from that pickle card unit which shall go to the licensed organization, such amount to be not less than seventy percent of the definite profit from such pickle card unit; (b) the maximum amount of the definite profit from the sale of a pickle card unit that a licensed organization may pay a pickle card operator as a commission, fee, or salary to sell its pickle cards, such amount not to exceed thirty percent of the definite profit from such pickle card unit; (c) the portion of the definite profit from the sale of a pickle card unit which may be expended by a licensed organization for allowable expenses, such amount not to exceed twelve percent of the definite profit from such pickle card unit; and (d) the portion of the definite profit from the sale of a pickle card unit which may be utilized by a licensed organization for payment of the organization's sales agent, such amount to be a portion of the allowable expenses and not to exceed six percent of the definite profit from such pickle card unit.

(2) The licensed organization's net profit from the sale of a pickle card unit shall be used exclusively for a lawful purpose. A licensed organization shall not donate or promise to donate its net profit or any portion of the net profit to a recipient outside of its organization as an inducement for or in exchange for (a) a payment, gift, or other thing of value from the recipient to any person,

organization, or corporation, including, but not limited to, the licensed organization or any of its members, employees, or agents, or (b) a pickle card operator's agreement to sell pickle cards on behalf of the licensed organization.

Source: Laws 1988, LB 1232, § 46; Laws 1989, LB 767, § 44; Laws 1995, LB 344, § 19; Laws 2002, LB 545, § 35; Laws 2009, LB286, § 3.

9-348 Segregation of definite profit; manner of payment; records; requirements.

(1) The definite profit, less not more than thirty percent of the definite profit as allowed by subsection (4) of section 9-347, of any lottery by the sale of pickle cards and all amounts received by any licensed organization from the sale, lease, or rental of coin-operated or currency-operated pickle card dispensing devices shall be segregated from other revenue of any licensed organization conducting the lottery and placed in a separate checking account. All lawful purpose donations and expenses relating to the licensed organization's lottery by the sale of pickle cards, including the allowable expenses, any license fees paid to the department to license the organization, each utilization-of-funds member, and any sales agent, coin-operated or currency-operated pickle card dispensing device registration fees, and the unit cost but excluding the payment of prizes for winning pickle cards, shall be paid by check from such account and shall be made payable to the ultimate use of such lawful purpose donations or expenses.

(2) Separate records shall be maintained by any licensed organization conducting a lottery by the sale of pickle cards. Each nonprofit organization conducting a lottery by the sale of pickle cards shall keep a record of all locations or persons who are paid to sell pickle cards. Records and lists required by the Nebraska Pickle Card Lottery Act shall be preserved for at least three years. Any law enforcement agency or other agency of government shall have the authority to investigate the records relating to lotteries by the sale of pickle cards and gross proceeds from such lotteries at any time. Organizations shall, upon proper written request, deliver all such records to the department, law enforcement agency, or other agency of government for investigation.

Source: Laws 1983, LB 259, § 46; Laws 1984, LB 949, § 52; R.S.Supp.,1984, § 9-181; Laws 1986, LB 1027, § 114; Laws 1988, LB 1232, § 47; Laws 1989, LB 767, § 45; Laws 1994, LB 694, § 90; Laws 1995, LB 344, § 20.

9-348.01 Lottery by the sale of pickle cards; sources of funding; payments; restrictions.

(1) A lottery by the sale of pickle cards shall fund itself after its first year of existence and shall not receive money from any other source, including the operation of other charitable gaming activities, for the payment of prizes, unit cost, allowable expenses, any commission paid to a pickle card operator, lawful purpose donations, or any other expense associated with the operation of the lottery by the sale of pickle cards except as provided in subsection (2) of this section.

(2) A licensed organization establishing a lottery by the sale of pickle cards may finance such lottery with money from the general fund of the licensed organization during the first year of operation of the lottery by the sale of pickle

cards. General fund money used to finance a lottery by the sale of pickle cards may be repaid from funds received by the lottery by the sale of pickle cards.

(3) A licensed organization may commingle funds received from the sale of pickle cards with any general operating funds of the licensed organization by means of a check drawn on the pickle card checking account or by electronic funds transfer from that account, but the burden of proof shall be on the licensed organization to demonstrate that such commingled funds are not used to make any payments associated with the operation of the lottery by the sale of pickle cards and are used for a lawful purpose.

Source: Laws 1988, LB 1232, § 49; Laws 1989, LB 767, § 46; Laws 1994, LB 694, § 91.

9-349 Lottery by the sale of pickle cards; reports.

(1) A licensed organization conducting a lottery by the sale of pickle cards shall report annually to the department, on a form prescribed by the department, a complete and accurate accounting of its gross proceeds from the lottery by the sale of pickle cards. The annual report shall demonstrate that the organization's definite profit from pickle card sales has been retained in the organization's pickle card checking account or expended solely for allowable expenses, unit costs, any pickle card operator commissions, lawful purpose donations, any license fees paid to the department to license the organization, each utilization-of-funds member, and any sales agent, coin-operated or currency-operated pickle card dispensing device registration fees, or any bingo expenses allocated to the sale of pickle cards as provided for in section 9-347.

(2) The annual report shall cover the organization's lottery by the sale of pickle cards activities from July 1 through June 30 of each year or such other period as the department may prescribe by rule and regulation. Such report shall be submitted to the department on or before August 15 of each year or such other date as the department may prescribe by rule and regulation.

(3) A copy of the report shall be submitted to the organization's membership.

(4) Upon dissolution of a licensed organization or if a previously licensed organization does not renew its license to conduct a lottery by the sale of pickle cards, its license renewal application is denied, or its license is canceled or revoked, all remaining profits derived from the conduct of the lottery by the sale of pickle cards shall be utilized for a lawful purpose and shall not be distributed to any private individual or shareholder. A complete and accurate report of the organization's pickle card activity shall be filed with the department, on a form prescribed by the department, no later than forty-five days after the date the organization is dissolved or no later than forty-five days after the expiration date of the license or the effective date of the license renewal application denial or license cancellation or revocation. The report shall cover the period from the end of the organization's most recent annual report filed through the date the organization is dissolved or the date the license renewal application has been denied or the license has been canceled or revoked or has otherwise expired. The organization shall include with the report a plan for the disbursement of any remaining profits which shall be subject to approval by the department. Such plan shall identify the specific purposes for which the remaining profits will be utilized.

(5) In addition to the reports required by subsections (1) and (4) of this section, the department may prescribe by rule and regulation the filing of a

pickle card revenue status report by August 15 of each year or such other date as the department may prescribe by rule and regulation, on a form prescribed by the department, listing all disbursements of pickle card revenue until all such revenue has been expended either for allowable expenses or for a lawful purpose.

Source: Laws 1983, LB 259, § 47; Laws 1984, LB 949, § 53; R.S.Supp.,1984, § 9-182; Laws 1986, LB 1027, § 115; Laws 1988, LB 1232, § 48; Laws 1994, LB 694, § 92; Laws 1995, LB 344, § 21; Laws 2002, LB 545, § 36.

9-350 Tax Commissioner; power to seize contraband; effect.

(1) The Tax Commissioner or his or her agents or employees, at the direction of the Tax Commissioner, or any peace officer of this state may seize, without a warrant, the following contraband goods found any place in this state: (a) Any pickle cards and pickle card units declared to be contraband goods in section 9-338; (b) any pickle cards that are not properly printed as required in section 9-346 or on which the tax has not been paid, except for pickle cards in the possession of a licensed distributor or licensed manufacturer; (c) any pickle cards or pickle card units purchased by any licensed organization from any source other than a licensed distributor; (d) any pickle cards or pickle card units that are being sold without all of the proper licenses; (e) any pickle card units or pickle cards that have been sold in violation of the Nebraska Pickle Card Lottery Act or any rules or regulations adopted and promulgated pursuant to such act; (f) any pickle cards or pickle card units in the possession of any licensee whose license has been revoked, canceled, or suspended or any pickle cards or pickle card units in the possession of any former licensee whose license has expired; or (g) any coin-operated or currency-operated pickle card dispensing device which contains any pickle cards deemed to be contraband goods pursuant to this subsection or any such device which does not have permanently and conspicuously affixed to it a current registration decal required by section 9-345.03.

(2) The Tax Commissioner may, upon satisfactory proof, direct return of any confiscated pickle cards or pickle card units when he or she has reason to believe that the entity from whom the pickle cards or pickle card units were confiscated has not willfully or intentionally evaded any tax or failed to comply with the Nebraska Pickle Card Lottery Act. Upon receipt of an affidavit of ownership, the Tax Commissioner shall relinquish possession of a seized coin-operated or currency-operated pickle card dispensing device to the lawful owners of the device if the device is not needed as evidence by the department, any county attorney, or the Attorney General at an administrative or judicial hearing, if contraband pickle cards have been removed from the device, and in the event the device was seized due to a violation of subsection (2) of section 9-345.03, if the entity who was utilizing the device has applied for and has received a current registration decal for the seized device.

(3) The Tax Commissioner may, upon finding that an entity in possession of contraband goods has willfully or intentionally evaded any tax or failed to comply with the act, confiscate such goods. Any pickle cards or pickle card units confiscated shall be destroyed.

(4) The seizure and destruction of coin-operated or currency-operated pickle card dispensing devices, pickle cards, or pickle card units shall not relieve any person from a fine, imprisonment, or other penalty for violation of the act.

(5) The Tax Commissioner or his or her agents or employees, at the direction of the Tax Commissioner, may seal any pickle cards, pickle card units, or coin-operated or currency-operated pickle card dispensing devices deemed to be contraband goods pursuant to this section. Such seal shall not be broken until authorized by the Tax Commissioner or his or her agents or employees. If the seal on a coin-operated or currency-operated pickle card dispensing device is broken prior to payment of the penalty and registration of the device required under section 9-345.03, the device shall be subject to forfeiture and sale by the Tax Commissioner.

(6) The Tax Commissioner or his or her agents or employees, when directed to do so by the Tax Commissioner, or any peace officer of this state shall not be responsible for negligence in any court for the sealing, seizure, or confiscation of any coin-operated or currency-operated pickle card dispensing device, pickle card, or pickle card unit pursuant to this section.

(7) Possession of pickle cards or pickle card units which are deemed to be contraband goods pursuant to this section shall be a violation of the Nebraska Pickle Card Lottery Act.

Source: Laws 1985, LB 408, § 29; R.S.Supp.,1985, § 9-187.02; Laws 1986, LB 1027, § 116; Laws 1991, LB 427, § 41; Laws 1995, LB 344, § 22; Laws 1997, LB 248, § 19.

9-351 Unauthorized sale or possession of pickle cards; violation; penalty.

(1) No person or organization other than those qualifying under section 9-326 and licensed pursuant to section 9-327 shall be permitted to conduct a lottery by the sale of pickle cards in this state.

(2) No person other than a licensed distributor or manufacturer shall possess pickle cards that are not properly printed with the information required in section 9-346.

(3) Any person who violates this section shall be guilty of a Class I misdemeanor.

Source: Laws 1983, LB 259, § 44; Laws 1984, LB 949, § 51; Laws 1985, LB 408, § 31; R.S.Supp.,1985, § 9-179; Laws 1986, LB 1027, § 117.

9-352 Violations; penalties; enforcement; venue.

(1) Except when another penalty is specifically provided, any person or licensee, or employee or agent thereof, who violates any provision of the Nebraska Pickle Card Lottery Act, or who causes, aids, abets, or conspires with another to cause any person or licensee or any employee or agent thereof to violate the act, shall be guilty of a Class I misdemeanor for the first offense and a Class IV felony for any second or subsequent violation. Any licensee guilty of violating any provision of the act more than once in a twelve-month period may have its license canceled or revoked. Such matters may also be referred to any other state licensing agencies for appropriate action.

(2) Each of the following violations of the Nebraska Pickle Card Lottery Act shall be a Class IV felony:

(a) Giving, providing, or offering to give or provide, directly or indirectly, to any public official, employee, or agent of this state, or any agencies or political subdivisions of this state, any compensation or reward or share of the money for property paid or received through gambling activities regulated under Chapter 9 in consideration for obtaining any license, authorization, permission, or privilege to participate in any gaming operations except as authorized under Chapter 9 or any rules and regulations adopted and promulgated pursuant to such chapter;

(b) Making or receiving payment of a portion of the purchase price of pickle cards by a seller of pickle cards to a buyer of pickle cards to induce the purchase of pickle cards or to improperly influence future purchases of pickle cards;

(c) Using bogus, counterfeit, or nonopaque pickle cards, pull tabs, break opens, punchboards, jar tickets, or any other similar card, board, or ticket or substituting or using any pickle cards, pull tabs, or jar tickets that have been marked or tampered with;

(d) Knowingly filing a false report under the Nebraska Pickle Card Lottery Act;

(e) Knowingly falsifying or making any false entry in any books or records with respect to any transaction connected with the conduct of a lottery by the sale of pickle cards; or

(f) Knowingly selling or distributing or knowingly receiving with intent to sell or distribute pickle cards or pickle card units without first obtaining a license in accordance with the Nebraska Pickle Card Lottery Act pursuant to section 9-329, 9-329.03, 9-330, or 9-332.

(3) Intentionally employing or possessing any device to facilitate cheating in any lottery by the sale of pickle cards or use of any fraudulent scheme or technique in connection with any lottery by the sale of pickle cards is a violation of the Nebraska Pickle Card Lottery Act. The offense is a:

(a) Class II misdemeanor when the amount gained or intended to be gained through the use of such items, schemes, or techniques is less than five hundred dollars;

(b) Class I misdemeanor when the amount gained or intended to be gained through the use of such items, schemes, or techniques is five hundred dollars or more but less than one thousand five hundred dollars; and

(c) Class IV felony when the amount gained or intended to be gained through the use of such items, schemes, or techniques is one thousand five hundred dollars or more.

(4) In all proceedings initiated in any court or otherwise under the act, it shall be the duty of the Attorney General and appropriate county attorney to prosecute and defend all such proceedings.

(5) The failure to do any act required by or under the Nebraska Pickle Card Lottery Act shall be deemed an act in part in the principal office of the department. Any prosecution under such act may be conducted in any county where the defendant resides or has a place of business or in any county in which any violation occurred.

(6) In the enforcement and investigation of any offense committed under the act, the department may call to its aid any sheriff, deputy sheriff, or other peace officer in the state.

Source: Laws 1986, LB 1027, § 118; Laws 1987, LB 523, § 2; Laws 1988, LB 1232, § 50; Laws 1995, LB 344, § 23; Laws 1997, LB 248, § 20; Laws 2015, LB605, § 2.

9-353 Violations; standing to sue.

Any person in this state, including any law enforcement official, who has cause to believe that (1) any licensed organization, (2) any employee or agent of such licensed organization, (3) any person acting in concert with such licensed organization, or (4) any person in connection with a lottery by the sale of pickle cards has engaged in or is engaging in any conduct in violation of the Nebraska Pickle Card Lottery Act or has aided or is aiding another in any conduct in violation of the act may commence a civil action in any district court of this state.

Source: Laws 1986, LB 1027, § 119.

9-354 Civil action; relief permitted.

In any civil action commenced pursuant to section 9-353, a court may allow:

(1) A temporary restraining order or injunction, with or without a bond as the court may direct, prohibiting a party to the action from continuing or engaging in such conduct, aiding in such conduct, or doing any act in furtherance of such conduct;

(2) A declaration that the conduct by a licensed organization or employee or agent of a licensed organization, which is a party to the action, constitutes a violation of the Nebraska Pickle Card Lottery Act and a determination of the number and times of violations for certification to the department for appropriate license revocation purposes;

(3) A permanent injunction under principles of equity and on reasonable terms;

(4) An accounting of the profits, earnings, or gains resulting directly and indirectly from such violations, with restitution or a distribution of such profits, earnings, or gains to all licensed organizations existing at the time of such violations which apply to the court and show that they suffered monetary losses by reason of such violations and with distribution of any remaining profits, earnings, or gains to the state; and

(5) Reasonable attorney's fees and court costs.

Source: Laws 1986, LB 1027, § 120; Laws 1991, LB 427, § 42.

9-355 Civil procedure statutes; applicability.

Proceedings under section 9-353 shall be subject to and governed by the district court civil procedure statutes. Issues properly raised shall be tried and determined as in other civil actions in equity. All orders, judgments, and decrees rendered may be reviewed as other orders, judgments, and decrees.

Source: Laws 1986, LB 1027, § 121.

Cross References

Appeals, procedure, see section 25-1901 et seq.
Civil procedure statutes, see section 25-101 et seq.

9-356 Returns, reports, and records; disclosure; limitations; violation; penalty.

(1) Except in accordance with a proper judicial order or as otherwise provided by this section or other law, it shall be a Class I misdemeanor for the Tax Commissioner or any employee or agent of the Tax Commissioner to make known, in any manner whatsoever, the contents of any tax return or any reports or records submitted by a licensed distributor or manufacturer or the contents of any personal history reports submitted by any licensee or license applicant to the department pursuant to the Nebraska Pickle Card Lottery Act and any rules and regulations adopted and promulgated pursuant to such act.

(2) Nothing in this section shall be construed to prohibit (a) the delivery to a taxpayer, licensee, or his or her duly authorized representative or his or her successors, receivers, trustees, executors, administrators, assignees, or guarantors, if directly interested, a certified copy of any tax return or report or record, (b) the publication of statistics so classified as to prevent the identification of particular tax returns or reports or records, (c) the inspection by the Attorney General, a county attorney, or other legal representative of the state of tax returns or reports or records submitted by a licensed distributor or manufacturer when information on the tax returns or reports or records is considered by the Attorney General, county attorney, or other legal representative to be relevant to any action or proceeding instituted by the taxpayer or licensee or against whom an action or proceeding is being considered or has been commenced by any state agency or county, (d) the furnishing of any information to the United States Government or to states allowing similar privileges to the Tax Commissioner, (e) the disclosure of information and records to a collection agency contracting with the Tax Commissioner for the collection of delinquent taxes under the Nebraska Pickle Card Lottery Act, (f) the publication or disclosure of final administrative opinions and orders made by the Tax Commissioner in the adjudication of license denials, suspensions, cancellations, or revocations or the levying of fines, (g) the release of any application, without the contents of any submitted personal history report or social security number, filed with the department to obtain a license to conduct activities under the act, which shall be deemed a public record, (h) the release of any report filed pursuant to section 9-349 or any other report filed by a licensed organization, sales agent, or pickle card operator pursuant to the act, which shall be deemed a public record, or (i) the notification of an applicant, a licensee, or a licensee's duly authorized representative of the existence of and the grounds for any administrative action to deny the license application of, to revoke, cancel, or suspend the license of, or to levy an administrative fine upon any agent or employee of the applicant, the licensee, or any other person upon whom the applicant or licensee relies to conduct activities authorized by the act.

(3) Nothing in this section shall prohibit the Tax Commissioner or any employee or agent of the Tax Commissioner from making known the names of persons, firms, or corporations licensed to conduct activities under the act, the locations at which such activities are conducted by license holders, or the dates on which such licenses were issued.

(4) Notwithstanding subsection (1) of this section, the Tax Commissioner may permit the Postal Inspector of the United States Postal Service or his or her delegates to inspect a tax return or reports or records submitted by a licensed distributor or manufacturer pursuant to the act when information on the returns or reports or records is relevant to any action or proceeding instituted or being considered by the United States Postal Service against such person for the fraudulent use of the mails to carry and deliver false and fraudulent tax returns to the Tax Commissioner with the intent to defraud the State of Nebraska or to evade the payment of Nebraska state taxes.

(5) Notwithstanding subsection (1) of this section, the Tax Commissioner may permit other tax officials of this state to inspect a tax return or reports or records submitted pursuant to the act, but such inspection shall be permitted only for purposes of enforcing a tax law and only to the extent and under the conditions prescribed by the rules and regulations of the Tax Commissioner.

Source: Laws 1988, LB 1232, § 51; Laws 1991, LB 427, § 43; Laws 1994, LB 694, § 93; Laws 1995, LB 344, § 24; Laws 2007, LB638, § 12.

ARTICLE 4

LOTTERIES AND RAFFLES

Section

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9-401 Act, how cited.

Sections 9-401 to 9-437 shall be known and may be cited as the Nebraska Lottery and Raffle Act.

Source: Laws 1986, LB 1027, § 122; Laws 1991, LB 427, § 44; Laws 1994, LB 694, § 94; Laws 1997, LB 248, § 21; Laws 2002, LB 545, § 37.

9-402 Purpose of act.

(1) The purpose of the Nebraska Lottery and Raffle Act is to protect the health and welfare of the public, to protect the economic welfare and interest in certain lotteries with gross proceeds greater than one thousand dollars and certain raffles with gross proceeds greater than five thousand dollars, to insure that the profits derived from the operation of any such lottery or raffle are accurately reported in order that their revenue-raising potential be fully exposed, to insure that the profits are used for legitimate purposes, and to prevent the purposes for which the profits of any such lottery or raffle are to be used from being subverted by improper elements.

(2) The purpose of the Nebraska Lottery and Raffle Act is also to completely and fairly regulate each level of the traditional marketing scheme of tickets or stubs for such lotteries and raffles to insure fairness, quality, and compliance with the Constitution of Nebraska. To accomplish such purpose, the regulation and licensure of nonprofit organizations and any other person involved in the marketing scheme are necessary.

(3) The Nebraska Lottery and Raffle Act shall apply to all lotteries with gross proceeds in excess of one thousand dollars, except for lotteries by the sale of pickle cards conducted in accordance with the Nebraska Pickle Card Lottery Act, lotteries conducted by a county, city, or village in accordance with the Nebraska County and City Lottery Act, and lottery games conducted in accordance with the State Lottery Act, and to all raffles with gross proceeds in excess of five thousand dollars. All such lotteries and raffles shall be played and conducted only by the methods permitted in the act. No other form, means of selection, or method of play shall be allowed.

Source: Laws 1986, LB 1027, § 123; Laws 1991, LB 849, § 49; Laws 1993, LB 138, § 7.

Cross References

Nebraska County and City Lottery Act, see section 9-601.
Nebraska Pickle Card Lottery Act, see section 9-301.
State Lottery Act, see section 9-801.

9-403 Definitions, where found.

For purposes of the Nebraska Lottery and Raffle Act, unless the context otherwise requires, the definitions found in sections 9-404 to 9-417.02 shall be used.

Source: Laws 1986, LB 1027, § 124; Laws 1994, LB 694, § 95; Laws 2003, LB 3, § 3.

9-404 Allowable expenses, defined.

Allowable expenses shall mean:

(1) All costs associated with the purchasing, printing, or manufacturing of any items to be used or distributed to participants such as tickets;

(2) All office expenses;

(3) All promotional expenses;

(4) The tax on gross proceeds prescribed in section 9-429;

(5) All license and permit fees prescribed by the Nebraska Lottery and Raffle Act;

(6) Any tax or fee imposed pursuant to section 9-433; and

(7) Any fee paid to any person associated with the operation of any lottery or raffle.

Source: Laws 1986, LB 1027, § 125; Laws 1994, LB 694, § 96.

9-405 Cancel, defined.

Cancel shall mean to discontinue all rights and privileges to hold a license or permit for up to three years.

Source: Laws 1986, LB 1027, § 126.

9-406 Department, defined.

Department shall mean the Department of Revenue.

Source: Laws 1986, LB 1027, § 127.

9-407 Gross proceeds, defined.

Gross proceeds shall mean the total receipts received from the conduct of the lottery or raffle without any reduction for prizes, discounts, taxes, or allowable expenses. Gross proceeds shall include receipts from any required admission costs or any other required purchase, to the extent such admission cost or purchase itself constitutes a chance in the lottery or raffle, and the value of any free tickets or stubs or free plays used.

Source: Laws 1986, LB 1027, § 128; Laws 1994, LB 694, § 97.

9-408 Lawful purpose, defined.

(1) Lawful purpose shall mean charitable or community betterment purposes, including, but not limited to, one or more of the following:

(a) Benefiting persons by enhancing their opportunity for religious or educational advancement, by relieving or protecting them from disease, suffering, or distress, by contributing to their physical well-being, by assisting them in establishing themselves in life as worthy and useful citizens, or by increasing their comprehension of and devotion to the principles upon which this nation was founded;

(b) Initiating, performing, or fostering worthy public works or enabling or furthering the erection or maintenance of public structures; and

(c) Lessening the burdens borne by government or voluntarily supporting, augmenting, or supplementing services which government would normally render to the people.

(2) Lawful purpose shall not include any activity consisting of an attempt to influence legislation or participate in any political campaign on behalf of any elected official or person who is or has been a candidate for public office.

(3) Nothing in this section shall prohibit any organization licensed pursuant to the Nebraska Lottery and Raffle Act from using its proceeds or profits derived from activities under the act in any activity which benefits and is conducted by the organization, including any charitable, benevolent, humane, religious, philanthropic, recreational, social, educational, civic, or fraternal activity conducted by the organization for the benefit of its members.

Source: Laws 1986, LB 1027, § 129; Laws 1994, LB 694, § 98.

9-409 License, defined.

License shall mean any license to conduct a lottery or raffle as provided in section 9-424 or any license for a utilization-of-funds member as provided in such section.

Source: Laws 1986, LB 1027, § 130; Laws 1994, LB 694, § 99.

9-410 Licensed organization, defined.

Licensed organization shall mean a nonprofit organization or a volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad licensed to conduct a lottery or raffle under the Nebraska Lottery and Raffle Act.

Source: Laws 1986, LB 1027, § 131; Laws 2002, LB 545, § 38.

9-411 Lottery, defined.

(1) Lottery shall mean a gambling scheme in which (a) participants pay or agree to pay something of value for an opportunity to win, (b) winning opportunities are represented by tickets differentiated by sequential enumeration, and (c) winners are determined by a random drawing of the tickets or by the method set forth in section 9-426.01.

(2) Lottery shall not include (a) any raffle as defined in section 9-415, (b) any gambling scheme which uses any mechanical, computer, electronic, or video gaming device which has the capability of awarding something of value, free games redeemable for something of value, or tickets or stubs redeemable for something of value, (c) any activity which is authorized or regulated under the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, section 9-701, or Chapter 2, article 12, or (d) any activity which is prohibited under Chapter 28, article 11.

Source: Laws 1986, LB 1027, § 132; Laws 1991, LB 849, § 50; Laws 1993, LB 138, § 8; Laws 1997, LB 248, § 22.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.

Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

9-412 Member, defined.

Member shall mean a person who is recognized and acknowledged by a licensed organization as a member for purposes other than conducting activities under the Nebraska Lottery and Raffle Act. Member shall not include social or honorary members.

Source: Laws 1986, LB 1027, § 133.

9-413 Permit, defined.

Permit shall mean a special permit to conduct one raffle and one lottery as provided in section 9-426.

Source: Laws 1986, LB 1027, § 134.

9-414 Profit, defined.

Profit shall mean the gross proceeds less reasonable sums necessarily and actually expended for prizes, taxes, and allowable expenses.

Source: Laws 1986, LB 1027, § 135.

9-415 Raffle, defined.

(1) Raffle shall mean a gambling scheme in which (a) participants pay or agree to pay something of value for an opportunity to win, (b) winning opportunities are represented by tickets differentiated by sequential enumeration, (c) winners are determined by a random drawing of the tickets or by the method set forth in section 9-426.01, and (d) at least eighty percent of all of the prizes to be awarded are merchandise prizes which are not directly or indirectly redeemable for cash by the licensed organization conducting the raffle or any agent of the organization.

(2) Raffle shall not include (a) any gambling scheme which uses any mechanical, computer, electronic, or video gaming device which has the capability of awarding something of value, free games redeemable for something of value, or tickets or stubs redeemable for something of value, (b) any activity which is authorized or regulated under the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, section 9-701, or Chapter 2, article 12, or (c) activity which is prohibited under Chapter 28, article 11.

Source: Laws 1986, LB 1027, § 136; Laws 1991, LB 849, § 51; Laws 1993, LB 138, § 9; Laws 1997, LB 248, § 23.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

9-416 Revoke, defined.

Revoke shall mean to permanently void and recall all rights and privileges to obtain a license or permit.

Source: Laws 1986, LB 1027, § 137.

9-417 Suspend, defined.

Suspend shall mean to cause a temporary interruption of all rights and privileges of a license or permit or the renewal thereof.

Source: Laws 1986, LB 1027, § 138.

9-417.01 Utilization-of-funds member, defined.

Utilization-of-funds member shall mean a member of the organization who shall be responsible for supervising the conduct of a lottery or raffle and for the proper utilization of the gross proceeds derived from the conduct of a lottery or raffle.

Source: Laws 1994, LB 694, § 100.

9-417.02 Volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad, defined.

Volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad shall mean a volunteer association or organization serving any city, village, county, township, or rural or suburban fire protection district in Nebraska by providing fire protection or emergency response services for the purpose of protecting human life, health, or property.

Source: Laws 2002, LB 545, § 39.

9-418 Department; powers, functions, and duties.

The department shall have the following powers, functions, and duties:

(1) To issue licenses, temporary licenses, and permits;

(2) To deny any license or permit application or renewal application for cause. Cause for denial of an application or renewal of a license or permit shall include instances in which the applicant individually or, in the case of a nonprofit organization, any officer, director, or employee of the applicant, licensee, or permittee, other than an employee whose duties are purely ministerial in nature, any other person or entity directly or indirectly associated with such applicant, licensee, or permittee which directly or indirectly receives compensation other than distributions from a bona fide retirement plan established pursuant to Chapter 1, subchapter D of the Internal Revenue Code from such applicant, licensee, or permittee for past or present services in a consulting capacity or otherwise, the licensee, the permittee, or any person with a substantial interest in the applicant, licensee, or permittee:

(a) Violated the provisions, requirements, conditions, limitations, or duties imposed by the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, or the State Lottery Act or any rules or regulations adopted and promulgated pursuant to such acts;

(b) Knowingly caused, aided, abetted, or conspired with another to cause any person to violate any of the provisions of such acts or any rules or regulations adopted and promulgated pursuant to such acts;

(c) Obtained a license or permit pursuant to the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act by fraud, misrepresentation, or concealment;

(d) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any offense or crime, whether a felony or misdemeanor, involving any gambling activity or fraud, theft, willful failure to make required payments or reports, or filing false reports with a governmental agency at any level;

(e) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any felony other than those described in subdivision (d) of this subdivision within the ten years preceding the filing of the application;

(f) Denied the department or its authorized representatives, including authorized law enforcement agencies, access to any place where lottery or raffle activity required to be licensed under the Nebraska Lottery and Raffle Act is being conducted or failed to produce for inspection or audit any book, record, document, or item required by law, rule, or regulation;

(g) Made a misrepresentation of or failed to disclose a material fact to the department;

(h) Failed to prove by clear and convincing evidence his, her, or its qualifications to be licensed in accordance with the Nebraska Lottery and Raffle Act;

(i) Failed to pay any taxes and additions to taxes, including penalties and interest, required by the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act or any other taxes imposed pursuant to the Nebraska Revenue Act of 1967;

(j) Failed to pay an administrative fine levied pursuant to the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act;

(k) Failed to demonstrate good character, honesty, and integrity;

(l) Failed to demonstrate, either individually or, in the case of a nonprofit organization, through its managers or employees, the ability, experience, or financial responsibility necessary to establish or maintain the activity for which the application is made; or

(m) Was cited and whose liquor license was suspended, canceled, or revoked by the Nebraska Liquor Control Commission for illegal gambling activities that occurred on or after July 20, 2002, on or about a premises licensed by the commission pursuant to the Nebraska Liquor Control Act or the rules and regulations adopted and promulgated pursuant to such act.

No renewal of a license under the Nebraska Lottery and Raffle Act shall be issued when the applicant for renewal would not be eligible for a license upon a first application;

(3) To revoke, cancel, or suspend for cause any license or permit. Cause for revocation, cancellation, or suspension of a license or permit shall include instances in which the licensee or permittee individually or, in the case of a nonprofit organization, any officer, director, or employee of the licensee or permittee, other than an employee whose duties are purely ministerial in nature, any other person or entity directly or indirectly associated with such licensee or permittee which directly or indirectly receives compensation other

than distributions from a bona fide retirement plan established pursuant to Chapter 1, subchapter D of the Internal Revenue Code from such licensee or permittee for past or present services in a consulting capacity or otherwise, or any person with a substantial interest in the licensee or permittee:

(a) Violated the provisions, requirements, conditions, limitations, or duties imposed by the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or any rules or regulations adopted and promulgated pursuant to such acts;

(b) Knowingly caused, aided, abetted, or conspired with another to cause any person to violate any of the provisions of the Nebraska Lottery and Raffle Act or any rules or regulations adopted and promulgated pursuant to the act;

(c) Obtained a license or permit pursuant to the act by fraud, misrepresentation, or concealment;

(d) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any offense or crime, whether a felony or misdemeanor, involving any gambling activity or fraud, theft, willful failure to make required payments or reports, or filing false reports with a governmental agency at any level;

(e) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any felony other than those described in subdivision (d) of this subdivision within the ten years preceding filing of the application;

(f) Denied the department or its authorized representatives, including authorized law enforcement agencies, access to any place where lottery or raffle activity required to be licensed under the Nebraska Lottery and Raffle Act is being conducted or failed to produce for inspection or audit any book, record, document, or item required by law, rule, or regulation;

(g) Made a misrepresentation of or failed to disclose a material fact to the department;

(h) Failed to pay any taxes and additions to taxes, including penalties and interest, required by the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act or any other taxes imposed pursuant to the Nebraska Revenue Act of 1967;

(i) Failed to pay an administrative fine levied pursuant to the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act;

(j) Failed to demonstrate good character, honesty, and integrity;

(k) Failed to demonstrate, either individually or, in the case of a nonprofit organization, through its managers or employees, the ability, experience, or financial responsibility necessary to maintain the activity for which the license was issued; or

(l) Was cited and whose liquor license was suspended, canceled, or revoked by the Nebraska Liquor Control Commission for illegal gambling activities that occurred on or after July 20, 2002, on or about a premises licensed by the commission pursuant to the Nebraska Liquor Control Act or the rules and regulations adopted and promulgated pursuant to such act;

(4) To issue an order requiring a licensee, permittee, or other person to cease and desist from violations of the Nebraska Lottery and Raffle Act or any rules or regulations adopted and promulgated pursuant to such act. The order shall give reasonable notice of the rights of the licensee, permittee, or other person to request a hearing and shall state the reason for the entry of the order. The notice of order shall be mailed to or personally served upon the licensee, permittee, or other person. If the notice of order is mailed, the date the notice is mailed shall be deemed to be the date of service of notice to the licensee, permittee, or other person. A request for a hearing by the licensee, permittee, or other person shall be in writing and shall be filed with the department within thirty days after the service of the cease and desist order. If a request for hearing is not filed within the thirty-day period, the cease and desist order shall become permanent at the expiration of such period. A hearing shall be held not later than thirty days after the request for the hearing is received by the Tax Commissioner, and within twenty days after the date of the hearing, the Tax Commissioner shall issue an order vacating the cease and desist order or making it permanent as the facts require. All hearings shall be held in accordance with the rules and regulations adopted and promulgated by the department. If the licensee, permittee, or other person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, the licensee, permittee, or other person shall be deemed in default and the proceeding may be determined against the licensee, permittee, or other person upon consideration of the cease and desist order, the allegations of which may be deemed to be true;

(5) To examine or to cause to have examined, by any agent or representative designated by the department for such purpose, any books, papers, records, or memoranda relating to lottery or raffle activities required to be licensed pursuant to the Nebraska Lottery and Raffle Act, to require by summons the production of such documents or the attendance of any person having knowledge in the premises, to take testimony under oath, and to require proof material for its information. If any such person willfully refuses to make documents available for examination by the department or its agent or representative or willfully fails to attend and testify, the department may apply to a judge of the district court of the county in which such person resides for an order directing such person to comply with the department's request. If any documents requested by the department are in the custody of a corporation, the court order may be directed to any principal officer of the corporation. Any person who fails or refuses to obey such a court order shall be guilty of contempt of court;

(6) To levy an administrative fine on an individual, partnership, limited liability company, corporation, or organization for cause. For purposes of this subdivision, cause shall include instances in which the individual, partnership, limited liability company, corporation, or organization violated the provisions, requirements, conditions, limitations, or duties imposed by the act or any rule or regulation adopted and promulgated pursuant to the act. In determining whether to levy an administrative fine and the amount of the fine if any fine is levied, the department shall take into consideration the seriousness of the violation, the intent of the violator, whether the violator voluntarily reported the violation, whether the violator derived financial gain as a result of the violation and the extent thereof, and whether the violator has had previous violations of the act, rules, or regulations. A fine levied on a violator under this

section shall not exceed one thousand dollars for each violation of the act or any rule or regulation adopted and promulgated pursuant to the act plus the financial benefit derived by the violator as a result of each violation. If an administrative fine is levied, the fine shall not be paid from lottery or raffle gross proceeds of an organization and shall be remitted by the violator to the department within thirty days after the date of the order issued by the department levying such fine;

(7) Unless specifically provided otherwise, to compute, determine, assess, and collect the amounts required to be paid to the state as taxes imposed by the act in the same manner as provided for sales and use taxes in the Nebraska Revenue Act of 1967;

(8) To collect license application, license renewal application, and permit fees imposed by the Nebraska Lottery and Raffle Act and to prorate license fees on an annual basis. The department shall establish, by rule and regulation, the conditions and circumstances under which such fees may be prorated;

(9) To confiscate and seize lottery or raffle tickets or stubs pursuant to section 9-432; and

(10) To adopt and promulgate such rules and regulations, prescribe such forms, and employ such staff, including inspectors, as are necessary to carry out the act.

Source: Laws 1986, LB 1027, § 139; Laws 1991, LB 427, § 45; Laws 1994, LB 694, § 101; Laws 1995, LB 344, § 25; Laws 1995, LB 574, § 10; Laws 1997, LB 248, § 25; Laws 2000, LB 1086, § 16; Laws 2002, LB 545, § 40; Laws 2002, LB 1126, § 3; Laws 2012, LB727, § 7.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Liquor Control Act, see section 53-101.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Revenue Act of 1967, see section 77-2701.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

9-418.01 Denial of application; procedure.

(1) Before any application is denied pursuant to section 9-418, the department shall notify the applicant in writing by mail of the department's intention to deny the application and the reasons for the denial. Such notice shall inform the applicant of his or her right to request an administrative hearing for the purpose of reconsideration of the intended denial of the application. The date the notice is mailed shall be deemed to be the date of service of notice to the applicant.

(2) A request for a hearing by the applicant shall be in writing and shall be filed with the department within thirty days after the service of notice to the applicant of the department's intended denial of the application. If a request for hearing is not filed within the thirty-day period, the denial shall become final at the expiration of such period.

(3) If a request for hearing is filed within the thirty-day period, the Tax Commissioner shall grant the applicant a hearing and shall, at least ten days before the hearing, serve notice upon the applicant by mail of the time, date,

and place of the hearing. Such proceedings shall be considered contested cases pursuant to the Administrative Procedure Act.

Source: Laws 1991, LB 427, § 47; Laws 2002, LB 545, § 41; Laws 2012, LB727, § 8.

Cross References

Administrative Procedure Act, see section 84-920.

9-418.02 Administrative fines; disposition; collection.

(1) All money collected by the department as an administrative fine shall be remitted on a monthly basis to the State Treasurer for credit to the permanent school fund.

(2) Any administrative fine levied under section 9-418 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 1991, LB 427, § 46; Laws 1994, LB 694, § 102.

9-419 Suspension of license or permit; limitation; procedure.

(1) The Tax Commissioner may suspend any license or permit, except that no order to suspend any license or permit shall be issued unless the department determines that the licensee or permittee is not operating in accordance with the purposes and intent of the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or any rules or regulations adopted and promulgated pursuant to such acts.

(2) Before any license or permit is suspended prior to a hearing, notice of an order to suspend a license or permit shall be mailed to or personally served upon the licensee or permittee at least fifteen days before the order of suspension takes effect.

(3) The order of suspension may be withdrawn if the licensee or permittee provides the department with evidence that any prior findings or violations have been corrected and that the licensee or permittee is now in full compliance, whether before or after the effective date of the order of suspension.

(4) The Tax Commissioner may issue an order of suspension pursuant to subsections (1) and (2) of this section when an action for suspension, cancellation, or revocation is pending. The Tax Commissioner may also issue an order of suspension after a hearing for a limited time of up to one year without an action for cancellation or revocation pending.

(5) The hearing for suspension, cancellation, or revocation of the license or permit shall be held within twenty days after the date the suspension takes effect. A request by the licensee or permittee to hold the hearing after the end of the twenty-day period shall extend the suspension until the hearing.

(6) The decision of the department shall be made within twenty days after the conclusion of the hearing. The suspension shall continue in effect until the decision is issued. If the decision is that an order of suspension, revocation, or cancellation is not appropriate, the suspension shall terminate immediately by order of the Tax Commissioner. If the decision is an order for the suspension,

revocation, or cancellation of the license or permit, the suspension shall continue pending an appeal of the decision of the department.

(7) Any period of suspension prior to the issuance of an order of suspension shall count toward the total amount of time a licensee may be suspended from gaming activities under the Nebraska Lottery and Raffle Act. Any period of suspension prior to the issuance of an order of cancellation shall not reduce the period of the cancellation. Any period of suspension after the issuance of the order and during an appeal shall be counted as a part of the period of cancellation.

Source: Laws 1986, LB 1027, § 140; Laws 1991, LB 427, § 48; Laws 1995, LB 344, § 26.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

9-420 Hearing; required; when; notice.

Before the adoption, amendment, or repeal of any rule or regulation, the suspension, revocation, or cancellation of any license or permit, or the levying of an administrative fine pursuant to section 9-418, the department shall set the matter for hearing. Such suspension, revocation, or cancellation proceedings or proceedings to levy an administrative fine shall be considered contested cases pursuant to the Administrative Procedure Act.

At least ten days before the hearing, the department shall (1) in the case of suspension, revocation, or cancellation proceedings or proceedings to levy an administrative fine, serve notice by personal service or mail upon the licensee, permittee, or violator of the time, date, and place of any hearing or (2) in the case of adoption, amendment, or repeal of any rule or regulation, issue a public notice of the time, date, and place of such hearing.

This section shall not apply to an order of suspension by the Tax Commissioner prior to a hearing as provided in section 9-419.

Source: Laws 1986, LB 1027, § 141; Laws 1991, LB 427, § 49; Laws 1994, LB 694, § 103; Laws 1995, LB 344, § 27; Laws 2012, LB727, § 9.

Cross References

Administrative Procedure Act, see section 84-920.

9-421 Proceeding before department; service; security; appeal.

(1) A copy of the order or decision of the department in any proceeding before it, certified under the seal of the department, shall be served upon each party of record to the proceeding before the department. Service upon any attorney of record for any such party shall be deemed to be service upon such party. Each party appearing before the department shall enter his or her appearance and indicate to the department his or her address for the service of a copy of any order, decision, or notice. The mailing of any copy of any order or decision or of any notice in the proceeding, to such party at such address, shall be deemed to be service upon such party.

(2) At the time of making an appearance before the department, each party shall deposit in cash or furnish a sufficient security for costs in an amount the department deems adequate to cover all costs liable to accrue, including costs for (a) reporting the testimony to be adduced, (b) making up a complete transcript of the hearing, and (c) extending reporter's original notes in typewriting.

(3) Any decision of the department in any proceeding before it may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1986, LB 1027, § 142; Laws 1988, LB 352, § 16; Laws 1991, LB 427, § 50.

Cross References

Administrative Procedure Act, see section 84-920.

9-422 Lottery or raffle; restriction on gross proceeds; violation; penalty.

No person, except a licensed organization operating pursuant to the Nebraska Lottery and Raffle Act, shall conduct any lottery with gross proceeds in excess of one thousand dollars or any raffle with gross proceeds in excess of five thousand dollars. Any lottery or raffle conducted in violation of this section is hereby declared to be a public nuisance. Any person who violates this section shall be guilty of a Class III misdemeanor. Nothing in this section shall be construed to apply to any lottery conducted in accordance with the Nebraska County and City Lottery Act, any lottery by the sale of pickle cards conducted in accordance with the Nebraska Pickle Card Lottery Act, or any lottery game conducted pursuant to the State Lottery Act.

Source: Laws 1984, LB 949, § 63; R.S.Supp.,1984, § 9-199; Laws 1986, LB 1027, § 143; Laws 1991, LB 849, § 52; Laws 1993, LB 138, § 10.

Cross References

Nebraska County and City Lottery Act, see section 9-601.
Nebraska Pickle Card Lottery Act, see section 9-301.
State Lottery Act, see section 9-801.

9-423 License; qualified applicants.

(1) Any nonprofit organization holding a certificate of exemption under section 501 of the Internal Revenue Code or any volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad may apply for a license to conduct a lottery or raffle.

(2) Prior to applying for any license, an organization shall:

(a) Be incorporated in this state as a not-for-profit corporation or organized in this state as a religious or not-for-profit organization;

(b) Have at least ten members in good standing;

(c) Conduct activities within this state in addition to the conduct of lotteries or raffles;

(d) Be authorized by its constitution, articles, charter, or bylaws to further in this state a lawful purpose; and

(e) Operate without profit to its members, and no part of the net earnings of such organization shall inure to the benefit of any private shareholder or individual.

Source: Laws 1986, LB 1027, § 144; Laws 2002, LB 545, § 42.

9-424 License; application; contents; fee; duty to keep current.

(1) Each applicant for a license to conduct a lottery or raffle shall file with the department an application on a form prescribed by the department. Each application shall include:

(a) The name and address of the applicant and, if the applicant is an individual, his or her social security number;

(b) Sufficient facts relating to the incorporation or organization of the applicant to enable the department to determine if the applicant is eligible for a license under section 9-423;

(c) The name and address of each officer of the applicant organization;

(d) The name, address, social security number, date of birth, and years of membership of a bona fide and active member of the applicant organization to be licensed as a utilization-of-funds member. Such person shall have been an active and bona fide member of the applicant organization for at least one year preceding the date the application is filed with the department unless the applicant organization can provide evidence that the one-year requirement would impose an undue hardship on the organization. Such person shall sign a sworn statement indicating that he or she agrees to comply with all provisions of the Nebraska Lottery and Raffle Act and all rules and regulations adopted pursuant to the act, that no commission, fee, rent, salary, profits, compensation, or recompense will be paid to any person or organization except payments authorized by the act, and that all net profits will be spent only for lawful purposes. The department may prescribe a separate application for such license;

(e) A roster of members, if the department deems it necessary and proper;

(f) Other information which the department deems necessary; and

(g) A thirty-dollar biennial license fee for the organization and a forty-dollar biennial license fee for each utilization-of-funds member.

(2) The information required by this section shall be kept current. An organization shall notify the department within thirty days if any information in the application is no longer correct and shall supply the correct information.

Source: Laws 1986, LB 1027, § 145; Laws 1994, LB 694, § 104; Laws 1997, LB 752, § 68; Laws 2007, LB638, § 13.

9-425 Licenses; renewal; application; requirements; temporary license; fee.

(1) All licenses to conduct a lottery or raffle and licenses issued to utilization-of-funds members shall expire as provided in this section and may be renewed biennially. An application for license renewal shall be submitted to the department at least thirty days prior to the starting date of the first lottery or raffle ticket sales for the biennial licensing period. The department may issue a temporary license prior to receiving all necessary information from the applicant.

(2) A license to conduct a lottery or raffle issued to a nonprofit organization holding a certificate of exemption under section 501(c)(3) or (c)(4) of the Internal Revenue Code and any license issued to a utilization-of-funds member for such nonprofit organization shall expire on September 30 of each odd-numbered year or on such other date as the department may prescribe by rule and regulation. A license to conduct a lottery or raffle issued to a nonprofit organization holding a certificate of exemption under section 501 of the Internal Revenue Code, other than a nonprofit organization holding a certificate of exemption under section 501(c)(3) or (c)(4) of the code, or any volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad, and any license issued to a utilization-of-funds member for such nonprofit organization or volunteer fire company or volunteer first-aid, rescue, ambulance, or emergency squad shall expire on September 30 of each even-numbered year or on such other date as the department may prescribe by rule and regulation.

Source: Laws 1986, LB 1027, § 146; Laws 1994, LB 694, § 105; Laws 2000, LB 1086, § 17; Laws 2002, LB 545, § 43; Laws 2007, LB638, § 14.

9-426 Special permit to conduct raffle and lottery; fee.

(1) A licensed organization may obtain from the department a special permit to conduct one raffle and one lottery. The cost of the special permit shall be ten dollars. The special permit shall exempt the licensed organization from subsections (2) and (3) of section 9-427 and from section 9-430. The organization shall comply with all other requirements of the Nebraska Lottery and Raffle Act.

(2) The special permit shall be valid for one year and shall be issued by the department upon the proper application by the licensed organization. The special permit shall become invalid upon termination, revocation, or cancellation of the organization's license to conduct a lottery or raffle. The application shall be in such form and contain such information as the department may prescribe.

(3) No licensed organization conducting a raffle or lottery pursuant to a special permit shall pay persons selling tickets or stubs for the raffle or lottery, except that nothing in this subsection shall prohibit the awarding of prizes to such persons based on ticket or stub sales.

Source: Laws 1985, LB 486, § 1; R.S.Supp.,1985, § 9-199.01; Laws 1986, LB 1027, § 147; Laws 2000, LB 1086, § 18; Laws 2020, LB1056, § 1.

9-426.01 Race utilizing floating objects; requirements.

(1) Pursuant to a special permit obtained in accordance with section 9-426, a licensed organization may conduct a lottery or raffle in which the winners are to be determined by a race utilizing inanimate, buoyant objects floated along a river, canal, or other waterway. The objects shall each bear a number or other unique identifying mark which corresponds to sequentially numbered tickets which are sold to participants in the lottery or raffle. A licensed organization utilizing this method of winner determination shall comply with all other requirements of the Nebraska Lottery and Raffle Act and any rules and regulations adopted and promulgated pursuant to the act.

(2) The department may adopt and promulgate rules and regulations for the conduct of a lottery or raffle utilizing the method of winner determination provided by this section.

Source: Laws 1997, LB 248, § 24.

9-427 Lottery or raffle; gross proceeds; use; restrictions.

(1) The gross proceeds of any lottery or raffle shall be used solely for lawful purposes, awarding of prizes, and allowable expenses.

(2) Not less than sixty-five percent of the gross proceeds of any lottery shall be used for the awarding of prizes, and not more than ten percent of the gross proceeds shall be used to pay the allowable expenses of operating such scheme.

(3) Not less than sixty-five percent of the gross proceeds of any raffle shall be used for the awarding of prizes, and not more than ten percent of the gross proceeds shall be used to pay the allowable expenses of operating such scheme, except that if prizes are donated to the licensed organization to be awarded in connection with such raffle, the prizes awarded shall have a fair market value equal to at least sixty-five percent of the gross proceeds and the licensed organization shall use the proceeds for allowable expenses, optional additional prizes, and a lawful purpose.

Source: Laws 1983, LB 259, § 50; Laws 1984, LB 949, § 56; Laws 1985, LB 486, § 3; Laws 1985, LB 408, § 34; R.S.Supp.,1985, § 9-185; Laws 1986, LB 1027, § 148; Laws 1994, LB 694, § 106.

9-428 Segregation of gross proceeds; records; requirements.

The gross proceeds of any lottery or raffle shall be segregated from other revenue of any licensed organization conducting the lottery or raffle and placed in a separate account. Separate records shall be maintained by any licensed organization conducting a lottery or raffle. Each licensed organization conducting a lottery or raffle shall keep a record of all persons who are paid to sell tickets or stubs. Records required by the Nebraska Lottery and Raffle Act shall be preserved for at least three years. Any law enforcement agency or other agency of government shall have the authority to investigate the records relating to lotteries or raffles and gross proceeds from such lottery or raffle at any time. Organizations shall, upon proper written request, deliver all such records to the department or other law enforcement agency for investigation.

Source: Laws 1986, LB 1027, § 149.

9-429 Lottery or raffle; gross proceeds; tax; deficiencies.

Any licensed organization or any other organization or person conducting a lottery or raffle activity required to be licensed pursuant to the Nebraska Lottery and Raffle Act shall pay to the department a tax of two percent of the gross proceeds of each lottery having gross proceeds of more than one thousand dollars or raffle having gross proceeds of more than five thousand dollars. Such tax shall be remitted annually by September 30 each year on forms approved and provided by the department. The department shall remit the tax to the State Treasurer for credit to the Charitable Gaming Operations Fund. All deficiencies of the tax imposed by this section shall accrue interest and be

subject to a penalty as provided for sales and use taxes in the Nebraska Revenue Act of 1967.

Source: Laws 1983, LB 259, § 61; Laws 1984, LB 949, § 70; R.S.Supp.,1984, § 9-196; Laws 1986, LB 1027, § 150; Laws 1991, LB 427, § 51; Laws 1994, LB 694, § 107; Laws 2020, LB1056, § 2.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

9-430 Participation; age limitation.

(1) No person under eighteen years of age shall participate in any way in any lottery or raffle, except that a person under eighteen years of age may participate in a lottery or raffle conducted by a licensed organization pursuant to a permit issued under section 9-426.

(2) No person, licensee, or permittee or employee or agent thereof shall knowingly permit an individual under eighteen years of age to play or participate in any way in a lottery or raffle conducted pursuant to the Nebraska Lottery and Raffle Act, excluding those conducted by a licensed organization with a special permit issued under section 9-426.

Source: Laws 1986, LB 1027, § 151; Laws 1997, LB 248, § 26.

9-431 Lottery or raffle ticket or stub; requirements.

Each licensed organization conducting a lottery or raffle conducted pursuant to the Nebraska Lottery and Raffle Act shall have its name and identification number clearly printed on each lottery or raffle ticket or stub used in such lottery or raffle. No such ticket or stub shall be sold unless such name and identification number is so printed thereon. In addition, all lottery or raffle tickets or stubs shall bear a number, which numbers shall be in sequence and clearly printed on the ticket or stub.

Each ticket or stub shall have an equal chance of being chosen in the drawing. Each ticket or stub shall be constructed of the same material, shall have the same surface, and shall be substantially the same shape, size, form and weight.

Each licensed organization conducting a lottery or raffle shall keep a record of all locations where its tickets or stubs are sold. In addition to other authorized sales, a licensed organization conducting a raffle conducted pursuant to the Nebraska Lottery and Raffle Act may also sell tickets or stubs for such raffles on its website and at events, and such tickets or stubs may be purchased using a debit card online on the website and at events in addition to other authorized methods of payment.

Source: Laws 1984, LB 949, § 62; R.S.Supp.,1984, § 9-198; Laws 1986, LB 1027, § 152; Laws 2020, LB1056, § 3.

9-432 Tax Commissioner; power to seize contraband; effect.

(1) The Tax Commissioner or his or her agents or employees, at the direction of the Tax Commissioner, or any peace officer of this state may seize, without a warrant, the following contraband goods found any place in this state: (a) Any lottery or raffle tickets or stubs that are being sold which are not properly printed as required in section 9-431 or which do not meet the other require-

ments of such section; (b) any lottery or raffle tickets or stubs that are being sold without the proper license or permit; or (c) any lottery or raffle tickets or stubs that have been sold in violation of the Nebraska Lottery and Raffle Act or any rule or regulation adopted and promulgated pursuant to the act.

(2) The Tax Commissioner may, upon satisfactory proof, direct return of any confiscated lottery or raffle tickets or stubs when he or she has reason to believe that the owner has not willfully or intentionally failed to comply with the Nebraska Lottery and Raffle Act.

(3) The Tax Commissioner may, upon finding that an owner of contraband goods has willfully or intentionally failed to comply with the act, confiscate such goods. Any lottery or raffle tickets or stubs confiscated shall be destroyed.

(4) The seizure of lottery or raffle tickets or stubs under this section shall not relieve any person from a fine, imprisonment, or other penalty for violation of the act.

(5) The Tax Commissioner or his or her agents or employees, when directed to do so by the Tax Commissioner, or any peace officer of this state shall not be responsible for negligence in any court for the seizure or confiscation of any lottery or raffle ticket or stub pursuant to this section.

Source: Laws 1986, LB 1027, § 153.

9-433 Lottery or raffle; local control; section, how construed.

(1) Any county or incorporated municipality may, by resolution or ordinance, tax, regulate, control, or prohibit any lottery or raffle within the boundaries of such county or the corporate limits of such incorporated municipality. No county may impose a tax or otherwise regulate, control, or prohibit any lottery within the corporate limits of an incorporated municipality. Any tax imposed pursuant to this subsection shall be remitted to the general fund of the county or incorporated municipality imposing such tax.

(2) Nothing in this section shall be construed to authorize any lottery or raffle not otherwise authorized under Nebraska law.

Source: Laws 1983, LB 259, § 60; Laws 1984, LB 949, § 69; R.S.Supp.,1984, § 9-195; Laws 1986, LB 1027, § 154; Laws 2017, LB217, § 1.

9-434 Violations; penalties; enforcement; venue.

(1) Except when another penalty is specifically provided, any person, licensee, or permittee, or employee or agent thereof, who violates any provision of the Nebraska Lottery and Raffle Act, or who causes, aids, abets, or conspires with another to cause any person, licensee, or permittee or employee or agent thereof to violate the act, shall be guilty of a Class I misdemeanor for the first offense and a Class IV felony for any second or subsequent violation. Any licensee guilty of violating any provision of the act more than once in a twelve-month period may have its license canceled or revoked.

(2) Each of the following violations of the Nebraska Lottery and Raffle Act shall be a Class IV felony:

(a) Giving, providing, or offering to give or provide, directly or indirectly, to any public official or employee or agent of this state, or any agencies or political subdivisions of this state, any compensation or reward or share of the money for property paid or received through gambling activities authorized

under Chapter 9 in consideration for obtaining any license, authorization, permission, or privileges to participate in any gaming operations except as authorized under Chapter 9 or any rules and regulations adopted and promulgated pursuant to such chapter; or

(b) Knowingly filing a false report under the Nebraska Lottery and Raffle Act.

(3) Intentionally employing or possessing any device to facilitate cheating in any lottery or raffle or using any fraudulent scheme or technique in connection with any lottery or raffle is a violation of the Nebraska Lottery and Raffle Act. The offense is a:

(a) Class II misdemeanor when the amount gained or intended to be gained through the use of such items, schemes, or techniques is less than five hundred dollars;

(b) Class I misdemeanor when the amount gained or intended to be gained through the use of such items, schemes, or techniques is five hundred dollars or more but less than one thousand five hundred dollars; and

(c) Class IV felony when the amount gained or intended to be gained through the use of such items, schemes, or techniques is one thousand five hundred dollars or more.

(4) In all proceedings initiated in any court or otherwise under the act, it shall be the duty of the Attorney General and appropriate county attorney to prosecute and defend all such proceedings.

(5) The failure to do any act required by or under the Nebraska Lottery and Raffle Act shall be deemed an act in part in the principal office of the department. Any prosecution under such act may be conducted in any county where the defendant resides or has a place of business or in any county in which any violation occurred.

(6) In the enforcement and investigation of any offense committed under the act, the department may call to its aid any sheriff, deputy sheriff, or other peace officer in the state.

Source: Laws 1986, LB 1027, § 155; Laws 1987, LB 523, § 3; Laws 1995, LB 344, § 28; Laws 1997, LB 248, § 27; Laws 2015, LB605, § 3.

9-435 Violations; standing to sue.

Any person in this state, including any law enforcement official, who has cause to believe that (1) any licensed organization, (2) any employee or agent of such licensed organization, (3) any person acting in concert with such licensed organization, or (4) any person in connection with a lottery or raffle has engaged in or is engaging in any conduct in violation of the Nebraska Lottery and Raffle Act or has aided or is aiding another in any conduct in violation of such act may commence a civil action in any district court of this state.

Source: Laws 1986, LB 1027, § 156.

9-436 Civil action; relief permitted.

In any civil action commenced pursuant to section 9-435, a court may allow:

(1) A temporary restraining order or injunction, with or without a bond as the court may direct, prohibiting a party to the action from continuing or engaging in such conduct, aiding in such conduct, or doing any act in furtherance of such conduct;

(2) A declaration that the conduct by a licensed organization or employee or agent of a licensed organization, which is a party to the action, constitutes a violation of the Nebraska Lottery and Raffle Act and a determination of the number and times of violations for certification to the department for appropriate license or permit revocation purposes;

(3) A permanent injunction under principles of equity and on reasonable terms;

(4) An accounting of the profits, earnings, or gains resulting directly and indirectly from such violations, with restitution or a distribution of such profits, earnings, or gains to all licensed organizations existing at the time of such violations which apply to the court and show that they suffered monetary losses by reason of such violations and with distribution of any remaining profits, earnings, or gains to the state; and

(5) Reasonable attorney's fees and court costs.

Source: Laws 1986, LB 1027, § 157; Laws 1991, LB 427, § 52.

9-437 Civil procedure statutes; applicability.

Proceedings under section 9-435 shall be subject to and governed by the district court civil procedure statutes. Issues properly raised shall be tried and determined as in other civil actions in equity. All orders, judgments, and decrees rendered may be reviewed as other orders, judgments, and decrees.

Source: Laws 1986, LB 1027, § 158.

Cross References

Appeals, procedure, see section 25-1901 et seq.
Civil procedure statutes, see section 25-101 et seq.

ARTICLE 5
SMALL LOTTERIES AND RAFFLES

Section
9-501. Act, how cited.
9-502. Act, purpose.
9-503. Definitions, sections found.
9-504. Charitable or community betterment purposes, defined.
9-505. Expenses, defined.
9-506. Gross proceeds, defined.
9-507. Lottery, defined.
9-508. Qualifying nonprofit organization, defined.
9-509. Raffle, defined.
9-510. Nonprofit organization; conduct lotteries; conditions.
9-511. Nonprofit organization; conduct raffles; conditions.
9-511.01. Nonprofit organization; conduct lottery or raffle with winners determined by racing objects; conditions.
9-512. Department of Revenue; law enforcement agency; powers and duties.
9-513. Violations; penalties.

9-501 Act, how cited.

Sections 9-501 to 9-513 shall be known and may be cited as the Nebraska Small Lottery and Raffle Act.

Source: Laws 1986, LB 1027, § 159; Laws 2000, LB 1086, § 19.

9-502 Act, purpose.

The purpose of the Nebraska Small Lottery and Raffle Act is to allow qualifying nonprofit organizations to conduct lotteries with gross proceeds not greater than one thousand dollars or raffles with gross proceeds not greater than five thousand dollars subject to minimal regulation. The Nebraska Small Lottery and Raffle Act shall apply to all lotteries with gross proceeds not greater than one thousand dollars, except for lotteries by the sale of pickle cards conducted in accordance with the Nebraska Pickle Card Lottery Act, lotteries conducted by a county, city, or village in accordance with the Nebraska County and City Lottery Act, and lottery games conducted pursuant to the State Lottery Act, and to all raffles with gross proceeds not greater than five thousand dollars. All such lotteries and raffles shall be played and conducted only by the methods permitted in the act. No other form or method shall be authorized or permitted.

Source: Laws 1986, LB 1027, § 160; Laws 1991, LB 849, § 53; Laws 1993, LB 138, § 11.

Cross References

Nebraska County and City Lottery Act, see section 9-601.
Nebraska Pickle Card Lottery Act, see section 9-301.
State Lottery Act, see section 9-801.

9-503 Definitions, sections found.

For purposes of the Nebraska Small Lottery and Raffle Act, unless the context otherwise requires, the definitions found in sections 9-504 to 9-509 shall be used.

Source: Laws 1986, LB 1027, § 161.

9-504 Charitable or community betterment purposes, defined.

(1) Charitable or community betterment purposes shall mean (a) benefiting persons by enhancing their opportunity for religious or educational advancement, by relieving or protecting them from disease, suffering, or distress, by contributing to their physical well-being, by assisting them in establishing themselves in life as worthy and useful citizens, or by increasing their comprehension of and devotion to the principles upon which this nation was founded, (b) initiating, performing, or fostering worthy public works or enabling or furthering the erection or maintenance of public structures, and (c) lessening the burdens borne by government or voluntarily supporting, augmenting, or supplementing services which government would normally render to the people.

(2) Charitable or community betterment purposes shall not include any activity consisting of an attempt to influence legislation or participate in any political campaign on behalf of any elected official or person who is or has been a candidate for public office.

(3) Nothing in this section shall prohibit any qualifying nonprofit organization from using its proceeds or profits derived from activities under the Nebraska Small Lottery and Raffle Act in any activity which benefits and is conducted by the qualifying nonprofit organization, including any charitable, benevolent, humane, religious, philanthropic, recreational, social, educational, civic, or fraternal activity conducted by the organization for the benefit of its members.

Source: Laws 1986, LB 1027, § 162.

9-505 Expenses, defined.

Expenses shall mean (1) all costs associated with the purchasing, printing, or manufacturing of any items to be used or distributed in the lottery or raffle, (2) all office or clerical expenses in connection with the lottery or raffle, (3) all promotional expenses, (4) all salaries of persons employed to operate, conduct, or supervise any lottery or raffle, (5) any rental or lease expense, and (6) any fee or commission paid to any person associated with the lottery or raffle.

Source: Laws 1986, LB 1027, § 163.

9-506 Gross proceeds, defined.

Gross proceeds shall mean the total aggregate receipts received from the conduct of any lottery or raffle conducted by any qualifying nonprofit organization without any reduction for prizes, discounts, or expenses and shall include receipts from admission cost, any consideration necessary for participation, and the value of any free tickets, games, or plays used.

Source: Laws 1986, LB 1027, § 164.

9-507 Lottery, defined.

(1) Lottery shall mean a gambling scheme in which (a) participants pay or agree to pay something of value for an opportunity to win, (b) winning opportunities are represented by tickets differentiated by sequential enumeration, (c) the winners are to be determined by a random drawing of the tickets or by the method set forth in section 9-511.01, and (d) the holders of the winning tickets are to receive something of value.

(2) Lottery shall not include (a) any raffle, (b) any gambling scheme which uses any mechanical, computer, electronic, or video gaming device which has the capability of awarding something of value, free games redeemable for something of value, or tickets or stubs redeemable for something of value, (c) any activity authorized or regulated under the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the State Lottery Act, section 9-701, or Chapter 2, article 12, or (d) any activity prohibited under Chapter 28, article 11.

Source: Laws 1986, LB 1027, § 165; Laws 1991, LB 849, § 54; Laws 1993, LB 138, § 12; Laws 2000, LB 1086, § 20.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
State Lottery Act, see section 9-801.

9-508 Qualifying nonprofit organization, defined.

Qualifying nonprofit organization shall mean any nonprofit organization holding a certificate of exemption under section 501 of the Internal Revenue Code or whose major activities, exclusive of conducting any lottery or raffle, are conducted for charitable and community betterment purposes. A qualifying

nonprofit organization shall have its principal office located in this state and shall conduct a majority of its activities in Nebraska.

Source: Laws 1986, LB 1027, § 166; Laws 1994, LB 694, § 108; Laws 1995, LB 574, § 11.

9-509 Raffle, defined.

(1) Raffle shall mean a gambling scheme in which (a) participants pay or agree to pay something of value for an opportunity to win, (b) winning opportunities are represented by tickets differentiated by sequential enumeration, (c) winners are to be determined by a random drawing of tickets or by the method set forth in section 9-511.01, and (d) at least eighty percent of all of the prizes to be awarded are merchandise prizes which are not directly or indirectly redeemable for cash by the qualifying nonprofit organization conducting the raffle or any agent of the organization.

(2) Raffle shall not include (a) any gambling scheme which uses any mechanical, computer, electronic, or video gaming device which has the capability of awarding something of value, free games redeemable for something of value, or tickets or stubs redeemable for something of value, (b) any activity authorized or regulated under the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the State Lottery Act, section 9-701, or Chapter 2, article 12, or (c) any activity prohibited under Chapter 28, article 11.

Source: Laws 1986, LB 1027, § 167; Laws 1991, LB 427, § 53; Laws 1991, LB 849, § 55; Laws 1993, LB 138, § 13; Laws 2000, LB 1086, § 21.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
State Lottery Act, see section 9-801.

9-510 Nonprofit organization; conduct lotteries; conditions.

Any qualifying nonprofit organization may conduct a lottery that has gross proceeds not greater than one thousand dollars. Each chance in such lottery shall have an equal likelihood of being a winning chance. The gross proceeds of the lottery shall be used solely for charitable or community betterment purposes, awarding of prizes, and expenses. No more than one lottery shall be conducted by any qualifying organization within any calendar month.

Source: Laws 1977, LB 38, § 231; Laws 1978, LB 351, § 51; Laws 1979, LB 152, § 10; Laws 1983, LB 259, § 40; Laws 1984, LB 949, § 74; R.S.1943, (1985), § 28-1115; Laws 1986, LB 1027, § 168.

9-511 Nonprofit organization; conduct raffles; conditions.

Any qualifying nonprofit organization may conduct a raffle that has gross proceeds not greater than five thousand dollars. Each chance in such raffle shall have an equal likelihood of being a winning chance. The gross proceeds shall be used solely for charitable or community betterment purposes, awarding of prizes, and expenses. Any qualifying nonprofit organization may conduct one

or more raffles in a calendar month if the total gross proceeds from such raffles do not exceed five thousand dollars during such month.

Source: Laws 1986, LB 1027, § 169.

9-511.01 Nonprofit organization; conduct lottery or raffle with winners determined by racing objects; conditions.

(1) A qualifying nonprofit organization may conduct a lottery or raffle in which the winners are to be determined by a race utilizing inanimate, buoyant objects floated along a river, canal, or other waterway. The objects shall each bear a number or other unique identifying mark which corresponds to sequentially numbered tickets which are sold to participants in the lottery or raffle. A qualifying nonprofit organization utilizing this method of winner determination shall comply with all other requirements of the Nebraska Small Lottery and Raffle Act and any rules and regulations adopted and promulgated pursuant to the act.

(2) The Department of Revenue may adopt and promulgate rules and regulations for the conduct of a lottery or raffle utilizing the method of winner determination provided by this section.

Source: Laws 2000, LB 1086, § 22.

9-512 Department of Revenue; law enforcement agency; powers and duties.

The Department of Revenue or any law enforcement agency may require any proper investigation or audit of any qualifying nonprofit organization which conducts any lottery or raffle under the Nebraska Small Lottery and Raffle Act, either for the specific purpose of determining whether the provisions of the Nebraska Small Lottery and Raffle Act are being complied with or for the specific purpose of ensuring that the provisions of the Nebraska Bingo Act, the Nebraska Pickle Card Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska County and City Lottery Act are not being violated. No audit or investigation shall be conducted under this section except as is absolutely necessary for the department or the agency to fulfill its necessary and proper duties.

Source: Laws 1986, LB 1027, § 170.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.

9-513 Violations; penalties.

Any person who violates any provision of the Nebraska Small Lottery and Raffle Act shall be guilty of a Class IV misdemeanor for the first offense and of a Class II misdemeanor for any second or subsequent offense.

Source: Laws 1986, LB 1027, § 171.

ARTICLE 6
COUNTY AND CITY LOTTERIES

Section
9-601. Act, how cited.
9-602. Purpose of act.

Section
9-603. Definitions, where found.
9-603.01. Transferred to section 9-603.03.
9-603.02. Authorized representative, defined.
9-603.03. Cancel, defined.
9-603.04. Activation, defined.
9-604. Community betterment purposes, defined.
9-604.01. Department, defined.
9-605. Expenses, defined.
9-605.01. Governing official, defined.
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9-606.02. Keno manager, defined.
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9-607. Lottery, defined; manner of play; designation.
9-608. Transferred to section 9-625.
9-609. Transferred to section 9-629.
9-610. Transferred to section 9-648.
9-611. Transferred to section 9-651.
9-612. Transferred to section 9-619.
9-613. Lottery equipment, defined.
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9-625. Lotteries; established by political subdivision; election; approval required; joint lottery.
9-626. Continuation of lottery; election; form; restrictions.
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9-629. Gross proceeds; use; audit and legal expenses, defined.
9-629.01. Gross proceeds; use; professional baseball organization.
9-629.02. Repealed. Laws 1995, LB 344, § 36.
9-630. Conduct of lottery; license required; application; contents; enumerated; duty to keep current.
9-631. License to conduct lottery; renewal; fee.
9-631.01. Lottery workers; application; contents; duty to keep current; investigation; probationary license; regular license.
9-631.02. Keno writer; exemption from licensure.
9-632. Manufacturer-distributor; license required; application; fee; expiration; renewal.
9-633. Manufacturer-distributor; resident agent; when required.
9-634. Manufacturer-distributor; lottery supplies; approval required.
9-635. Manufacturer-distributor; lottery equipment; approval required; costs of examination.
9-636. Lottery supplies; requirements.
9-637. Ticket; purchase price limitation.
9-638. Manufacturer-distributor; information requirements.
9-639. Manufacturer-distributor; employee, agent, or spouse; restriction on activities.
9-640. Manufacturer-distributor; lottery equipment or supplies sales and leases; restrictions.
9-641. Manufacturer-distributor; records required.
9-642. Lottery operator; conflict of interest prohibited.

Section
9-642.01. Sales outlet location; qualification standards; notice to department; license; application; renewal.
9-643. Lottery; local control; section, how construed.
9-644. Local control; annexation; effect.
9-645. Licensees; exempt from Uniform Disposition of Unclaimed Property Act.
9-646. Participation; restrictions.
9-646.01. No extension of credit.
9-647. Lottery; time limitation.
9-648. Gross proceeds; tax; collection.
9-649. Tax Commissioner; power to seize contraband; effect.
9-650. Segregation of gross proceeds; use of interest; records; requirements; Tax Commissioner; powers.
9-651. Lottery ticket; requirements.
9-652. Violations; penalties; enforcement; venue.
9-653. Reports and records; disclosure; limitations; violation; penalty.

9-601 Act, how cited.

Sections 9-601 to 9-653 shall be known and may be cited as the Nebraska County and City Lottery Act.

Source: Laws 1986, LB 1027, § 172; Laws 1989, LB 767, § 47; Laws 1991, LB 427, § 54; Laws 1991, LB 795, § 4; Laws 1993, LB 563, § 2; Laws 2002, LB 545, § 44; Laws 2011, LB490, § 1; Laws 2014, LB259, § 1.

9-602 Purpose of act.

The purpose of the Nebraska County and City Lottery Act is to allow any county, city, or village to conduct a lottery for community betterment purposes. Any lottery conducted by a county, city, or village shall be conducted only by those methods and under those circumstances prescribed in the act. No other form or method shall be authorized or allowed.

Source: Laws 1986, LB 1027, § 173.

9-603 Definitions, where found.

For purposes of the Nebraska County and City Lottery Act, the definitions found in sections 9-603.02 to 9-618 shall be used.

Source: Laws 1986, LB 1027, § 174; Laws 1989, LB 767, § 48; Laws 2002, LB 545, § 45; Laws 2003, LB 3, § 4; Laws 2011, LB490, § 2; Laws 2014, LB259, § 2.

9-603.01 Transferred to section 9-603.03.

9-603.02 Authorized representative, defined.

Authorized representative shall mean any person designated by the county, city, or village or a joint entity created by the county, city, or village by entering into an agreement pursuant to the Interlocal Cooperation Act to examine, sign, and approve a lottery worker license application for submission to the department.

Source: Laws 2002, LB 545, § 46.

Cross References

Interlocal Cooperation Act, see section 13-801.

9-603.03 Cancel, defined.

Cancel shall mean to discontinue all rights and privileges to hold a license for up to three years.

Source: Laws 1989, LB 767, § 49; R.S.1943, (1997), § 9-603.01; Laws 2003, LB 3, § 5.

9-603.04 Activation, defined.

Activation, with regard to lottery equipment, means initiating the selection of winning numbers.

Source: Laws 2011, LB490, § 3.

9-604 Community betterment purposes, defined.

(1) Community betterment purposes shall mean (a) benefiting persons by enhancing their opportunity for educational advancement, by relieving or protecting them from disease, suffering, or distress, by contributing to their physical well-being, by assisting them in establishing themselves in life as worthy and useful citizens, by providing them with opportunities to contribute to the betterment of the community, or by increasing their comprehension of and devotion to the principles upon which this nation was founded, (b) initiating, performing, or fostering worthy public works or enabling or furthering the erection or maintenance of public structures, (c) lessening the burdens borne by government or voluntarily supporting, augmenting, or supplementing services which government would normally render to the people, or (d) providing tax relief for the community.

(2) Community betterment purposes shall not include any activity consisting of an attempt to influence legislation or participate in any political campaign on behalf of any elected official or person who is or has been a candidate for public office.

Source: Laws 1986, LB 1027, § 175; Laws 1991, LB 427, § 55.

9-604.01 Department, defined.

Department shall mean the Department of Revenue.

Source: Laws 1989, LB 767, § 50.

9-605 Expenses, defined.

Expenses shall mean (1) all costs associated with the purchasing, printing, or manufacturing of any items to be used or distributed in the lottery, (2) all office or clerical expenses in connection with the lottery, (3) all promotional expenses for the lottery, (4) all salaries of persons employed to operate, conduct, or supervise the lottery, (5) any rental or lease expense related to the lottery, (6) any fee or commission paid to any person associated with the lottery, (7) license fees paid to the department, and (8) any other costs associated with the conduct of a lottery by a county, city, or village. Expenses shall not include taxes paid pursuant to section 9-648 or prizes awarded to participants.

Source: Laws 1986, LB 1027, § 176; Laws 1989, LB 767, § 51.

9-605.01 Governing official, defined.

Governing official shall mean the chief executive officer of a county, city, village or any other elected or appointed official, including a governing board member, who has any decisionmaking responsibility regarding the conduct of the lottery.

Source: Laws 2002, LB 545, § 47.

9-606 Gross proceeds, defined.

Gross proceeds shall mean the total aggregate receipts received from the conduct of any lottery conducted by any county, city, or village without any reduction for prizes, discounts, taxes, or expenses and shall include receipts from admission costs, any consideration necessary for participation, and the value of any free tickets, games, or plays used.

Source: Laws 1986, LB 1027, § 177.

9-606.01 License, defined.

License shall mean a license issued to any county, city, or village to conduct a lottery for community betterment purposes, any license issued to any lottery operator, any license issued to any manufacturer-distributor, any license issued to any authorized sales outlet location, and any license issued to any lottery worker.

Source: Laws 1989, LB 767, § 52; Laws 1993, LB 563, § 3; Laws 2002, LB 545, § 50.

9-606.02 Keno manager, defined.

Keno manager shall mean the shift manager, supervisor, or person in charge of the daily operation of a keno game at a location.

Source: Laws 2002, LB 545, § 48.

9-606.03 Keno writer, defined.

(1) Keno writer means a person whose primary responsibilities include accepting inside tickets or other requests for wagers and payments of wagers from players, issuing outside tickets, voiding tickets, and redeeming winning tickets.

(2) Keno writer does not include a keno manager, a lottery operator, or any other person who is directly in charge of the manual selection of numbers.

Source: Laws 2014, LB259, § 3.

9-607 Lottery, defined; manner of play; designation.

(1) Lottery shall mean a gambling scheme in which:

(a) The players pay or agree to pay something of value for an opportunity to win;

(b) Winning opportunities are represented by tickets;

(c) Winners are solely determined by one of the following two methods:

(i) By a random drawing of tickets differentiated by sequential enumeration from a receptacle by hand whereby each ticket has an equal chance of being chosen in the drawing; or

(ii) By use of a game known as keno in which a player selects up to twenty numbers from a total of eighty numbers on a paper ticket and a computer, other electronic selection device, or electrically operated blower machine which is not player-activated randomly selects up to twenty numbers from the same pool of eighty numbers and the winning players are determined by the correct matching of the numbers on the paper ticket selected by the players with the numbers randomly selected by the computer, other electronic selection device, or electrically operated blower machine, except that (A) no keno game shall permit or require player activation of lottery equipment and (B) the random selection of numbers by the computer, other electronic selection device, or electrically operated blower machine shall not occur within five minutes of the completion of the previous selection of random numbers; and

(d) The holders of the winning paper tickets are to receive cash or prizes redeemable for cash. Selection of a winner or winners shall be predicated solely on chance.

(2) Lottery shall not include:

(a) Any gambling scheme which uses any mechanical gaming device, computer gaming device, electronic gaming device, or video gaming device which has the capability of awarding something of value, free games redeemable for something of value, or tickets or stubs redeemable for something of value;

(b) Any activity authorized or regulated under the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, section 9-701, or Chapter 2, article 12; or

(c) Any activity prohibited under Chapter 28, article 11.

(3) Notwithstanding the requirement in subdivision (1)(c)(ii) of this section that a player select up to twenty numbers, a player may select more than twenty numbers on a paper ticket when a top or bottom, left or right, edge, or way ticket is played. For a top or bottom ticket, the player shall select all numbers from one through forty or all numbers from forty-one through eighty. For a left or right ticket, the player shall select all numbers ending in one through five or all numbers ending in six through zero. For an edge ticket, the player shall select all of the numbers comprising the outside edge of the ticket. For a way ticket, the player shall select a combination of groups of numbers in multiple ways on a single ticket.

(4) A county, city, or village conducting a keno lottery shall designate the method of winning number selection to be used in the lottery and submit such designation in writing to the department prior to conducting a keno lottery. Only those methods of winning number selection described in subdivision (1)(c)(ii) of this section shall be permitted, and the method of winning number selection initially utilized may only be changed once during that business day as set forth in the designation. A county, city, or village shall not change the method or methods of winning number selection filed with the department or allow it to be changed once such initial designation has been made unless (a) otherwise authorized in writing by the department based upon a written request from the county, city, or village or (b) an emergency arises in which case a ball draw method of number selection would be switched to a number selection by a random number generator. An emergency situation shall be

reported by the county, city, or village to the department within twenty-four hours of its occurrence.

Source: Laws 1986, LB 1027, § 178; Laws 1989, LB 767, § 53; Laws 1991, LB 795, § 7; Laws 1991, LB 849, § 56; Laws 1993, LB 563, § 4; Laws 1993, LB 138, § 14; Laws 2011, LB490, § 4.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

9-608 Transferred to section 9-625.

9-609 Transferred to section 9-629.

9-610 Transferred to section 9-648.

9-611 Transferred to section 9-651.

9-612 Transferred to section 9-619.

9-613 Lottery equipment, defined.

Lottery equipment shall mean all proprietary devices, machines, and parts used in the manufacture or maintenance of equipment which is used in and is an integral part of the conduct of any lottery activity authorized or regulated under the Nebraska County and City Lottery Act.

Source: Laws 1989, LB 767, § 54.

9-614 Lottery operator, defined.

Lottery operator shall mean any individual, sole proprietorship, partnership, limited liability company, or corporation which operates a lottery on behalf of a county, city, or village.

A lottery operator shall be a resident of Nebraska or, if a partnership, limited liability company, or corporation, shall be organized under the laws of this state as a partnership, formed under the Nebraska Uniform Limited Liability Company Act, or incorporated under the Nebraska Model Business Corporation Act.

Source: Laws 1989, LB 767, § 55; Laws 1990, LB 1055, § 6; Laws 1993, LB 121, § 114; Laws 1995, LB 109, § 194; Laws 2010, LB888, § 98; Laws 2013, LB283, § 1; Laws 2014, LB749, § 237.

Cross References

Nebraska Model Business Corporation Act, see section 21-201.
Nebraska Uniform Limited Liability Company Act, see section 21-101.

9-615 Lottery supplies, defined.

Lottery supplies shall mean all tickets, cards, boards, sheets, or other supplies which are used in and are an integral part of the conduct of any lottery activity authorized or regulated under the Nebraska County and City Lottery Act.

Source: Laws 1989, LB 767, § 56.

9-615.01 Lottery worker, defined.

Lottery worker shall mean any person, other than a keno writer, who performs work directly related to the conduct of a lottery, including, but not limited to, winning number selection, winning number verification, record keeping, shift checkout and review of keno writer banks, and security.

Source: Laws 2002, LB 545, § 49; Laws 2014, LB259, § 4.

9-616 Manufacturer-distributor, defined.

Manufacturer-distributor shall mean any individual, sole proprietorship, partnership, limited liability company, or corporation which assembles, produces, makes, prints, or supplies lottery equipment or supplies for sale, use, or distribution in this state.

Source: Laws 1989, LB 767, § 57; Laws 1993, LB 121, § 115.

9-617 Revoke, defined.

Revoke shall mean to permanently void and recall all rights and privileges to obtain or hold a license.

Source: Laws 1989, LB 767, § 58.

9-618 Suspend, defined.

Suspend shall mean to cause a temporary interruption of all rights and privileges of a license or renewal thereof.

Source: Laws 1989, LB 767, § 59.

9-619 Regulation of lotteries; department; duty.

The department shall regulate lotteries conducted by counties, cities, and villages to insure fairness, equity, and uniformity.

Source: Laws 1986, LB 1027, § 183; R.S.1943, (1987), § 9-612; Laws 1989, LB 767, § 91.

9-620 Department; powers, functions, and duties.

The department shall have the following powers, functions, and duties:

(1) To issue licenses and temporary licenses;

(2) To deny any license application or renewal application for cause. Cause for denial of an application or renewal of a license shall include instances in which the applicant individually, or in the case of a business entity, any officer, director, employee, or limited liability company member of the applicant or licensee other than an employee whose duties are purely ministerial in nature, any other person or entity directly or indirectly associated with such applicant or licensee which directly or indirectly receives compensation other than distributions from a bona fide retirement or pension plan established pursuant to Chapter 1, subchapter D of the Internal Revenue Code from such applicant or licensee for past or present services in a consulting capacity or otherwise, the licensee, or any person with a substantial interest in the applicant or licensee:

(a) Violated the provisions, requirements, conditions, limitations, or duties imposed by the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the

Nebraska Small Lottery and Raffle Act, the State Lottery Act, or any rules or regulations adopted and promulgated pursuant to such acts;

(b) Knowingly caused, aided, abetted, or conspired with another to cause any person to violate any of the provisions of such acts or any rules or regulations adopted and promulgated pursuant to such acts;

(c) Obtained a license or permit pursuant to such acts by fraud, misrepresentation, or concealment;

(d) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any offense or crime, whether a felony or a misdemeanor, involving any gambling activity or fraud, theft, willful failure to make required payments or reports, or filing false reports with a governmental agency at any level;

(e) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any felony other than those described in subdivision (d) of this subdivision within the ten years preceding the filing of the application;

(f) Denied the department or its authorized representatives, including authorized law enforcement agencies, access to any place where activity required to be licensed under the Nebraska County and City Lottery Act is being conducted or failed to produce for inspection or audit any book, record, document, or item required by law, rule, or regulation;

(g) Made a misrepresentation of or failed to disclose a material fact to the department;

(h) Failed to prove by clear and convincing evidence his, her, or its qualifications to be licensed in accordance with the Nebraska County and City Lottery Act;

(i) Failed to pay any taxes and additions to taxes, including penalties and interest, required by the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act or any other taxes imposed pursuant to the Nebraska Revenue Act of 1967;

(j) Failed to pay an administrative fine levied pursuant to the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act;

(k) Failed to demonstrate good character, honesty, and integrity;

(l) Failed to demonstrate, either individually or in the case of a business entity through its managers, employees, or agents, the ability, experience, or financial responsibility necessary to establish or maintain the activity for which the application is made; or

(m) Was cited and whose liquor license was suspended, canceled, or revoked by the Nebraska Liquor Control Commission for illegal gambling activities that occurred on or after July 20, 2002, on or about a premises licensed by the commission pursuant to the Nebraska Liquor Control Act or the rules and regulations adopted and promulgated pursuant to such act.

No renewal of a license under the Nebraska County and City Lottery Act shall be issued when the applicant for renewal would not be eligible for a license upon a first application;

(3) To revoke, cancel, or suspend for cause any license. Cause for revocation, cancellation, or suspension of a license shall include instances in which the

licensee individually, or in the case of a business entity, any officer, director, employee, or limited liability company member of the licensee other than an employee whose duties are purely ministerial in nature, any other person or entity directly or indirectly associated with such licensee which directly or indirectly receives compensation other than distributions from a bona fide retirement or pension plan established pursuant to Chapter 1, subchapter D of the Internal Revenue Code from such licensee for past or present services in a consulting capacity or otherwise, or any person with a substantial interest in the licensee:

(a) Violated the provisions, requirements, conditions, limitations, or duties imposed by the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or any rules or regulations adopted and promulgated pursuant to such acts;

(b) Knowingly caused, aided, abetted, or conspired with another to cause any person to violate any of the provisions of the Nebraska County and City Lottery Act or any rules or regulations adopted and promulgated pursuant to the act;

(c) Obtained a license pursuant to the Nebraska County and City Lottery Act by fraud, misrepresentation, or concealment;

(d) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any offense or crime, whether a felony or a misdemeanor, involving any gambling activity or fraud, theft, willful failure to make required payments or reports, or filing false reports with a governmental agency at any level;

(e) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any felony other than those described in subdivision (d) of this subdivision within the ten years preceding the filing of the application;

(f) Denied the department or its authorized representatives, including authorized law enforcement agencies, access to any place where activity required to be licensed under the Nebraska County and City Lottery Act is being conducted or failed to produce for inspection or audit any book, record, document, or item required by law, rule, or regulation;

(g) Made a misrepresentation of or failed to disclose a material fact to the department;

(h) Failed to pay any taxes and additions to taxes, including penalties and interest, required by the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act or any other taxes imposed pursuant to the Nebraska Revenue Act of 1967;

(i) Failed to pay an administrative fine levied pursuant to the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act;

(j) Failed to demonstrate good character, honesty, and integrity;

(k) Failed to demonstrate, either individually or in the case of a business entity through its managers, employees, or agents, the ability, experience, or financial responsibility necessary to maintain the activity for which the license was issued; or

(l) Was cited and whose liquor license was suspended, canceled, or revoked by the Nebraska Liquor Control Commission for illegal gambling activities that

occurred on or after July 20, 2002, on or about a premises licensed by the commission pursuant to the Nebraska Liquor Control Act or the rules and regulations adopted and promulgated pursuant to such act;

(4) To issue an order requiring a licensee or other person to cease and desist from violations of the Nebraska County and City Lottery Act or any rules or regulations adopted and promulgated pursuant to the act. The order shall give reasonable notice of the rights of the licensee or other person to request a hearing and shall state the reason for the entry of the order. The notice of order shall be mailed to or personally served upon the licensee or other person. If the notice of order is mailed, the date the notice is mailed shall be deemed to be the date of service of notice to the licensee or other person. A request for a hearing by the licensee or other person shall be in writing and shall be filed with the department within thirty days after the service of the cease and desist order. If a request for hearing is not filed within the thirty-day period, the cease and desist order shall become permanent at the expiration of such period. A hearing shall be held not later than thirty days after the request for the hearing is received by the Tax Commissioner, and within twenty days after the date of the hearing, the Tax Commissioner shall issue an order vacating the cease and desist order or making it permanent as the facts require. All hearings shall be held in accordance with the rules and regulations adopted and promulgated by the department. If the licensee or other person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, the licensee or other person shall be deemed in default and the proceeding may be determined against the licensee or other person upon consideration of the cease and desist order, the allegations of which may be deemed to be true;

(5) To levy an administrative fine on an individual, partnership, limited liability company, corporation, or organization for cause. For purposes of this subdivision, cause shall include instances in which the individual, partnership, limited liability company, corporation, or organization violated the provisions, requirements, conditions, limitations, or duties imposed by the act or any rule or regulation adopted and promulgated pursuant to the act. In determining whether to levy an administrative fine and the amount of the fine if any fine is levied, the department shall take into consideration the seriousness of the violation, the intent of the violator, whether the violator voluntarily reported the violation, whether the violator derived financial gain as a result of the violation and the extent thereof, and whether the violator has had previous violations of the act and regulations. A fine levied on a violator under this section shall not exceed twenty-five thousand dollars for each violation of the act or any rules and regulations adopted and promulgated pursuant to the act plus the financial benefit derived by the violator as a result of each violation. If an administrative fine is levied, the fine shall not be paid from lottery gross proceeds of the county, city, or village and shall be remitted by the violator to the department within thirty days from the date of the order issued by the department levying such fine;

(6) To enter or to authorize any law enforcement officer to enter at any time upon any premises where lottery activity required to be licensed under the act is being conducted to determine whether any of the provisions of the act or any rules or regulations adopted and promulgated under it have been or are being violated and at such time to examine such premises;

(7) To require periodic reports of lottery activity from licensed counties, cities, villages, manufacturer-distributors, and lottery operators and any other

persons, organizations, limited liability companies, or corporations as the department deems necessary to carry out the act;

(8) To audit, examine, or cause to have examined, by any agent or representative designated by the department for such purpose, any books, papers, records, or memoranda relating to the conduct of a lottery, to require by administrative order or summons the production of such documents or the attendance of any person having knowledge in the premises, to take testimony under oath, and to require proof material for its information. If any such person willfully refuses to make documents available for examination by the department or its agent or representative or willfully fails to attend and testify, the department may apply to a judge of the district court of the county in which such person resides for an order directing such person to comply with the department's request. If any documents requested by the department are in the custody of a corporation, the court order may be directed to any principal officer of the corporation. If the documents requested by the department are in the custody of a limited liability company, the court order may be directed to any member when management is reserved to the members or otherwise to any manager. Any person who fails or refuses to obey such a court order shall be guilty of contempt of court;

(9) Unless specifically provided otherwise, to compute, determine, assess, and collect the amounts required to be paid as taxes imposed by the act in the same manner as provided for sales and use taxes in the Nebraska Revenue Act of 1967;

(10) To collect license application and license renewal application fees imposed by the Nebraska County and City Lottery Act and to prorate license fees on an annual basis. The department shall establish by rule and regulation the conditions and circumstances under which such fees may be prorated;

(11) To confiscate and seize lottery equipment or supplies pursuant to section 9-649;

(12) To investigate the activities of any person applying for a license under the act or relating to the conduct of any lottery activity under the act. Any license applicant or licensee shall produce such information, documentation, and assurances as may be required by the department to establish by a preponderance of the evidence the financial stability, integrity, and responsibility of the applicant or licensee, including, but not limited to, bank account references, business and personal income and disbursement schedules, tax returns and other reports filed with governmental agencies, business entity and personal accounting records, and check records and ledgers. Any such license applicant or licensee shall authorize the department to examine bank accounts and other such records as may be deemed necessary by the department;

(13) To adopt and promulgate such rules and regulations and prescribe all forms as are necessary to carry out the act; and

(14) To employ staff, including auditors and inspectors, as necessary to carry out the act.

Source: Laws 1989, LB 767, § 60; Laws 1991, LB 427, § 56; Laws 1991, LB 849, § 57; Laws 1993, LB 563, § 5; Laws 1993, LB 138, § 15; Laws 1994, LB 884, § 17; Laws 1995, LB 344, § 29; Laws 1995, LB 574, § 12; Laws 1997, LB 248, § 28; Laws 2000, LB 1086, § 23; Laws 2002, LB 545, § 51; Laws 2002, LB 1126, § 4; Laws 2012, LB727, § 10.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska Liquor Control Act, see section 53-101.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Revenue Act of 1967, see section 77-2701.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

9-621 Administrative fines; disposition; collection.

(1) All money collected by the department as an administrative fine shall be remitted on a monthly basis to the State Treasurer for credit to the permanent school fund.

(2) Any administrative fine levied under section 9-620 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 1989, LB 767, § 61; Laws 1993, LB 563, § 6.

9-622 Application; denial; hearing.

(1) Before any application is denied pursuant to section 9-620, the department shall notify the applicant in writing by mail of the department's intention to deny the application and the reasons for the denial. Such notice shall inform the applicant of his or her right to request an administrative hearing for the purpose of reconsideration of the intended denial of the application. The date the notice is mailed shall be deemed to be the date of service of notice to the applicant.

(2) A request for a hearing by the applicant shall be in writing and shall be filed with the department within thirty days after the service of notice to the applicant of the department's intended denial of the application. If a request for hearing is not filed within the thirty-day period, the application denial shall become final at the expiration of such period.

(3) If a request for hearing is filed within the thirty-day period, the Tax Commissioner shall grant the applicant a hearing and shall, at least ten days before the hearing, serve notice upon the applicant by mail of the time, date, and place of the hearing. Such proceedings shall be considered contested cases pursuant to the Administrative Procedure Act.

Source: Laws 1989, LB 767, § 62; Laws 2002, LB 545, § 52; Laws 2012, LB727, § 11.

Cross References

Administrative Procedure Act, see section 84-920.

9-623 Hearing; required; when; notice.

Before the adoption, amendment, or repeal of any rule or regulation, the suspension, revocation, or cancellation of any license pursuant to section 9-620, or the levying of an administrative fine pursuant to such section, the department shall set the matter for hearing. Such suspension, revocation, or cancellation proceedings or proceedings to levy an administrative fine shall be contested cases pursuant to the Administrative Procedure Act.

At least ten days before the hearing, the department shall (1) in the case of suspension, revocation, or cancellation proceedings or proceedings to levy an administrative fine, serve notice upon the licensee or violator by personal service or mail of the time, date, and place of any hearing or (2) in the case of adoption, amendment, or repeal of any rule or regulation, issue a public notice of the time, date, and place of such hearing.

Source: Laws 1989, LB 767, § 63; Laws 1991, LB 427, § 57; Laws 1993, LB 563, § 7; Laws 1995, LB 344, § 30; Laws 2012, LB727, § 12.

Cross References

Administrative Procedure Act, see section 84-920.

9-624 Proceeding before department; service; decision; appeal.

(1) A copy of the order or decision of the department in any proceeding before it pursuant to the Nebraska County and City Lottery Act shall be served upon each party of record to the proceeding before the department. Service upon any attorney of record for any such party shall be deemed to be service upon such party. Each party appearing before the department shall enter his or her appearance and indicate to the department his or her address for the service of a copy of any order, decision, or notice. The mailing of any copy of any order or decision or of any notice in the proceeding, to such party at such address, shall be deemed to be service upon such party.

(2) Any decision of the department in any proceeding before it pursuant to the act may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1989, LB 767, § 64.

Cross References

Administrative Procedure Act, see section 84-920.

9-625 Lotteries; established by political subdivision; election; approval required; joint lottery.

Any county, city, or village may establish and conduct a lottery if an election is first held pursuant to this section. Only one scheme or type of lottery may be conducted by a county, city, or village at one time. No county, city, or village shall establish and conduct a lottery until such course of action has been approved by a majority of the registered voters of such county, city, or village casting ballots on the issue at a regular election or a special election called by the governing board of the county, city, or village for such purpose. This section shall not be construed to prohibit any county, city, or village from conducting a lottery if such course of action was approved prior to July 17, 1986, by a majority of the registered voters of such county, city, or village casting ballots on the issue.

Any lottery established pursuant to this section which is authorized by an election held on or after October 1, 1989, pursuant to this section that is not in operation for any ten consecutive years shall no longer be authorized under this section. If the voters in a county, city, or village approve a lottery on or after October 1, 1989, pursuant to this section but the lottery does not actually begin operation within ten years of the date that the results of the election are certified, the lottery shall no longer be authorized under this section. Any lottery no longer authorized under this section because it did not operate within

the ten-year period provided in this section may be reauthorized by a majority vote of the registered voters of the county, city, or village casting ballots on the issue at a subsequent election pursuant to this section.

Except for any restriction imposed pursuant to section 9-643, any county, city, or village may conduct a lottery only within the boundaries of such county, city, or village, or within a licensed racetrack enclosure which abuts the corporate limits thereof or which is within the zoning jurisdiction of a city, except that nothing in this section shall prohibit a county, city, or village from entering into an agreement pursuant to the Interlocal Cooperation Act to conduct a joint lottery with another county, city, or village which has established a lottery in accordance with this section.

If any county, city, or village is conducting a lottery at the time it is consolidated into a municipal county and such county, city, or village is abolished as of the date of creation of the municipal county, the municipal county shall be subject to the same rights and obligations with respect to such lottery or lotteries as the counties, cities, and villages which were abolished, including any rights or obligations under lottery contracts of such counties, cities, and villages. Such lottery shall continue to be subject to all other provisions of the Nebraska County and City Lottery Act, except that such lottery shall not be expanded to any new location in any area of the municipal county where such lottery was not previously authorized before the consolidation unless such expansion has been approved by a majority of the registered voters of such municipal county voting at a regular election or a special election called by the governing board of the municipal county for such purpose.

Source: Laws 1977, LB 38, § 232; Laws 1983, LB 259, § 62; Laws 1984, LB 949, § 75; R.S.1943, (1985), § 28-1116; Laws 1986, LB 1027, § 179; R.S.1943, (1987), § 9-608; Laws 1989, LB 767, § 65; Laws 1995, LB 344, § 31; Laws 2001, LB 142, § 20; Laws 2002, LB 545, § 53.

Cross References

Interlocal Cooperation Act, see section 13-801.

9-626 Continuation of lottery; election; form; restrictions.

(1) A governing board of a county, city, or village may submit to the registered voters of such county, city, or village the question whether an existing lottery should be continued. The question may be submitted at a regular election or a special election called by the governing board of the county, city, or village for such purpose.

(2) The question shall be submitted in substantially the following form:

Shall the (county, city, or village) of (here insert the name of the county, city, or village) continue operating a lottery pursuant to the Nebraska County and City Lottery Act?

...... For continued operation of lottery

...... Against continued operation of lottery

(3) A majority of the voters voting on the issue shall determine such issue. The vote shall be binding on the affected county, city, or village, and if the majority vote is to discontinue the lottery, such county, city, or village shall discontinue the lottery within sixty days of the certification of the election results.

(4) An election pursuant to this section shall not be held within two years of the election authorized under section 9-625 and shall not be held more often than once every two years.

(5) An election held by a county, city, or village pursuant to section 9-625 shall not be held within two years of an election authorized under this section and section 9-627 if such election results in the discontinuation of the lottery in the county, city, or village.

Source: Laws 1989, LB 767, § 66.

9-627 Continuation of lottery; petition; election.

(1) The registered voters of any county, city, or village shall have the right to vote on the question of whether an existing lottery should be continued. The question shall be submitted to such voters whenever petitions calling for its submission, signed by at least twenty percent of the number of persons voting in the county, city, or village at the last preceding general election, are presented to the governing board of the county, city, or village.

(2) Upon receipt of the petitions provided under subsection (1) of this section, it shall be the duty of the governing board to submit the question at a special election to be held not less than thirty nor more than forty-five days after receipt of the petitions, except that if any other election is to be held in such county, city, or village within ninety days of receipt of the petitions, the governing board may provide for the holding of the lottery election on the same day.

(3) The governing board shall give notice of the submission of the question of whether an existing lottery should be continued, not more than twenty days nor less than ten days prior to the election, by publication one time in one or more newspapers published in or of general circulation in the county, city, or village in which such question is to be submitted. Such notice shall be in addition to any other notice required under the general election laws of this state.

(4) The question shall be submitted to the registered voters in the form provided in subsection (2) of section 9-626.

(5) A majority of the voters voting on the issue shall determine such issue. The vote shall be binding on the affected county, city, or village, and if the majority vote is to discontinue the lottery, such county, city, or village shall discontinue the lottery within sixty days of the certification of the election results.

Source: Laws 1989, LB 767, § 67.

9-628 Contract; termination provision required.

On and after October 1, 1989, any contract entered into by a county, city, or village relating to the conduct of a lottery shall include a provision permitting the county, city, or village to terminate the contract by giving thirty days' notice to the other party if such lottery has been discontinued by an election authorized under section 9-626 or 9-627.

Source: Laws 1989, LB 767, § 68.

9-629 Gross proceeds; use; audit and legal expenses, defined.

(1) The gross proceeds of any lottery conducted by a county, city, or village shall be used solely for community betterment purposes, awarding of prizes, taxes, and expenses.

(2) Not less than sixty-five percent of the gross proceeds shall be used for the awarding of prizes, except that for purposes of conducting a lottery authorized by subdivision (1)(c)(ii) of section 9-607, not less than sixty-five percent of the gross proceeds during an annual period from July 1 to June 30 of each year shall be used for the awarding of prizes.

(3) Not more than fourteen percent of the gross proceeds shall be used to pay the expenses of operating the lottery, except that license fees paid to the department and audit or legal expenses incurred by the county, city, or village which relate directly to the conduct of operating such lottery need not be included in determining the fourteen-percent limitation on expenses.

(4) For purposes of this section, audit and legal expenses shall include all expenses relating to: (a) The governmental organization of the lottery; (b) government maintenance, monitoring, and examination of lottery records; and (c) enforcement, regulatory, administrative, investigative, and litigation functions undertaken by government, but shall not include the expenses of the actual conduct of the game. Audit and legal expenses during an annual period from July 1 to June 30 of each year in excess of one percent of gross proceeds or five thousand dollars, whichever is greater, shall be subject to the fourteen-percent limitation on expenses under subsection (3) of this section. In the case of a joint lottery conducted pursuant to an interlocal agreement as provided for in section 9-625, the combined gross proceeds of the joint lottery shall be used to determine that portion of audit and legal expenses that are not subject to the fourteen-percent limitation on expenses.

Source: Laws 1983, LB 259, § 41; R.S.1943, (1985), § 28-1116.01; Laws 1986, LB 1027, § 180; R.S.1943, (1987), § 9-609; Laws 1989, LB 767, § 69; Laws 1991, LB 795, § 8; Laws 1991, LB 849, § 58; Laws 1993, LB 138, § 16; Laws 1994, LB 694, § 109; Laws 1995, LB 344, § 32.

9-629.01 Gross proceeds; use; professional baseball organization.

As authorized in section 19-4701, a city of the metropolitan or primary class or a county in which a city of the metropolitan class is located which conducts a lottery pursuant to the Nebraska County and City Lottery Act may use a portion of the gross proceeds from such lottery for the acquisition, purchase, and maintenance of a professional baseball organization.

Source: Laws 1991, LB 795, § 5.

9-629.02 Repealed. Laws 1995, LB 344, § 36.

9-630 Conduct of lottery; license required; application; contents; enumerated; duty to keep current.

(1) No county, city, village, or lottery operator shall conduct a lottery without having first been issued a license by the department. An applicant for such license shall apply on a form prescribed by the department.

(2) Each application by any county, city, or village shall include:

(a) The name and address of the applicant;

(b) A certified copy of the election results at which the lottery was approved by a majority of the registered voters of the county, city, or village in the manner prescribed in section 9-625;

(c) Any approval by ordinance or resolution approved by a governing board of a county, city, or village sanctioning the conduct of a lottery;

(d) The names, addresses, and dates of birth of each person employed by the county, city, or village to conduct the lottery;

(e) The name and address of at least one person employed by the county, city, or village who shall represent the county, city, or village in all matters with the department regarding the conduct of the lottery;

(f) A written statement describing the type of lottery to be conducted by the county, city, or village;

(g) If the county, city, or village enters into a written agreement with a lottery operator, a copy of the proposed contract or written agreement between the county, city, or village and the chosen lottery operator; and

(h) Any other information which the department deems necessary.

(3) Each application by any lottery operator shall include:

(a) The name, address, social security number, and date of birth of every individual who is the lottery operator, the sole proprietor, a partner, a member, or a corporate officer of the lottery operator, or a person or entity holding in the aggregate ten percent or more of the debt or equity of the lottery operator if a corporation;

(b) The name and state identification number of the county, city, or village on whose behalf a lottery will be conducted;

(c) A statement signed by an authorized representative of the county, city, or village signifying that such county, city, or village approves the applicant to act as a lottery operator on behalf of such county, city, or village; and

(d) Any other information which the department deems necessary.

A separate license shall be obtained by a lottery operator for each county, city, or village on whose behalf a lottery will be conducted.

(4) The information required by this section shall be kept current. A county, city, village, or lottery operator shall notify the department within thirty days of any changes in the information originally submitted in the application form.

(5) The department may prescribe a separate application form for renewal purposes.

Source: Laws 1989, LB 767, § 70; Laws 1991, LB 427, § 58; Laws 1993, LB 121, § 116; Laws 1993, LB 563, § 8; Laws 1997, LB 248, § 29.

9-631 License to conduct lottery; renewal; fee.

(1) All licenses issued to any county, city, or village to conduct a lottery and licenses issued to any lottery operator or any authorized sales outlet location shall expire on May 31 of every even-numbered year, or such other date as the department may prescribe by rule and regulation, and may be renewed biennially. All licenses issued to any lottery worker shall expire on May 31 of every odd-numbered year, or such other date as the department may prescribe by rule and regulation, and may be renewed biennially. Applications for renewal of

a county, city, or village license, a lottery operator license, an authorized sales outlet location license, or a lottery worker license shall be submitted to the department at least sixty days prior to the expiration date of the license.

(2) A biennial license fee of one hundred dollars shall be charged for each license issued to any county, city, or village to conduct a lottery. A biennial license fee of five hundred dollars shall be charged for each license issued to a lottery operator. No license fee shall be charged for an authorized sales outlet location or a lottery worker license.

Source: Laws 1989, LB 767, § 71; Laws 1991, LB 427, § 59; Laws 1993, LB 563, § 9; Laws 2002, LB 545, § 54.

9-631.01 Lottery workers; application; contents; duty to keep current; investigation; probationary license; regular license.

(1) No person shall be a lottery worker unless a lottery worker license application has been filed with the department. The application shall be on a form prescribed by the department and shall include:

(a) The name, address, date of birth, and social security number of the applicant;

(b) The name and state identification number of the county, city, or village, lottery operator, and sales outlet location or locations for which the applicant will be performing work;

(c) A description of the applicant's duties;

(d) A statement that the applicant has not been convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any felony within ten years preceding the date of the application or any felony or misdemeanor involving fraud, theft, or any gambling activity, willful failure to make required payments or reports, or filing false reports to a governmental agency at any level;

(e) The date of signing and the signature of the applicant, under penalty of perjury, verifying that the information is true and accurate;

(f) A statement signed by a governing official of the county, city, or village or the authorized representative signifying that such county, city, or village or authorized representative has examined the completed application and approved the application for submission to the department; and

(g) Any other information which the department deems necessary.

(2) The applicant shall complete and forward the application to the county, city, or village or authorized representative. Upon receipt of the completed application the governing official of the county, city, or village or the authorized representative shall examine the application and, if the governing official of the county, city, or village or the authorized representative approves the application for submission to the department, shall sign and file the application with the department. If the application is approved by an authorized representative, a copy of the application or the information contained in the application shall be filed with the county, city, or village.

(3) The department and the county, city, or village shall have the right to conduct an investigation concerning the applicant as may be necessary or appropriate to maintain the integrity of the game.

(4) The information required by this section shall be kept current, and a new application shall be filed with the department if any information on the application is no longer correct. A county, city, village, or lottery operator shall notify the department if the person to whom the license was originally issued is no longer working for such county, city, village, or lottery operator.

(5) Falsification of information on the application by the applicant shall disqualify such applicant from being a lottery worker in addition to any other penalties which may be imposed under the laws of this state.

(6) The applicant shall be granted a probationary license as a lottery worker which shall be valid for a period of one hundred twenty days after the application is filed with the department unless such application is denied by the department. An application shall be considered filed with the department upon receipt by the department or as of the date postmarked or transmitted by electronic facsimile to the department if the application is received by the department within ten days after the date postmarked or electronically transmitted. An application postmarked or electronically transmitted but not received by the department after ten days shall not be considered filed. If proceedings to deny the license application pursuant to section 9-622 have not been initiated by the department during such probationary period, the applicant shall be granted a regular lottery worker license. The license shall be valid to allow such person to perform work for the county, city, village, lottery operator, or sales outlet location or locations unless otherwise suspended, canceled, revoked, or denied by the department or unless the license otherwise becomes invalid upon notification by the county, city, village, or lottery operator that the person to whom the license was originally issued is no longer working for such county, city, village, or lottery operator.

(7) An applicant may obtain a license as a lottery worker for more than one county, city, or village conducting a lottery pursuant to the Nebraska County and City Lottery Act if a separate application has been filed for such applicant with respect to each such county, city, or village.

(8) A lottery worker license is nontransferable and shall no longer be valid if a person is no longer employed as a lottery worker by the county, city, or village for which the lottery worker license was obtained.

(9) A person holding a license as a lottery worker under the Nebraska County and City Lottery Act shall not be connected with or interested in, directly or indirectly, any individual, sole proprietorship, partnership, limited liability company, corporation, or other party licensed as a distributor, manufacturer, or manufacturer-distributor under section 9-255.07, 9-255.09, 9-330, 9-332, or 9-632.

Source: Laws 1993, LB 563, § 10; Laws 1997, LB 248, § 30; Laws 2002, LB 545, § 55.

9-631.02 Keno writer; exemption from licensure.

A person who is a keno writer and has no direct responsibility for the selection of numbers shall not be considered a lottery worker and shall not be required to be licensed for purposes of the Nebraska County and City Lottery Act.

Source: Laws 2014, LB259, § 5.

9-632 Manufacturer-distributor; license required; application; fee; expiration; renewal.

(1) No individual, sole proprietorship, partnership, limited liability company, or corporation shall manufacture, sell, print, or distribute lottery equipment or supplies for use or play in this state without having first been issued a manufacturer-distributor license by the department.

(2) The department shall charge a biennial license fee of one thousand five hundred twenty-five dollars for the issuance or renewal of a manufacturer-distributor license. The department shall remit the proceeds from such license fees to the State Treasurer for credit to the Charitable Gaming Operations Fund. All manufacturer-distributor licenses may be renewed biennially. The biennial expiration date shall be September 30 of every odd-numbered year or such other date as the department may prescribe by rule and regulation. An application for license renewal shall be submitted to the department at least forty-five days prior to the expiration date of the license.

(3) An applicant for issuance or renewal of a manufacturer-distributor license shall apply for a license on a form prescribed by the department. The application form shall include:

(a) The name and address of the applicant and the name and address of each of its separate locations manufacturing or distributing lottery equipment or supplies;

(b) The name and home address of all owners or members of the manufacturer-distributor business if the business is not a corporation. If the business is a corporation, the name and home address of each of the officers and directors of the corporation and of each stockholder owning ten percent or more of any class of stock in the corporation shall be supplied;

(c) If the applicant is an individual, the applicant's social security number;

(d) If the applicant is a foreign manufacturer-distributor, the full name, business address, and home address of the agent who is a resident of this state designated pursuant to section 9-633; and

(e) Such other information as the department deems necessary.

(4) The applicant shall notify the department within thirty days of any change in the information submitted on or with the application form. The applicant shall comply with all applicable laws of the United States and the State of Nebraska and all applicable rules and regulations of the department.

(5) Any person licensed as a manufacturer pursuant to section 9-255.09 or 9-332 or as a distributor pursuant to section 9-255.07 or 9-330 may act as a manufacturer-distributor pursuant to this section upon the filing of the proper application form and payment of a biennial license fee of one thousand five hundred twenty-five dollars.

Source: Laws 1989, LB 767, § 72; Laws 1991, LB 427, § 60; Laws 1993, LB 121, § 117; Laws 1993, LB 563, § 11; Laws 1994, LB 694, § 110; Laws 1997, LB 752, § 69.

9-633 Manufacturer-distributor; resident agent; when required.

Each manufacturer-distributor selling lottery equipment or supplies in this state that is not a resident of this state or is not a corporation shall designate a natural person who is a resident of and living in this state and is nineteen years

of age or older as a resident agent for the purpose of receipt and acceptance of service of process and other communications on behalf of the manufacturer-distributor. The name, business address where service of process and delivery of mail can be made, and home address of such agent shall be filed with the department.

Source: Laws 1989, LB 767, § 73.

9-634 Manufacturer-distributor; lottery supplies; approval required.

Each manufacturer-distributor shall receive departmental approval of lottery supplies prior to offering or marketing in this state any type of lottery supplies for use in a lottery conducted pursuant to the Nebraska County and City Lottery Act. Approval by the department shall be based upon, but not be limited to, conformance with specifications imposed by the department regarding the manufacture, assembly, and packaging of lottery supplies, the provisions of the act, and any other specifications imposed by rule or regulation adopted and promulgated pursuant to the act.

Source: Laws 1989, LB 767, § 74.

9-635 Manufacturer-distributor; lottery equipment; approval required; costs of examination.

(1) Each manufacturer-distributor shall receive departmental approval of lottery equipment prior to offering or marketing in this state any type of lottery equipment for use in a lottery conducted pursuant to the Nebraska County and City Lottery Act. Approval by the department shall be based upon, but not be limited to, conformance with the provisions of the act and any other specifications imposed by rule or regulation adopted and promulgated pursuant to the act.

(2) Lottery equipment shall not be submitted for approval by the department until the manufacturer-distributor has obtained a license as required in section 9-632.

(3) The department may require a manufacturer-distributor seeking approval of any lottery equipment to pay the anticipated actual costs of the examination of the equipment by the department. If required, such costs shall be paid in advance by the manufacturer-distributor. After completion of the examination, the department shall refund overpayments or charge and collect amounts sufficient to reimburse the department for underpayments of actual costs.

(4) Lottery equipment which does not conform in all respects to the requirements of the act and any other specifications imposed by the department by rule and regulation shall be contraband goods for purposes of section 9-649.

Source: Laws 1989, LB 767, § 75.

9-636 Lottery supplies; requirements.

(1) All lottery supplies shall be constructed to conform in all respects to the provisions and specifications imposed by the Nebraska County and City Lottery Act and the rules and regulations adopted and promulgated pursuant to the act as to the manufacture, assembly, printing, and packaging of lottery supplies.

(2) Any lottery supplies which do not conform in all respects to the requirements of the act and any other specifications imposed by the department by rule and regulation shall be contraband goods for purposes of section 9-649.

Source: Laws 1989, LB 767, § 76; Laws 1993, LB 563, § 12.

9-637 Ticket; purchase price limitation.

No ticket used in the conduct of any lottery shall have an individual purchase price in excess of one hundred dollars.

Source: Laws 1989, LB 767, § 77.

9-638 Manufacturer-distributor; information requirements.

Each manufacturer-distributor shall maintain the following information: (1) The name of each purchaser of lottery equipment or supplies; (2) relative to each sale, the quantity and type of lottery equipment or supplies sold; and (3) any other information concerning lottery equipment or supplies sold which the department deems necessary. Such information shall be made available to the department upon request.

Source: Laws 1989, LB 767, § 78; Laws 1997, LB 248, § 31.

9-639 Manufacturer-distributor; employee, agent, or spouse; restriction on activities.

No manufacturer-distributor shall be licensed to conduct any other activity under the Nebraska County and City Lottery Act. No manufacturer-distributor shall hold a license to conduct any other kind of gambling activity which is authorized or regulated under Chapter 9 except as provided in section 9-632. No manufacturer-distributor or employee, agent, or spouse of any manufacturer-distributor shall play in any lottery conducted by any county, city, or village or participate in the conduct or operation of any lottery conducted by any county, city, or village or any other kind of gambling activity which is authorized or regulated under Chapter 9 except to the exclusive extent of his or her statutory duties as a licensed manufacturer-distributor and as provided in sections 9-255.07, 9-255.09, 9-330, and 9-332.

Source: Laws 1989, LB 767, § 79; Laws 1991, LB 427, § 61; Laws 1993, LB 563, § 13; Laws 1994, LB 694, § 111.

9-640 Manufacturer-distributor; lottery equipment or supplies sales and leases; restrictions.

(1) No manufacturer-distributor shall sell, lease, or otherwise provide any lottery equipment or supplies to any person in Nebraska except a county, city, or village licensed to conduct a lottery, a licensed lottery operator, or another licensed manufacturer-distributor. No county, city, or village licensed to conduct a lottery or a licensed lottery operator shall purchase, lease, or otherwise obtain any lottery equipment or supplies except from a manufacturer-distributor licensed in Nebraska.

(2) Nothing in this section shall prohibit (a) a licensed county, city, village, or lottery operator which has purchased or intends to purchase new lottery equipment from selling or donating its old lottery equipment to another licensed county, city, village, or lottery operator if prior written approval has been obtained from the department or (b) a county, city, village, or lottery

operator which has voluntarily canceled its license or allowed its license to lapse or which has had its license suspended, canceled, or revoked from selling or donating its lottery equipment to another licensed county, city, village, or lottery operator if prior written approval has been obtained from the department.

Source: Laws 1989, LB 767, § 80; Laws 1991, LB 427, § 62.

9-641 Manufacturer-distributor; records required.

Every licensed manufacturer-distributor shall keep and maintain a complete set of records which shall include all details of all activities of the licensee related to the conduct of the licensed activity as may be required by the department, including the total quantity and types of lottery equipment or supplies sold to any county, city, or village, to any licensed lottery operator, and to other licensed manufacturer-distributors. Such records shall be available for inspection by the department. The records shall be maintained for a period of not less than three years from the date of the end of the licensee's fiscal year.

Source: Laws 1989, LB 767, § 81.

9-642 Lottery operator; conflict of interest prohibited.

(1) No sole proprietor, partner in a partnership, member in a limited liability company, officer or director of a corporation, or individual with a substantial interest in a sole proprietorship, partnership, limited liability company, or corporation applying for a lottery operator license or licensed as a lottery operator shall be connected with or interested in, directly or indirectly, any person, partnership, limited liability company, firm, corporation, or other party licensed as a distributor, manufacturer, or manufacturer-distributor under section 9-255.07, 9-255.09, 9-330, 9-332, or 9-632.

(2) No member of the governing board or governing official of a county, city, or village shall be connected with or interested in, directly or indirectly, any lottery operator with whom the county, city, or village contracts to conduct its lottery or any manufacturer-distributor.

Source: Laws 1989, LB 767, § 82; Laws 1991, LB 427, § 63; Laws 1993, LB 121, § 118; Laws 1993, LB 563, § 14; Laws 1994, LB 694, § 112; Laws 1994, LB 884, § 18.

9-642.01 Sales outlet location; qualification standards; notice to department; license; application; renewal.

(1) Prior to a county, city, village, or lottery operator conducting a lottery at a location other than the location of the lottery operator (a) the county, city, or village shall, by ordinance or resolution, establish qualification standards which shall be met by any individual, sole proprietorship, partnership, limited liability company, or corporation seeking to have its location qualify as an authorized sales outlet location for conducting a lottery and (b) the county, city, or village shall approve or disapprove each sales outlet location and individual, sole proprietorship, partnership, limited liability company, or corporation which desires to conduct the lottery at its sales outlet location solely on the basis of the qualification standards. A copy of the ordinance or resolution setting forth the qualification standards shall be filed with the department within thirty days of its adoption. A county, city, or village shall notify the department of all approved lottery locations within thirty days of approval.

(2) An authorized sales outlet location shall obtain a license issued by the department prior to conducting any lottery activity at such location pursuant to the Nebraska County and City Lottery Act. An applicant for a license as an authorized sales outlet location shall apply on a form prescribed by the department containing the information the department deems necessary, including documentation that reflects that the location has been approved by the county, city, or village in accordance with the qualification standards required by this section. If the applicant is an individual, the application shall include the applicant's social security number.

(3) The information required by this section shall be kept current and a new application shall be filed with the department if any information on the application is no longer correct.

Source: Laws 1991, LB 427, § 64; Laws 1993, LB 121, § 119; Laws 1993, LB 563, § 15; Laws 1997, LB 752, § 70; Laws 2002, LB 545, § 56.

9-643 Lottery; local control; section, how construed.

(1) Any county, city, or village may, by resolution or ordinance, tax, regulate, control, or prohibit any lottery conducted pursuant to the Nebraska County and City Lottery Act within the boundaries of such county, city, or village, except that no county may impose a tax or otherwise regulate, control, or prohibit any lottery within the corporate limits of a city or village. Any tax imposed pursuant to this subsection shall be remitted to the general fund of the county, city, or village imposing such tax.

(2) Nothing in this section shall be construed to authorize any lottery not otherwise authorized under Nebraska law.

Source: Laws 1989, LB 767, § 83; Laws 1993, LB 563, § 16.

9-644 Local control; annexation; effect.

If a city or village which has exercised its authority under section 9-643 to prohibit lotteries within its boundaries annexes any area in which a lottery is being lawfully conducted by a county, the county may continue the lottery for a period not to exceed the shorter of (1) the remainder of the term of the county's agreement with the lottery operator or (2) two years. The lottery shall be subject to all taxes, regulations, and controls imposed by the city or village under such section, whether imposed before or after annexation.

Source: Laws 1989, LB 767, § 84.

9-645 Licensees; exempt from Uniform Disposition of Unclaimed Property Act.

Any county, city, or village licensed to conduct a lottery pursuant to the Nebraska County and City Lottery Act shall be exempt from the Uniform Disposition of Unclaimed Property Act solely with respect to unclaimed lottery prizes.

Source: Laws 1989, LB 767, § 85.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

9-646 Participation; restrictions.

(1) No person under nineteen years of age shall play or participate in any way in any lottery conducted pursuant to the Nebraska County and City Lottery Act.

(2) A county, city, or village which authorizes the conduct of a lottery shall establish by ordinance or resolution the limitations, if any, on the playing of any lottery conducted by the county, city, or village by any member of the governing board, a governing official, or the immediate family of such member or official.

(3) No owner or officer of a lottery operator with whom the county, city, or village contracts to conduct its lottery shall play any lottery conducted by such county, city, or village. An owner or officer of an authorized sales outlet location for such county, city, or village may be prohibited from playing any lottery conducted by such county, city, or village by ordinance or resolution. No employee or agent of a county, city, village, lottery operator, or authorized sales outlet location shall play the lottery of the county, city, or village for which he or she performs work during such time as he or she is actually working at such lottery or while on duty.

(4) No person or licensee, or employee or agent thereof, shall knowingly permit an individual under nineteen years of age to play or participate in any way in any lottery conducted pursuant to the Nebraska County and City Lottery Act.

Source: Laws 1989, LB 767, § 86; Laws 1991, LB 427, § 65; Laws 1993, LB 563, § 17; Laws 1997, LB 248, § 32.

9-646.01 No extension of credit.

No person or licensee, or any employee or agent thereof, accepting wagers on a lottery conducted pursuant to the Nebraska County and City Lottery Act shall extend credit from the gross proceeds of a lottery to participants in the lottery for the purchase of lottery tickets. No person shall purchase or be allowed to purchase any lottery ticket or make or be allowed to make any wager pursuant to the act unless he or she pays for such ticket or wager with cash. For purposes of this section, cash shall mean United States currency having the same face value as the price of the ticket or wager.

Source: Laws 1993, LB 563, § 18; Laws 1997, LB 248, § 33.

9-647 Lottery; time limitation.

No lottery shall be conducted between the hours of 1 a.m. and 6 a.m., except that if alcoholic liquor is allowed to be sold later than 1 a.m. pursuant to a vote under subdivision (1)(b) of section 53-179, no lottery shall be conducted between the hour established pursuant to such vote and 6 a.m. within the area affected by the vote.

Source: Laws 1989, LB 767, § 94; Laws 2010, LB861, § 3.

9-648 Gross proceeds; tax; collection.

Any county, city, or village which conducts a lottery shall submit to the department on a quarterly basis a tax of two percent of the gross proceeds. Such tax shall be remitted not later than thirty days from the close of the preceding quarter on forms provided by the department. The department shall remit the tax to the State Treasurer for credit to the Charitable Gaming Operations Fund. All deficiencies of the tax imposed by this section shall accrue

interest and be subject to a penalty as provided for sales and use taxes in the Nebraska Revenue Act of 1967.

Source: Laws 1986, LB 1027, § 181; R.S.1943, (1987), § 9-610; Laws 1989, LB 767, § 87; Laws 1993, LB 563, § 19.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

9-649 Tax Commissioner; power to seize contraband; effect.

(1) The Tax Commissioner or his or her agents or employees, at the direction of the Tax Commissioner, or any peace officer of this state may seize, without a warrant, the following contraband goods found any place in this state: (a) Any lottery equipment or supplies which do not conform in all respects to the requirements of the Nebraska County and City Lottery Act and any other specifications imposed by the department by rule and regulation; (b) any lottery equipment or supplies that are being sold without the proper license; (c) any lottery equipment or supplies that have been sold in violation of the act or any rule or regulation adopted and promulgated pursuant to the act; or (d) any lottery equipment or supplies used in connection with any lottery that has been or is being conducted in violation of the act or any rule or regulation adopted and promulgated pursuant to the act.

(2) The Tax Commissioner may, upon satisfactory proof, direct the return of any seized lottery equipment or supplies when he or she has reason to believe that the owner has not willfully or intentionally failed to comply with the act.

(3) The Tax Commissioner may, upon finding that an owner of contraband goods has willfully or intentionally failed to comply with the act, confiscate such goods. Any lottery equipment or supplies confiscated shall be destroyed.

(4) The seizure of contraband goods under this section shall not relieve any person from a fine, imprisonment, or other penalty for violation of the act.

(5) The Tax Commissioner or his or her agents or employees, when directed to do so by the Tax Commissioner, or any peace officer of this state shall not be responsible for negligence in any court for the seizure or confiscation of any lottery equipment or supplies pursuant to this section.

Source: Laws 1989, LB 767, § 88; Laws 1991, LB 427, § 66.

9-650 Segregation of gross proceeds; use of interest; records; requirements; Tax Commissioner; powers.

(1) The gross proceeds of any lottery, less the amount awarded in prizes and any salary, fee, or commission paid to a licensed lottery operator plus any interest on such funds, shall be segregated from any other revenue and placed in a separate account of the lottery operator and the county, city, or village. If a lottery operator is conducting a lottery on behalf of a county, city, or village, such proceeds, including any interest, shall be transferred from the lottery operator's separate account to a separate account of the county, city, or village. Any interest received by a county, city, or village from the proceeds of the lottery shall be used solely for community betterment purposes.

(2) During the hours that keno is conducted at a sales outlet location, cash constituting the starting bank of the lottery operator conducting the keno game and cash receipts from the sale of keno tickets shall be segregated from all other revenue of the sales outlet location. Subject to the adoption and promul-

gation of rules and regulations by the department setting forth record-keeping and reporting criteria for lottery operators, counties, cities, and villages that request authorization from the department for the use of electronic transfers from satellite locations, cash receipts from the sale of keno tickets shall remain segregated from all other revenue of the sales outlet location until deposited in the bank account of the sales outlet location, lottery operator, county, city, or village. Such bank account shall be designated by the lottery operator, county, city, or village.

(3) The Tax Commissioner may authorize the electronic transfer of funds from the nonsegregated general business account of a sales outlet location to the bank account of a lottery operator, county, city, or village as long as such funds are transferred no later than five business days following the day the funds were collected. To facilitate the electronic transfer of such funds to a lottery operator, county, city, or village that has met the requirements of the rules and regulations adopted and promulgated pursuant to subsection (2) of this section, a sales outlet location may first deposit such funds into a nonsegregated general business account of the sales outlet location.

(4) The gross proceeds of any lottery, less the amount awarded in prizes, which are collected by a sales outlet location shall be deposited into the account of the sales outlet location, lottery operator, county, city, or village no later than five business days following the day such gross proceeds were collected.

(5) Separate records shall be maintained by such licensed county, city, or village. Records required by the Nebraska County and City Lottery Act shall be preserved for at least three years unless otherwise provided by rules and regulations adopted and promulgated by the department. Any law enforcement agency or other agency of government shall have the authority to investigate the records relating to lotteries and gross proceeds from such lottery at any time. Any county, city, or village shall, upon proper written request, deliver all such records to the department or other law enforcement agency for investigation.

Source: Laws 1989, LB 767, § 89; Laws 1991, LB 427, § 67; Laws 1993, LB 563, § 20; Laws 2018, LB724, § 1.

9-651 Lottery ticket; requirements.

Each county, city, or village conducting a lottery shall have its name clearly printed on each ticket used in the lottery. No such ticket shall be sold unless the name is printed thereon.

Source: Laws 1986, LB 1027, § 182; R.S.1943, (1987), § 9-611; Laws 1989, LB 767, § 90.

9-652 Violations; penalties; enforcement; venue.

(1) Except when another penalty is specifically provided, any person or licensee, or employee or agent thereof, who knowingly or intentionally violates any provision of the Nebraska County and City Lottery Act, or who causes, aids, abets, or conspires with another to cause any person or licensee or any employee or agent thereof to violate the act, shall be guilty of a Class I misdemeanor for the first offense and a Class IV felony for any second or subsequent violation. Any licensee guilty of violating the act more than once in a twelve-month period may have its license canceled or revoked.

(2) Each of the following violations of the act shall be a Class IV felony:

(a) Giving, providing, or offering to give or provide, directly or indirectly, to any public official, employee, or agent of this state or any agencies or political subdivisions of this state any compensation or reward or share of the money for property paid or received through gambling activities regulated under the act in consideration for obtaining any license, authorization, permission, or privilege to participate in any gaming operations except as authorized under the act or any rules and regulations adopted and promulgated pursuant to such act;

(b) Knowingly filing a false report under the act; or

(c) Knowingly falsifying or making any false entry in any books or records with respect to any transaction connected with the conduct of a lottery.

(3) Intentionally employing or possessing any device to facilitate cheating in any lottery or using any fraudulent scheme or technique in connection with any lottery is a violation of the act. The offense is a:

(a) Class II misdemeanor when the amount gained or intended to be gained through the use of such device, scheme, or technique is less than five hundred dollars;

(b) Class I misdemeanor when the amount gained or intended to be gained through the use of such device, scheme, or technique is five hundred dollars or more but less than one thousand five hundred dollars; and

(c) Class IV felony when the amount gained or intended to be gained through the use of such device, scheme, or technique is one thousand five hundred dollars or more.

(4) It shall be the duty of the Attorney General or appropriate county attorney to prosecute and defend all proceedings initiated in any court or otherwise under the act.

(5) The failure to do any act required by or under the Nebraska County and City Lottery Act shall be deemed an act in part in the principal office of the department. Any prosecution under such act may be conducted in any county where the defendant resides or has a place of business or in any county in which any violation occurred.

(6) In the enforcement and investigation of any offense committed under the act, the department may call to its aid any sheriff, deputy sheriff, or other peace officer in the state.

Source: Laws 1989, LB 767, § 92; Laws 1993, LB 563, § 21; Laws 1995, LB 344, § 33; Laws 1997, LB 248, § 34; Laws 2015, LB605, § 4.

9-653 Reports and records; disclosure; limitations; violation; penalty.

(1) Except in accordance with a proper judicial order or as otherwise provided by this section or other law, it shall be a Class I misdemeanor for the Tax Commissioner or any employee or agent of the Tax Commissioner to make known, in any manner whatsoever, the contents of any reports or records submitted by a licensed manufacturer-distributor or the contents of any personal history reports submitted by any licensee or license applicant to the department pursuant to the Nebraska County and City Lottery Act and any rules and regulations adopted and promulgated pursuant to the act.

(2) Nothing in this section shall be construed to prohibit (a) the delivery to a licensee, his or her duly authorized representative, or his or her successors,

receivers, trustees, personal representatives, administrators, assignees, or guarantors, if directly interested, of a certified copy of any report or record, (b) the publication of statistics so classified as to prevent the identification of particular reports or records, (c) the inspection by the Attorney General, a county attorney, or other legal representative of the state of reports or records submitted by a licensed manufacturer-distributor when information on the reports or records is considered by the Attorney General, county attorney, or other legal representative to be relevant to any action or proceeding instituted by the licensee or against whom an action or proceeding is being considered or has been commenced by any state agency or county, (d) the furnishing of any information to the United States Government or to states allowing similar privileges to the Tax Commissioner, (e) the disclosure of information and records to a collection agency contracting with the Tax Commissioner for the collection of delinquent taxes under the act, (f) the publication or disclosure of final administrative opinions and orders made by the Tax Commissioner in the adjudication of license denials, suspensions, cancellations, or revocations or the levying of fines, (g) the release of any application, without the contents of any submitted personal history report or social security number, filed with the department to obtain a license to conduct activities under the act, which application shall be deemed a public record, (h) the release of any report filed by a licensed county, city, village, or lottery operator pursuant to the act, which report shall be deemed a public record, or (i) the notification of an applicant, a licensee, or a licensee's duly authorized representative of the existence of and the grounds for any administrative action to deny the license application of, to revoke, cancel, or suspend the license of, or to levy an administrative fine upon any agent or employee of the applicant, the licensee, or any other person upon whom the applicant or licensee relies to conduct activities authorized by the act.

(3) Nothing in this section shall prohibit the Tax Commissioner or any employee or agent of the Tax Commissioner from making known the names of persons, firms, or corporations licensed to conduct activities under the act, the locations at which such activities are conducted by licensees, or the dates on which such licenses were issued.

(4) Notwithstanding subsection (1) of this section, the Tax Commissioner may permit the Postal Inspector of the United States Postal Service or his or her delegates to inspect reports or records submitted by a licensed manufacturer-distributor pursuant to the act when information on the reports or records is relevant to any action or proceeding instituted or being considered by the United States Postal Service against such person for the fraudulent use of the mails to carry and deliver false and fraudulent tax returns to the Tax Commissioner with the intent to defraud the State of Nebraska or to evade the payment of Nebraska state taxes.

(5) Notwithstanding subsection (1) of this section, the Tax Commissioner may permit the other tax officials of this state to inspect reports or records submitted pursuant to the act, but such inspection shall be permitted only for purposes of enforcing a tax law and only to the extent and under the conditions prescribed by the rules and regulations of the Tax Commissioner.

Source: Laws 1989, LB 767, § 93; Laws 1991, LB 427, § 68; Laws 1993, LB 563, § 22; Laws 1995, LB 344, § 34; Laws 2002, LB 545, § 57.

ARTICLE 7
GIFT ENTERPRISES

Section
9-701. Conduct of gift enterprises; conditions; prohibited acts; violation; penalties; venue; enforcement.

9-701 Conduct of gift enterprises; conditions; prohibited acts; violation; penalties; venue; enforcement.

(1) For purposes of this section:

(a) Financial institution means a bank, savings bank, building and loan association, or savings and loan association, whether chartered by the United States, the Department of Banking and Finance, or a foreign state agency as defined in section 8-101.03; or any other similar organization which is covered by federal deposit insurance;

(b) Gift enterprise means a contest, game of chance, savings promotion raffle, or game promotion which is conducted within the state or throughout the state and other states in connection with the sale of consumer or trade products or services solely as business promotions and in which the elements of chance and prize are present. Gift enterprise does not include any scheme using the game of bingo or keno; any non-telecommunication-related, player-activated electronic or electromechanical facsimile of any game of chance; or any slot machine of any kind. A gift enterprise shall not utilize pickle cards as defined in section 9-315. Promotional game tickets may be utilized subject to the following:

(i) The tickets utilized shall be manufactured or imprinted with the name of the operator on each ticket;

(ii) The tickets utilized shall not be manufactured with a cost per play printed on them; and

(iii) The tickets utilized shall not be substantially similar to any type of pickle card approved by the Department of Revenue pursuant to section 9-332.01;

(c) Operator means any person, firm, corporation, financial institution, association, governmental entity, or agent or employee thereof who promotes, operates, or conducts a gift enterprise. Operator does not include any nonprofit organization or any agent or employee thereof, except that operator includes any credit union chartered under state or federal law or any agent or employee thereof who promotes, operates, or conducts a gift enterprise; and

(d) Savings promotion raffle means a contest conducted by a financial institution or credit union chartered under state or federal law or any agent or employee thereof in which a chance of winning a designated prize is obtained by the deposit of a specified amount of money in a savings account or other savings program if each entry has an equal chance of winning.

(2) Any operator may conduct a gift enterprise within this state in accordance with this section.

(3) An operator shall not:

(a) Design, engage in, promote, or conduct a gift enterprise in connection with the promotion or sale of consumer products or services in which the winner may be unfairly predetermined or the game may be manipulated or rigged;

(b) Arbitrarily remove, disqualify, disallow, or reject any entry;

(c) Fail to award prizes offered;

(d) Print, publish, or circulate literature or advertising material used in connection with such gift enterprise which is false, deceptive, or misleading; or

(e) Require an entry fee, a payment or promise of payment of any valuable consideration, or any other consideration as a condition of entering a gift enterprise or winning a prize from the gift enterprise, except that a contest, game of chance, or business promotion may require, as a condition of participation, evidence of the purchase of a product or service as long as the purchase price charged for such product or service is not greater than it would have been without the contest, game of chance, or business promotion. For purposes of this section, consideration shall not include (i) filling out an entry blank, (ii) entering by mail with the purchase of postage at a cost no greater than the cost of postage for a first-class letter weighing one ounce or less, (iii) entering by a telephone call to the operator of or for the gift enterprise at a cost no greater than the cost of postage for a first-class letter weighing one ounce or less. When the only method of entry is by telephone, the cost to the entrant of the telephone call shall not exceed the cost of postage for a first-class letter weighing one ounce or less for any reason, including (A) whether any communication occurred during the call which was not related to the gift enterprise or (B) the fact that the cost of the call to the operator was greater than the cost to the entrant allowed under this section, or (iv) the deposit of money in a savings account or other savings program, regardless of the interest rate earned by such account or program.

(4) An operator shall disclose to participants all terms and conditions of a gift enterprise.

(5)(a) The Department of Revenue may adopt and promulgate rules and regulations necessary to carry out the operation of gift enterprises.

(b) Whenever the department has reason to believe that a gift enterprise is being operated in violation of this section or the department's rules and regulations, it may bring an action in the district court of Lancaster County in the name of and on behalf of the people of the State of Nebraska against the operator of the gift enterprise to enjoin the continued operation of such gift enterprise anywhere in the state.

(6)(a) Any person, firm, corporation, association, or agent or employee thereof who engages in any unlawful acts or practices pursuant to this section or violates any of the rules and regulations promulgated pursuant to this section is guilty of a Class II misdemeanor.

(b) Any person, firm, corporation, association, or agent or employee thereof who violates any provision of this section or any of the rules and regulations promulgated pursuant to this section shall be liable to pay a civil penalty of not more than one thousand dollars imposed by the district court of Lancaster County for each such violation which shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska. Each day of continued violation shall constitute a separate offense or violation for purposes of this section.

(7) A financial institution or credit union may limit the number of chances that a participant in a savings promotion raffle may obtain for making the required deposits but shall not limit the number of deposits.

(8) In all proceedings initiated in any court or otherwise under this section, the Attorney General or appropriate county attorney shall prosecute and defend all such proceedings.

(9) This section shall not apply to any activity authorized and regulated under the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, or the State Lottery Act.

Source: Laws 1977, LB 38, § 230; Laws 1983, LB 259, § 39; R.S.1943, (1985), § 28-1114; Laws 1986, LB 1027, § 184; Laws 1991, LB 427, § 69; Laws 1993, LB 54, § 1; Laws 1994, LB 694, § 113; Laws 2004, LB 999, § 20; Laws 2011, LB524, § 1; Laws 2015, LB160, § 1; Laws 2017, LB140, § 147.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

ARTICLE 8

STATE LOTTERY

Section

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9-801 Act, how cited.

Sections 9-801 to 9-841 shall be known and may be cited as the State Lottery Act.

Source: Laws 1991, LB 849, § 1; Laws 1993, LB 138, § 17; Laws 1994, LB 694, § 114; Laws 2006, LB 1039, § 1.

9-802 Purpose of act.

The purpose of the State Lottery Act is to establish lottery games which will raise revenue for the purposes set forth in section 9-812.

Source: Laws 1991, LB 849, § 2; Laws 1993, LB 138, § 18.

9-803 Terms, defined.

For purposes of the State Lottery Act:

(1) Director shall mean the Director of the Lottery Division;

(2) Division shall mean the Lottery Division of the Department of Revenue;

(3) Lottery contractor shall mean a lottery vendor or lottery game retailer with whom the division has contracted for the purpose of providing goods or services for the state lottery;

(4) Lottery game shall mean any variation of the following types of games:

(a) An instant-win game in which disposable tickets contain certain preprinted winners which are determined by rubbing or scraping an area or areas on the tickets to match numbers, letters, symbols, or configurations, or any combination thereof, as provided by the rules of the game. An instant-win game may also provide for preliminary and grand prize drawings conducted pursuant to the rules of the game. An instant-win game shall not include the use of any pickle card as defined in section 9-315; and

(b) An online lottery game in which lottery game retailer terminals are hooked up to a central computer via a telecommunications system through which (i) a player selects a specified group of numbers or symbols out of a predetermined range of numbers or symbols and purchases a ticket bearing the player-selected numbers or symbols for eligibility in a drawing regularly scheduled in accordance with game rules or (ii) a player purchases a ticket bearing randomly selected numbers for eligibility in a drawing regularly scheduled in accordance with game rules.

Lottery game shall not be construed to mean any video lottery game;

(5) Lottery game retailer shall mean a person who contracts with or seeks to contract with the division to sell tickets in lottery games to the public;

(6) Lottery vendor shall mean any person who submits a bid, proposal, or offer as part of a major procurement;

(7) Major procurement shall mean any procurement or contract unique to the operation of the state lottery in excess of twenty-five thousand dollars for the printing of tickets used in any lottery game, security services, consulting services, advertising services, any goods or services involving the receiving or recording of number selections in any lottery game, or any goods or services involving the determination of winners in any lottery game. Major procurement shall include production of instant-win tickets, procurement of online gaming systems and drawing equipment, or retaining the services of a consultant who will have access to any goods or services involving the receiving or recording of number selections or determination of winners in any lottery game; and

(8) Ticket or lottery ticket shall mean any tangible evidence authorized by the division to prove participation in a lottery game.

Source: Laws 1991, LB 849, § 3; Laws 1993, LB 138, § 19; Laws 1994, LB 694, § 115; Laws 1995, LB 343, § 1; Laws 1999, LB 479, § 1; Laws 2007, LB638, § 15.

9-804 Lottery Division of the Department of Revenue; established; Director of the Lottery Division.

The Lottery Division of the Department of Revenue is hereby established. The division shall be administered by the Director of the Lottery Division who shall be appointed by and serve at the pleasure of the Tax Commissioner. The division shall administer and regulate the lottery games conducted pursuant to the State Lottery Act.

Source: Laws 1991, LB 849, § 4; Laws 1993, LB 138, § 20.

9-804.01 Repealed. Laws 1995, LB 275, § 27.

9-804.02 Transferred to section 83-162.01.

9-804.03 Transferred to section 83-162.02.

9-804.04 Transferred to section 83-162.03.

9-804.05 Transferred to section 83-162.04.

9-805 Tax Commissioner; agreements authorized.

The Tax Commissioner may enter into written agreements with one or more government-authorized lotteries to participate in the conduct and operation of lottery games and may enter into written agreements with one or more government-authorized lotteries or other persons, entities, organizations, or associations to purchase goods or services in support of lottery games when necessary or desirable to make lottery games more remunerative for the State of Nebraska so long as the games and purchases are consistent with the State Lottery Act. Major procurement purchase requirements under the act shall only apply to the Nebraska portion of any purchase made through the agreements.

Source: Laws 1991, LB 849, § 5; Laws 1993, LB 138, § 21; Laws 1999, LB 479, § 2.

9-806 Legislative intent.

In construing the State Lottery Act, it is the intent of the Legislature that the following policies be implemented:

(1) The lottery games shall be operated by the division;

(2) The lottery games shall be operated as a self-sufficient, revenue-raising operation after money generated from the conduct of the lottery is used to repay the initial appropriation plus interest;

(3) All contracts entered into by the division for the provision of goods and services shall be subject to the act and shall be exempt from any other state law concerning the purchase of goods or services;

(4) Preference for contracts shall be given to bidders and applicants based in Nebraska if the costs and benefits are equal or superior to those available from competing persons. All major procurements of goods or services essential to the operation of a lottery shall require that the person awarded the contract establish a permanent office in this state;

(5) Every entity submitting a bid, proposal, or offer to the division shall disclose all information required by the Tax Commissioner; and

(6) Every entity submitting a bid, proposal, or offer to the division shall be required to meet such other requirements as established by the Tax Commissioner, including the posting of a bond.

Source: Laws 1991, LB 849, § 6; Laws 1993, LB 138, § 22.

9-807 Division; personnel; bond or insurance.

(1) Other than the director, all employees of the division shall be classified employees under the rules and regulations of the personnel division of the Department of Administrative Services.

(2) Before entering upon the duties of the office, the director and each employee of the division shall be bonded or insured as required by section 11-201.

Source: Laws 1991, LB 849, § 7; Laws 1992, Third Spec. Sess., LB 14, § 1; Laws 1993, LB 138, § 23; Laws 1995, LB 343, § 3; Laws 2004, LB 884, § 7.

9-808 Division; personnel; investigators or security personnel; powers and duties; confidentiality; exception.

(1) The Tax Commissioner shall employ or contract with such personnel as necessary to carry out the responsibilities of the division. The Tax Commissioner shall employ investigators or security personnel who shall be vested with the authority and power of a law enforcement officer to carry out the laws of this state administered by the Tax Commissioner or the Department of Revenue.

(2) Investigators or security personnel of the division may enter and search premises and seize all relevant materials pursuant to a warrant issued by a court.

(3)(a) Investigators or security personnel shall, as deemed necessary, conduct background investigations of all individuals seeking employment in the division. Such background investigations shall include, but not be limited to, police records checks, conviction records checks, national and statewide criminal records clearinghouse checks, and fingerprint checks.

(b) It shall be a condition of employment in the division that an individual supply investigators or security personnel with his or her fingerprints for the purpose of conducting a background investigation for employment purposes.

(c) Any individual convicted of any crime involving moral turpitude, fraud, theft, theft of services, and theft by deception and any individual whose constitutional rights have been forfeited and not restored shall not be eligible for employment in the division.

(d) All information obtained through a background investigation performed by the division shall be confidential, except that the Tax Commissioner may exchange such confidential information with state, federal, and local law enforcement agencies.

Source: Laws 1991, LB 849, § 8; Laws 1993, LB 138, § 24.

9-809 Auditor of Public Accounts; audit; Tax Commissioner; reports.

(1) The books, records, funds, and accounts of the division shall be audited at least annually by or under the direction of the Auditor of Public Accounts who shall submit a report of the audit to the Governor and the Legislature. The report submitted to the Legislature shall be submitted electronically. The expenses of the audit shall be paid from the State Lottery Operation Cash Fund.

(2) The Tax Commissioner shall make an annual written report by November 1 of each year to the Governor and the Legislature, which report shall include a summary of the activities of the division for the previous fiscal year through June 30, a statement detailing lottery revenue, prize disbursements, expenses of the division, and allocation of remaining revenue, and any recommendations for change in the statutes which the Tax Commissioner deems necessary or desirable. The report submitted to the Legislature shall be submitted electronically. The report shall be a public record.

Source: Laws 1991, LB 849, § 9; Laws 1993, LB 138, § 25; Laws 1994, LB 694, § 116; Laws 2012, LB782, § 13.

9-810 Lottery ticket; restrictions on sale and purchase; computation of retail sales; termination of liability; prize credited against certain tax liability or debt; procedure.

(1) A person under nineteen years of age shall not purchase a lottery ticket. No lottery ticket shall be sold to any person under nineteen years of age. No person shall purchase a lottery ticket for a person under nineteen years of age, and no person shall purchase a lottery ticket for the benefit of a person under nineteen years of age.

(2) No lottery ticket shall be sold and no prize shall be awarded to the Tax Commissioner, the director, or any employee of the division or any spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of abode of the Tax Commissioner, the director, or any employee of the division.

(3) With respect to a lottery game retailer under contract to sell lottery tickets whose rental payment for premises is contractually computed in whole or in part on the basis of a percentage of retail sales and when the computation of retail sales is not explicitly defined to include the sale of lottery tickets, the amount of retail sales for lottery tickets by the retailer for purposes of such a computation may not exceed the amount of compensation received by the retailer from the division.

(4) Once any prize is awarded in conformance with the State Lottery Act and any rules and regulations adopted under the act, the state shall have no further liability with respect to that prize.

(5) Prior to the payment of any lottery prize in excess of five hundred dollars for a winning lottery ticket presented for redemption to the division, the division shall check the name and social security number of the winner with a list provided by the Department of Revenue of people identified as having an outstanding state tax liability and a list of people certified by the Department of Health and Human Services as owing a debt as defined in section 77-27,161. The division shall credit any such lottery prize against any outstanding state tax liability owed by such winner and the balance of such prize amount, if any, shall be paid to the winner by the division. The division shall credit any such lottery prize against any certified debt in the manner set forth in sections 77-27,160 to 77-27,173. If the winner has both an outstanding state tax liability and a certified debt, the division shall add the liability and the debt together and pay the appropriate agency or person a share of the prize in the proportion that the liability or debt owed to the agency or person is to the total liability and debt.

Source: Laws 1991, LB 849, § 10; Laws 1993, LB 563, § 23; Laws 1993, LB 138, § 26; Laws 1996, LB 1044, § 44; Laws 1997, LB 307, § 1.

9-811 Exemption from occupation tax.

Lottery games conducted pursuant to the State Lottery Act shall be exempt from any local or occupation tax levied or assessed by any political subdivision having the power to levy, assess, or collect such a tax.

Source: Laws 1991, LB 849, § 11; Laws 1993, LB 138, § 27.

9-811.01 Lottery Investigation Petty Cash Fund; establishment; use; investment; Tax Commissioner; department; duties; records and reports.

(1) The Tax Commissioner may apply to the Director of Administrative Services and the Auditor of Public Accounts to establish and maintain a Lottery

Investigation Petty Cash Fund. The money used to initiate and maintain the fund shall be drawn solely from the State Lottery Operation Cash Fund. The Tax Commissioner shall determine the amount of money to be held in the Lottery Investigation Petty Cash Fund, consistent with carrying out the duties and responsibilities of the division but not to exceed five thousand dollars for the entire division. This restriction shall not apply to funds otherwise appropriated to the State Lottery Operation Cash Fund for investigative purposes. When the Director of Administrative Services and the Auditor of Public Accounts have approved the establishment of the Lottery Investigation Petty Cash Fund, a voucher shall be submitted to the Department of Administrative Services accompanied by such information as the department may require for the establishment of the fund. The Director of Administrative Services shall issue a warrant for the amount specified and deliver it to the division. The fund may be replenished as necessary, but the total amount in the fund shall not exceed ten thousand dollars in any fiscal year. The fund shall be audited by the Auditor of Public Accounts.

(2) Any prize amounts won, less any investigative expenditures, by department personnel with funds drawn from the Lottery Investigation Petty Cash Fund or reimbursed from the State Lottery Operation Cash Fund shall be deposited into the Lottery Investigation Petty Cash Fund.

(3) For the purpose of establishing and maintaining legislative oversight and accountability, the Department of Revenue shall maintain records of all expenditures, disbursements, and transfers of cash from the Lottery Investigation Petty Cash Fund.

(4) By September 15 of each year, the department shall report to the budget division of the Department of Administrative Services and to the Legislative Fiscal Analyst the unexpended balance existing on June 30 of the previous fiscal year relating to investigative expenses in the Lottery Investigation Petty Cash Fund and any funds existing on June 30 of the previous fiscal year in the possession of division personnel involved in investigations. The report submitted to the Legislative Fiscal Analyst shall be submitted electronically. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1994, LB 694, § 117; Laws 1995, LB 7, § 28; Laws 2012, LB782, § 14.

Cross References

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

9-812 State Lottery Operation Trust Fund; State Lottery Operation Cash Fund; State Lottery Prize Trust Fund; created; transfers; Nebraska Education Improvement Fund; created; use; investment; recipient, subsequent recipient, or service contractor; reports required; unclaimed prize money; use.

(1) All money received from the operation of lottery games conducted pursuant to the State Lottery Act in Nebraska shall be credited to the State Lottery Operation Trust Fund, which fund is hereby created. All payments of the costs of establishing and maintaining the lottery games shall be made from the State Lottery Operation Cash Fund. In accordance with legislative appropriations, money for payments for expenses of the division shall be transferred

from the State Lottery Operation Trust Fund to the State Lottery Operation Cash Fund, which fund is hereby created. All money necessary for the payment of lottery prizes shall be transferred from the State Lottery Operation Trust Fund to the State Lottery Prize Trust Fund, which fund is hereby created. The amount used for the payment of lottery prizes shall not be less than forty percent of the dollar amount of the lottery tickets which have been sold.

(2) A portion of the dollar amount of the lottery tickets which have been sold on an annualized basis shall be transferred from the State Lottery Operation Trust Fund to the Education Innovation Fund, the Nebraska Opportunity Grant Fund, the Nebraska Education Improvement Fund, the Nebraska Environmental Trust Fund, the Nebraska State Fair Board, and the Compulsive Gamblers Assistance Fund as provided in subsection (3) of this section. The dollar amount transferred pursuant to this subsection shall equal the greater of (a) the dollar amount transferred to the funds in fiscal year 2002-03 or (b) any amount which constitutes at least twenty-two percent and no more than twenty-five percent of the dollar amount of the lottery tickets which have been sold on an annualized basis. To the extent that funds are available, the Tax Commissioner and director may authorize a transfer exceeding twenty-five percent of the dollar amount of the lottery tickets sold on an annualized basis.

(3) Of the money available to be transferred to the Education Innovation Fund, the Nebraska Opportunity Grant Fund, the Nebraska Education Improvement Fund, the Nebraska Environmental Trust Fund, the Nebraska State Fair Board, and the Compulsive Gamblers Assistance Fund:

(a) The first five hundred thousand dollars shall be transferred to the Compulsive Gamblers Assistance Fund to be used as provided in section 9-1006;

(b) Beginning July 1, 2016, forty-four and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Education Improvement Fund;

(c) Forty-four and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Environmental Trust Fund to be used as provided in the Nebraska Environmental Trust Act;

(d) Ten percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska State Fair Board if the most populous city within the county in which the fair is located provides matching funds equivalent to ten percent of the funds available for transfer. Such matching funds may be obtained from the city and any other private or public entity, except that no portion of such matching funds shall be provided by the state. If the Nebraska State Fair ceases operations, ten percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the General Fund; and

(e) One percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Compulsive Gamblers Assistance Fund to be used as provided in section 9-1006.

(4) The Nebraska Education Improvement Fund is created. The fund shall consist of money transferred pursuant to subsection (3) of this section, money transferred pursuant to section 85-1920, and any other funds appropriated by the Legislature. The fund shall be allocated, after actual and necessary administrative expenses, as provided in this section for fiscal years 2016-17 through 2023-24. A portion of each allocation may be retained by the agency to which the allocation is made or the agency administering the fund to which the allocation is made for actual and necessary expenses incurred by such agency for administration, evaluation, and technical assistance related to the purposes of the allocation, except that no amount of the allocation to the Nebraska Opportunity Grant Fund may be used for such purposes. On or before December 31, 2022, the Education Committee of the Legislature shall electronically submit recommendations to the Clerk of the Legislature regarding how the fund should be allocated to best advance the educational priorities of the state for the five-year period beginning with fiscal year 2024-25. For fiscal year 2016-17, an amount equal to ten percent of the revenue allocated to the Education Innovation Fund and to the Nebraska Opportunity Grant Fund for fiscal year 2015-16 shall be retained in the Nebraska Education Improvement Fund. For fiscal years 2017-18 through 2023-24, an amount equal to ten percent of the revenue received by the Nebraska Education Improvement Fund in the prior fiscal year shall be retained in the fund at all times plus any interest earned during the current fiscal year. For fiscal years 2016-17 through 2023-24, the remainder of the fund shall be allocated as follows:

(a) One percent of the allocated funds to the Expanded Learning Opportunity Grant Fund to carry out the Expanded Learning Opportunity Grant Program Act;

(b) Seventeen percent of the allocated funds to the Department of Education Innovative Grant Fund to be used for competitive innovation grants pursuant to section 79-1054;

(c) Nine percent of the allocated funds to the Community College Gap Assistance Program Fund to carry out the community college gap assistance program;

(d) Eight percent of the allocated funds to the Excellence in Teaching Cash Fund to carry out the Excellence in Teaching Act;

(e) Sixty-two percent of the allocated funds to the Nebraska Opportunity Grant Fund to carry out the Nebraska Opportunity Grant Act in conjunction with appropriations from the General Fund; and

(f) Three percent of the allocated funds to fund distance education incentives pursuant to section 79-1337.

(5)(a) On or before September 20, 2022, and on or before each September 20 thereafter, (i) any department or agency receiving a transfer or acting as the administrator for a fund receiving a transfer pursuant to subsection (4) of this section, (ii) any recipient or subsequent recipient of money from any such fund, and (iii) any service contractor responsible for managing any portion of any such fund or any money disbursed from any such fund on behalf of any entity shall prepare and submit an annual report to the Auditor of Public Accounts in a manner prescribed by the auditor for the immediately preceding July 1 through June 30 fiscal year detailing information regarding the use of such fund or such money.

(b) The Auditor of Public Accounts shall annually compile a summary of the annual reports received pursuant to subdivision (5)(a) of this section, any audits related to transfers pursuant to subsection (4) of this section conducted by the Auditor of Public Accounts, and any findings or recommendations related to such transfers into a consolidated annual report and shall submit such consolidated annual report electronically to the Legislature on or before January 1, 2023, and on or before each January 1 thereafter.

(c) For purposes of this subsection, recipient, subsequent recipient, or service contractor means a nonprofit entity that expends funds transferred pursuant to subsection (4) of this section to carry out a state program or function, but does not include an individual who is a direct beneficiary of such a program or function.

(6) Any money in the State Lottery Operation Trust Fund, the State Lottery Operation Cash Fund, the State Lottery Prize Trust Fund, or the Nebraska Education Improvement Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(7) Unclaimed prize money on a winning lottery ticket shall be retained for a period of time prescribed by rules and regulations. If no claim is made within such period, the prize money shall be used at the discretion of the Tax Commissioner for any of the purposes prescribed in this section.

Source: Laws 1991, LB 849, § 12; Laws 1992, LB 1257, § 57; Laws 1993, LB 138, § 28; Laws 1993, LB 563, § 24; Laws 1994, LB 647, § 5; Laws 1994, LB 694, § 119; Laws 1994, LB 1066, § 11; Laws 1995, LB 275, § 1; Laws 1995, LB 860, § 1; Laws 1996, LB 900, § 1015; Laws 1996, LB 1069, § 1; Laws 1997, LB 118, § 1; Laws 1997, LB 347, § 1; Laws 1997, LB 710, § 1; Laws 1997, LB 865, § 1; Laws 1998, LB 924, § 16; Laws 1998, LB 1228, § 7; Laws 1998, LB 1229, § 1; Laws 1999, LB 386, § 1; Laws 2000, LB 659, § 2; Laws 2000, LB 1243, § 1; Laws 2001, LB 797, § 1; Laws 2001, LB 833, § 1; Laws 2001, Spec. Sess., LB 3, § 1; Laws 2002, LB 1105, § 418; Laws 2002, LB 1310, § 3; Laws 2002, Second Spec. Sess., LB 1, § 1; Laws 2003, LB 367, § 1; Laws 2003, LB 574, § 21; Laws 2004, LB 1083, § 83; Laws 2004, LB 1091, § 1; Laws 2006, LB 1208, § 1; Laws 2007, LB638, § 16; Laws 2009, LB286, § 4; Laws 2009, LB545, § 1; Laws 2009, LB547, § 1; Laws 2009, First Spec. Sess., LB2, § 1; Laws 2010, LB956, § 1; Laws 2011, LB333, § 1; Laws 2011, LB575, § 7; Laws 2011, LB637, § 22; Laws 2012, LB1079, § 9; Laws 2013, LB6, § 9; Laws 2013, LB366, § 8; Laws 2013, LB495, § 1; Laws 2013, LB497, § 1; Laws 2014, LB967, § 2; Laws 2015, LB519, § 1; Laws 2016, LB930, § 1; Laws 2016, LB1067, § 1; Laws 2017, LB512, § 5; Laws 2021, LB528, § 2.

Cross References

Excellence in Teaching Act, see section 79-8,132.
Expanded Learning Opportunity Grant Program Act, see section 79-2501.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska Environmental Trust Act, see section 81-15,167.
Nebraska Opportunity Grant Act, see section 85-1901.
Nebraska State Funds Investment Act, see section 72-1260.

9-813 Lottery game retailer; Tax Commissioner; powers and duties; deposit of funds; liability for tickets.

(1) The Tax Commissioner may require each lottery game retailer to deposit all money received by the lottery game retailer from the sale of lottery tickets, less the amount, if any, retained as compensation for the sale of lottery tickets and less the amount, if any, paid in prizes, in financial institutions designated by the State Treasurer for credit to the State Lottery Operation Trust Fund and to file with the Tax Commissioner or his or her designated agent reports of the lottery game retailer's receipts and transactions regarding the sale of lottery tickets in such form and containing such information as the Tax Commissioner requires.

(2) The Tax Commissioner may make such arrangements for any person, including a financial institution, to perform any functions, activities, or services in connection with the operation of lottery games pursuant to the State Lottery Act and the rules and regulations as he or she deems advisable, and such functions, activities, or services shall constitute lawful functions, activities, and services of such person.

(3) The Tax Commissioner may authorize the electronic transfer of funds from the accounts of lottery game retailers to the State Lottery Operation Trust Fund.

(4) All lottery game retailers shall be fully liable for the face value of all lottery tickets in their possession and shall deliver to the division upon demand all unsold lottery tickets or all money that would have been received by the lottery game retailers had the lottery tickets been sold less the amount, if any, retained as compensation for the sale of lottery tickets and less the amount, if any, paid in prizes.

Source: Laws 1991, LB 849, § 13; Laws 1993, LB 138, § 34.

9-814 Prohibited acts; violations; penalties.

(1) It shall be a Class II misdemeanor for a lottery game retailer to fail to separate and keep separate all money received from the sale of lottery tickets less the amount, if any, retained as compensation for the sale of lottery tickets and less the amount, if any, paid in prizes or to fail to make available to the division all records pertaining to separate accounts maintained for revenue derived from the sale of lottery tickets.

(2) It shall be a Class II misdemeanor for any lottery game retailer or his or her employee to knowingly sell a lottery ticket to any person under nineteen years of age.

(3) It shall be a Class IV misdemeanor for a person under nineteen years of age to knowingly purchase a lottery ticket under the State Lottery Act.

(4) It shall be a Class I misdemeanor for any person to sell lottery tickets without holding a valid contract with the division to sell such tickets.

(5) It shall be a Class I misdemeanor for a lottery game retailer to sell lottery tickets at any price other than that established by the division.

(6) It shall be a Class I misdemeanor to release any information obtained through a background investigation performed by the division without the prior written consent of the subject of the investigation except as provided in subdivision (3)(d) of section 9-808.

(7) It shall be a Class III felony to alter or attempt to alter a lottery ticket for the purpose of defrauding a lottery game conducted pursuant to the State Lottery Act.

(8) It shall be a Class IV felony to falsify information provided to the division for purposes of applying for a contract with the division or for purposes of completing a background investigation pursuant to the act.

Source: Laws 1991, LB 849, § 14; Laws 1993, LB 138, § 35; Laws 1994, LB 694, § 120.

9-815 Repealed. Laws 1993, LB 138, § 83.

9-816 Conflicts of interest; enumerated; compliance with other laws; violation; removal from office.

(1) The Tax Commissioner, the director, and other employees of the division or their immediate families shall not, while employed with the division, directly or indirectly (a) knowingly hold a financial interest or acquire stocks, bonds, or any other interest in any entity which is a party or subcontracts with a party to a major procurement with the division or (b) have a financial interest in the ownership or leasing of property used by or for the division.

(2) Neither the director, any employee of the division, nor any member of their immediate families shall ask for, offer to accept, or receive any gift, gratuity, or other thing of value which would inure to that person's benefit from (a) any entity contracting or seeking to contract with the state to supply equipment or materials for use by the division, (b) any applicant for a contract to act as a lottery game retailer to be awarded by the division, or (c) any lottery game retailer.

(3) No (a) person, corporation, association, or organization contracting or seeking to contract to supply equipment or materials for use by the division, (b) applicant for a contract to act as a lottery game retailer to be awarded by the division, or (c) lottery game retailer shall offer or give the Tax Commissioner, the director, or any employee of the division or a member of his or her immediate family any gift, gratuity, or other thing of value which would inure to the recipient's personal benefit.

(4) For purposes of this section:

(a) Gift, gratuity, or other thing of value shall mean a payment, subscription, advance, forbearance, honorarium, campaign contribution, or rendering of deposit of money, services, or anything of value, the value of which exceeds twenty-five dollars in any one-month period, unless consideration of equal or greater value is received in return. Gift, gratuity, or other thing of value shall not include:

(i) A campaign contribution otherwise reported as required by the Nebraska Political Accountability and Disclosure Act;

(ii) A commercially reasonable loan made in the ordinary course of business;

(iii) A gift received from a member of the recipient's immediate family or the spouse of any such family member;

(iv) A breakfast, luncheon, dinner, or other refreshment consisting of food and beverage provided for immediate consumption;

(v) Any admission to a facility or event;

(vi) Any occasional provision of transportation within the State of Nebraska; or

(vii) Anything of value received in legitimate furtherance of the objectives of the State Lottery Act; and

(b) Member of his or her immediate family shall mean such person's parent, child, brother, sister, or spouse.

(5) The director and other employees of the division shall comply with all state laws applicable to ethics in government, conflict of interest, and financial disclosure.

(6) Any employee of the division other than the director who violates this section may be removed from his or her position after notice and a hearing before the Tax Commissioner or his or her representative.

Source: Laws 1991, LB 849, § 16; Laws 1993, LB 138, § 36.

Cross References

Nebraska Political Accountability and Disclosure Act, see section 49-1401.

9-817 Director and employees of the division; investigatory and enforcement powers; application to district court; contempt.

The director and any employee of the division, when authorized by the director or Tax Commissioner, shall have the power (1) to make a thorough investigation into all the records and affairs of any person, organization, or corporation when, in the judgment of the director, such investigation is necessary to the proper performance of the division's duties and the efficient enforcement of the laws, including the power to administer oaths, (2) to examine under oath any person or any officer, employee, or agent of any organization or corporation, (3) to compel by subpoena the production of records, and (4) to compel by subpoena the attendance of any person in this state to testify before the Tax Commissioner or his or her designated representative. If any person willfully refuses to testify or obey a subpoena, the director may apply to a judge of the district court of Lancaster County for an order directing such person to comply with the subpoena. Any person who fails or refuses to obey such a court order shall be guilty of contempt of court.

Source: Laws 1991, LB 849, § 17; Laws 1993, LB 138, § 37.

9-818 Attorney General and other law enforcement authority; powers and duties.

The Tax Commissioner or the director may confer with the Attorney General or his or her designee as he or she deems necessary and advisable to carry out the responsibilities of the division. Upon request of the director with the approval of the Tax Commissioner, it shall be the duty of the Attorney General and any other law enforcement authority to whom a violation is reported to investigate and cause appropriate proceedings to be instituted without delay.

Source: Laws 1991, LB 849, § 18; Laws 1993, LB 138, § 38.

9-819 Lottery administration; hearings; rules and regulations; director; Tax Commissioner; duties; exempt from Administrative Procedure Act.

(1) The director shall develop rules and regulations concerning lottery administration for consideration by the Tax Commissioner. Rules and regulations

shall be adopted, promulgated, amended, or repealed only after a public hearing by the Tax Commissioner. Notice of the hearing shall be given at least twenty days in advance in a newspaper of general circulation in the state. The Tax Commissioner shall either approve or disapprove the proposed adoption, promulgation, amendment, or repeal of such rules and regulations within ten days of the hearing.

(2) Certified copies of any rules and regulations, for informational purposes only, shall be submitted to the Attorney General and the Secretary of State. Copies of the rules and regulations in force shall be made available to any person upon request.

(3) The Tax Commissioner shall adopt and promulgate rules and regulations for the conduct of all hearings.

(4) For the purpose of adopting, amending, or repealing rules and regulations pursuant to the State Lottery Act, the Tax Commissioner and the division shall be exempt from the Administrative Procedure Act.

Source: Laws 1991, LB 849, § 19; Laws 1993, LB 138, § 39.

Cross References

Administrative Procedure Act, see section 84-920.

9-820 Contracts awarded by Tax Commissioner; notices of hearings; orders and decisions; delivery.

Notices of hearings related to contracts awarded by the Tax Commissioner and copies of all orders and decisions of the Tax Commissioner concerning such contracts shall be mailed to the address of record of the appropriate party or parties.

Source: Laws 1991, LB 849, § 20; Laws 1993, LB 138, § 40; Laws 2012, LB727, § 13.

9-821 District court of Lancaster County; jurisdiction; appeal.

The district court of Lancaster County shall have exclusive original jurisdiction of all legal proceedings, except criminal actions, related to the administration, enforcement, or fulfillment of the responsibilities, duties, or functions of the division. An aggrieved party seeking review of an order or decision of the Tax Commissioner shall file an appeal with the district court of Lancaster County within thirty days after the date of such order or decision. All such proceedings shall be considered contested cases pursuant to the Administrative Procedure Act.

Source: Laws 1991, LB 849, § 21; Laws 1993, LB 138, § 41.

Cross References

Administrative Procedure Act, see section 84-920.

9-822 Books and records; requirements.

The director shall make and keep books and records which accurately and fairly reflect transactions of the lottery games conducted pursuant to the State Lottery Act, including the distribution of tickets to lottery game retailers, receipt of funds, prize claims, prizes paid, expenses, and all other activities and financial transactions involving revenue generated by such lottery games, so as

to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain daily accountability.

Source: Laws 1991, LB 849, § 22; Laws 1993, LB 138, § 42.

9-823 Rules and regulations; enumerated; Tax Commissioner; duties.

The Tax Commissioner shall adopt and promulgate rules and regulations necessary to carry out the State Lottery Act. The rules and regulations shall include provisions relating to the following:

(1) The lottery games to be conducted subject to the following conditions:

(a) No lottery game shall use the theme of dog racing or horseracing;

(b) In any lottery game utilizing tickets, each ticket in such game shall bear a unique number distinguishing it from every other ticket in such lottery game;

(c) No name of an elected official shall appear on the tickets of any lottery game; and

(d) In any instant-win game, the overall estimated odds of winning some prize shall be printed on each ticket and shall also be available at the office of the division at the time such lottery game is offered for sale to the public;

(2) The retail sales price for lottery tickets;

(3) The types and manner of payment of prizes to be awarded for winning tickets in lottery games;

(4) The method for determining winners, the frequency of drawings, if any, or other selection of winning tickets subject to the following conditions:

(a) No lottery game shall be based on the results of a dog race, horserace, or other sports event;

(b) If the lottery game utilizes the drawing of winning numbers, a drawing among entries, or a drawing among finalists (i) the drawings shall be witnessed by an independent certified public accountant, (ii) any equipment used in the drawings shall be inspected by the independent certified public accountant and an employee of the division or designated agent both before and after the drawing, and (iii) the drawing shall be recorded on videotape with an audio track; and

(c) Drawings in an instant-win game, other than grand prize drawings or other runoff drawings, shall not be held more often than weekly. Drawings or selections in an online game shall not be held more often than daily;

(5) The validation and manner of payment of prizes to the holders of winning tickets subject to the following conditions:

(a) The prize shall be given to the person who presents a winning ticket, except that for awards in excess of five hundred dollars, the winner shall also provide his or her social security number or tax identification number;

(b) A prize may be given to only one person per winning ticket, except that a prize shall be divided between the holders of winning tickets if there is more than one winning ticket per prize;

(c) For the convenience of the public, the director may authorize lottery game retailers to pay winners of up to five hundred dollars after performing validation procedures on their premises appropriate to the lottery game involved;

(d) No prize shall be paid to any person under nineteen years of age, and any prize resulting from a lottery ticket held by a person under nineteen years of

age shall be awarded to the parent or guardian or custodian of the person under the Nebraska Uniform Transfers to Minors Act;

(e) No prize shall be paid for tickets that are stolen, counterfeit, altered, fraudulent, unissued, produced or issued in error, unreadable, not received or not recorded by the division by acceptable deadlines, lacking in captions that confirm and agree with the lottery play symbols as appropriate to the lottery game involved, or not in compliance with additional specific rules and regulations and public or confidential validation and security tests appropriate to the particular lottery game involved;

(f) No particular prize in any lottery game shall be paid more than once. In the event of a binding determination by the director that more than one claimant is entitled to a particular prize, the sole right of such claimants shall be the award to each of them of an equal share in the prize; and

(g) After the expiration of the claim period for prizes for each lottery game, the director shall make available a detailed tabulation of the total number of tickets actually sold in the lottery game and the total number of prizes of each prize denomination that were actually claimed and paid;

(6) Requirements for eligibility for participation in grand prize drawings or other runoff drawings, including requirements for submission of evidence of eligibility;

(7) The locations at which tickets may be sold except that no ticket may be sold at a retail liquor establishment holding a license for the sale of alcoholic liquor at retail for consumption on the licensed premises unless the establishment holds a Class C liquor license with a sampling designation as provided in subsection (6) of section 53-124;

(8) The method to be used in selling tickets;

(9) The contracting with persons as lottery game retailers to sell tickets and the manner and amount of compensation to be paid to such retailers;

(10)(a) The form and type of marketing of informational and educational material.

(b) Beginning on September 1, 2019, all lottery advertisements shall disclose the odds of winning the prize with the largest value for any lottery game in a clear and conspicuous manner. Such disclosure shall be in a font size of not less than thirty-five percent of the largest font used in the advertisement, except that for any online advertisement, such disclosure shall be in a font size of at least ten points. This subdivision (b) shall not apply to advertisements printed, distributed, broadcast, or otherwise disseminated or conducted prior to September 1, 2019;

(11) Any arrangements or methods to be used in providing proper security in the storage and distribution of tickets or lottery games; and

(12) All other matters necessary or desirable for the efficient and economical operation and administration of lottery games and for the convenience of the purchasers of tickets and the holders of winning tickets.

Source: Laws 1991, LB 849, § 23; Laws 1992, LB 907, § 25; Laws 1992, LB 1257, § 58; Laws 1993, LB 138, § 43; Laws 1994, LB 1313, § 1; Laws 1995, LB 343, § 4; Laws 2010, LB861, § 4; Laws 2019, LB252, § 1.

Cross References

Nebraska Uniform Transfers to Minors Act, see section 43-2701.

9-824 Lottery game retailer; contract with division; considerations.

No person shall sell tickets without first contracting with the division as a lottery game retailer. Persons shall be awarded contracts as lottery game retailers in a manner which best serves the public convenience. Before awarding a contract, the director shall consider the financial responsibility and security of the applicant, the applicant's business or activity, the accessibility of the applicant's place of business or activity to the public, the efficiency of existing lottery game retailers in serving the public convenience, and the volume of expected sales. Political subdivisions or agencies or departments of such political subdivisions may be awarded contracts as lottery game retailers. Notwithstanding this or any other section of the State Lottery Act, nothing shall prohibit an onsite employee of a lottery game retailer from selling lottery tickets.

Source: Laws 1991, LB 849, § 24; Laws 1993, LB 138, § 44.

9-825 Lottery game retailer; division; sale of tickets; when.

A lottery game retailer shall not engage in business exclusively to sell tickets, except that the director or Tax Commissioner may award a temporary contract to permit a lottery game retailer to sell tickets to the public at special events approved by the Tax Commissioner. Nothing in the State Lottery Act shall prohibit the division or employees of the division from selling tickets to the public.

Source: Laws 1991, LB 849, § 25; Laws 1993, LB 138, § 45.

9-826 Lottery game retailer; award of contract; director; findings required.

A contract may be awarded to an applicant to operate as a lottery game retailer only after the director finds all of the following:

(1) The applicant is at least nineteen years of age;

(2) The applicant has not been convicted of a felony or misdemeanor involving gambling, moral turpitude, dishonesty, or theft and the applicant has not been convicted of any other felony within ten years preceding the date such applicant applies for a contract;

(3) The applicant has not been convicted of a violation of the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or Chapter 28, article 11;

(4) The applicant has not previously had a license revoked or denied under the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or Chapter 28, article 11;

(5) The applicant has not had a license or contract to sell tickets for a lottery in another jurisdiction revoked by the authority regulating such lottery or by a court of such jurisdiction;

(6) The applicant has demonstrated financial responsibility, as determined in rules and regulations of the division, sufficient to meet the requirements of a lottery game retailer;

(7) All persons holding at least a ten percent ownership interest in the applicant's business or activity have been disclosed;

(8) The applicant has been in substantial compliance with Nebraska tax laws as determined by the director based on the severity of any possible violation for the five years prior to applying, is not delinquent in the payment of any Nebraska taxes at the time of application, and is in compliance with Nebraska tax laws at the time of application; and

(9) The applicant has not knowingly made a false statement of material fact to the director.

For purposes of this section, applicant shall include the entity seeking the contract and every sole proprietor, partner in a partnership, member in a limited liability company, officer of a corporation, shareholder owning in the aggregate ten percent or more of the stock of a corporation, and governing officer of an organization or political subdivision.

Source: Laws 1991, LB 849, § 26; Laws 1993, LB 138, § 46; Laws 1994, LB 694, § 121; Laws 1994, LB 884, § 19.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Small Lottery and Raffle Act, see section 9-501.

9-827 Lottery game retailer; cooperation with director; termination of contract.

A lottery game retailer shall cooperate with the director by using point-of-purchase materials, posters, and other educational, informational, and marketing materials when requested to do so by the director. Lack of cooperation shall be sufficient cause for termination of a contract.

Source: Laws 1991, LB 849, § 27; Laws 1993, LB 138, § 47.

9-828 Director; powers relating to contracts and fees.

The director may contract with lottery game retailers on a permanent, seasonal, or temporary basis and may require payment of an initial application fee or an annual fee, or both, as provided in rules and regulations. All fees shall be credited to the State Lottery Operation Trust Fund.

Source: Laws 1991, LB 849, § 28; Laws 1993, LB 138, § 48.

9-829 Ticket sales; restrictions.

A lottery game retailer shall sell tickets only on the premises stated in the contract. No ticket shall be sold over a telephone or through the mail. No credit shall be extended by the lottery game retailer for the purchase of a ticket. No lottery tickets shall be sold through a vending or dispensing device.

Source: Laws 1991, LB 849, § 29; Laws 1993, LB 138, § 49.

9-830 Lottery game retailer; bond; requirements.

(1) The director may require a bond from each lottery game retailer in an amount, as provided by rule or regulation, graduated according to the volume of expected sales of tickets by the retailer or may purchase a blanket surety bond or bonds covering the activities of all or selected retailers. The total and aggregate liability of a surety on any bond shall be limited to the amount specified in the bond.

(2) A bond shall not be canceled by a surety on less than thirty days' notice in writing to the director. If a bond is canceled following proper written notice, the lottery game retailer shall file a new bond with the director in the required amount on or before the effective date of cancellation of the previous bond. Failure to do so shall result in the automatic suspension of the lottery game retailer's contract. A suspended contract shall be terminated upon proper notice if the requirements of this subsection are not met within thirty days of the suspension.

Source: Laws 1991, LB 849, § 30; Laws 1993, LB 138, § 50.

9-831 Advertising on problem gambling prevention, education, and awareness messages; requirements.

The division shall spend not less than five percent of the advertising budget for the state lottery on problem gambling prevention, education, and awareness messages. The division shall coordinate messages developed under this section with the prevention, education, and awareness messages in use by or developed in conjunction with the Gamblers Assistance Program established pursuant to section 9-1005. For purposes of this section, the advertising budget for the state lottery includes amounts budgeted and spent for advertising, promotions, incentives, public relations, marketing, or contracts for the purchase or lease of goods or services that include advertising, promotions, incentives, public relations, or marketing, but does not include in-kind contributions by media outlets.

Source: Laws 2006, LB 1039, § 2; Laws 2013, LB6, § 10.

9-832 Refusal to award contract; termination of contract; fine; procedure; appeal.

The director may refuse to award a contract to any applicant and may terminate the contract of or initiate an administrative action to levy a fine against a lottery game retailer who violates any provision of the State Lottery Act or any rule or regulation adopted pursuant to the act. A fine may be levied against a lottery game retailer by the Tax Commissioner and shall not exceed one thousand dollars per violation. In determining whether to impose a fine and the amount of the fine if any fine is imposed, the Tax Commissioner shall take into consideration the seriousness of the violation and the extent to which the lottery game retailer derived financial gain as a result of the violation. All money collected by the division as a fine shall be remitted on a monthly basis to the State Treasurer for credit to the permanent school fund. Any fine imposed by the Tax Commissioner 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. If the director decides to terminate a contract or initiate an administrative action to levy a fine, the aggrieved party shall be entitled to a hearing before the Tax Commissioner or his or her designee by filing a written request with the Tax

Commissioner within ten days after notification of the director's intention to terminate a contract or initiate an administrative action to levy a fine. Upon receipt of such request, the Tax Commissioner shall set a hearing date which shall be within thirty days of receipt of the request and shall notify the aggrieved party, in writing, of the time and place for the hearing. Such notice shall be given as soon as the date is set and at least seven days in advance of the hearing date. The Tax Commissioner or his or her designee may stay the termination of a contract pending the outcome of the hearing if so requested by the aggrieved party at the time of filing the written request for hearing.

The Tax Commissioner may affirm, reverse, or modify the action of the director. The order or decision of the Tax Commissioner may be appealed to the district court of Lancaster County in the manner prescribed in section 9-821.

Source: Laws 1991, LB 849, § 32; Laws 1993, LB 138, § 51; Laws 1994, LB 694, § 122.

9-833 Procurement of goods or services; director; powers; limitation.

The director may contract for, purchase, or lease goods or services necessary for effectuating the purpose of the State Lottery Act. All procurements shall be subject to the act and shall be exempt from any other state law concerning the purchase of any goods or services, and all purchases in excess of twenty-five thousand dollars shall be subject to approval by the Tax Commissioner.

Source: Laws 1991, LB 849, § 33; Laws 1993, LB 138, § 52; Laws 2007, LB638, § 17.

9-834 Major procurement; lottery vendor; disclosures required; contract approval; requirements; section, how construed.

(1) To enable the division to review and evaluate the competence, integrity, background, character, qualifications, and nature of the ownership and control of lottery vendors for major procurements, such vendors shall disclose the following information:

(a) The lottery vendor's name, address, and type of business entity and, as applicable, the name and address of the following:

(i) If the lottery vendor is a corporation, the officers, directors, and each stockholder in the corporation, except that in the case of stockholders of publicly held equity securities of a publicly traded corporation, only the names and addresses of those known to the corporation to own or have a beneficial interest in ten percent or more of such securities need to be disclosed;

(ii) If the lottery vendor is a trust, the trustee and all persons entitled to receive income or benefit from the trust;

(iii) If the lottery vendor is a subsidiary, the officers, directors, and each stockholder of the parent corporation, except that in the case of stockholders of publicly held equity securities of a publicly traded corporation, only the names and addresses of those known to the corporation to own or have a beneficial interest in ten percent or more of such securities need to be disclosed;

(iv) If the lottery vendor is a limited liability company, the members and any managers;

(v) If the lottery vendor is a partnership or joint venture, the general partners, limited partners, or joint venturers;

(vi) If the parent company, general partner, limited partner, or joint venturer of the lottery vendor is itself a corporation, trust, association, subsidiary, partnership, limited liability company, or joint venture, all the information required in subdivision (a) of this subsection shall be disclosed for such other entity as if it were itself a lottery vendor so that full disclosure of ultimate ownership is achieved;

(vii) If any parent, child, brother, sister, or spouse of the lottery vendor is involved in the vendor's business in any capacity, all of the information required in subdivision (a) of this subsection shall be disclosed for such family member as if he or she were a lottery vendor; and

(viii) If the lottery vendor subcontracts any substantial portion of the work to be performed to a subcontractor, all of the information required in subdivision (a) of this subsection shall be disclosed for each subcontractor as if it were itself a lottery vendor;

(b) The place of the lottery vendor's incorporation, if any;

(c) The name, address, and telephone number of a resident agent to contact regarding matters of the lottery vendor and for service of process;

(d) The name, address, and telephone number of each attorney and law firm representing the lottery vendor in this state;

(e) The name, address, and telephone number of each of the lottery vendor's accountants;

(f) The name, address, and telephone number of each attorney, law firm, accountant, accounting firm, public relations firm, consultant, sales agent, or other person engaged by the lottery vendor or involved in aiding the vendor's efforts to obtain the contract and the procurement involved at the time of disclosure or during the prior year;

(g) The states and jurisdictions in which the lottery vendor does business or has contracts to supply goods or services related to lottery games, the nature of the business or the goods or services involved for each such state or jurisdiction, and the entities to which the vendor is supplying goods or services;

(h) The states and jurisdictions in which the lottery vendor has applied for, sought renewal of, received, been denied, or had revoked a gaming contract or license of any kind, and the status of such application, contract, or license in each state or jurisdiction. If any gaming contract or license has been revoked or has not been renewed or if any gaming contract or license application either has been denied or is pending and has remained pending for more than six months, all of the facts and circumstances underlying the failure to receive or retain such a contract or license shall be disclosed. For purposes of this subdivision, gaming contract or license shall mean a contract or license for the conduct of or any activity related to the operation of any lottery game or other gambling scheme;

(i) The details of any conviction or judgment of any state or federal court against the lottery vendor relating to any felony and any other criminal offense other than a traffic violation;

(j) The details of any bankruptcy, insolvency, reorganization, or pending litigation involving the lottery vendor;

(k) The identity of any entity with which the lottery vendor has a joint venture or other contractual agreement to supply any state or jurisdiction with goods or

services related to lottery games, including, with regard to such entity, all the information requested under subdivisions (a) through (j) of this subsection;

(l) The lottery vendor's financial statements for the three years prior to disclosure and a list of all liens filed on or filed against the entity or filed on or filed against persons with a substantial interest in the entity;

(m) At the director's request, the lottery vendor's federal and state income tax returns for the three years prior to disclosure. Such information shall be considered confidential in any review in conjunction with any pending major procurement and shall not be disclosed except pursuant to appropriate judicial order;

(n) The identity and nature of any interest known to the lottery vendor of any past or present director or other employee of the division who, directly or indirectly, is an officer, director, limited liability company member, agent, consultant, independent contractor, stockholder, debt holder, principal, or employee of or who has any direct or indirect financial interest in any lottery vendor. For purposes of this subdivision, financial interest shall mean ownership of any interest or involvement in any relationship from which or as a result of which a person within the five years prior to disclosure has received, is receiving at the time of disclosure, or in the future will be entitled to receive over a five-year period more than one thousand dollars or its equivalent;

(o) The details of any contribution to or independent expenditure for a candidate for a state elective office as defined in section 49-1444 made by the lottery vendor after March 1, 1995, and within three years prior to disclosure. The lottery vendor shall be considered to have made a contribution or independent expenditure if the contribution or independent expenditure was made by the lottery vendor, by an officer of the lottery vendor, by a separate segregated political fund established by the lottery vendor as provided in section 49-1469, or by a person acting on behalf of the vendor, officer, or fund;

(p) The names, street addresses, and mailing addresses of all lobbyists representing the vendor in Nebraska, and all accounts and money managed by those lobbyists; and

(q) Such additional disclosures and information as the Tax Commissioner may determine to be appropriate for the major procurement involved.

(2) The disclosures required by subsection (1) of this section may be required only once of a lottery vendor. The vendor shall file an addendum to the original filing by August 1 of each year showing any changes from the original filing or the latest addendum.

(3) No contract shall be approved by the Tax Commissioner or signed or entered into by the director unless the lottery vendor has complied with this section. Any contract entered into with a vendor who has not complied with this section shall be void.

(4) If a contract is to be entered into as a result of competitive procurement procedures, the required disclosures, if not already on file with the director, shall be made prior to or concurrent with the submission of a bid, proposal, or offer. If the contract is entered into without a competitive procurement procedure, such disclosures shall be required prior to execution of the contract.

(5) No major procurement with any lottery vendor shall be entered into if any person with a substantial interest in the lottery vendor has been convicted of a felony or misdemeanor involving gambling, moral turpitude, dishonesty, or

theft. No major procurement with any lottery vendor shall be entered into if any person with a substantial interest in the lottery vendor has been convicted of any other felony within ten years preceding the date of submission of information required under this section. For purposes of this subsection, person with a substantial interest shall mean any sole proprietor, partner in a partnership, member or manager of a limited liability company, officer of a corporation, shareholder owning in the aggregate ten percent or more of the stock in a corporation, or governing officer of an organization or other entity.

(6) This section shall be construed broadly and liberally to achieve the end of full disclosure of all information necessary to allow for a full and complete evaluation by the director of the competence, integrity, background, character, qualifications, and nature of the ownership and control of lottery vendors for major procurements.

Source: Laws 1991, LB 849, § 34; Laws 1993, LB 121, § 120; Laws 1993, LB 138, § 53; Laws 1994, LB 694, § 123; Laws 1994, LB 884, § 20; Laws 1995, LB 28, § 1; Laws 1996, LB 1069, § 2.

9-835 Major procurement; director; Tax Commissioner; powers and duties; limitation; assignment of contract.

(1) Subject to the approval of the Tax Commissioner, the director may request proposals for or enter into major procurements for effectuating the purpose of the State Lottery Act. In awarding contracts in response to requests for proposals, the director shall award such contracts to the responsible vendor who submits the lowest and best proposal which maximizes the benefits to the state in relation to the cost in the areas of security, competence, quality of product, capability, timely performance, and maximization of net revenue to benefit the public purpose of the act. All contract awards made by the director exceeding twenty-five thousand dollars shall be approved by the Tax Commissioner.

(2) The director may not award and the Tax Commissioner may not approve a contract with a person to serve as a lottery contractor for a major procurement if the person has made a contribution to a candidate for a state elective office as defined in section 49-1444 after March 1, 1995, and within three years preceding the award of the contract. A person shall be considered to have made a contribution if the contribution is made by the person, by an officer of the person, by a separate segregated political fund established and administered by the person as provided in section 49-1469, or by anyone acting on behalf of the person, officer, or fund. Any contract awarded in violation of the subsection shall be void.

(3) No contract may be assigned by a lottery contractor except by a written agreement approved by the Tax Commissioner and signed by the director.

Source: Laws 1991, LB 849, § 35; Laws 1993, LB 138, § 54; Laws 1995, LB 28, § 2; Laws 2007, LB638, § 18.

9-836 Major procurement; lottery contractor; performance bond.

Each lottery contractor for a major procurement shall, at the time of executing the contract with the director, post a performance bond with the

director, using a surety acceptable to the director, in an amount equal to the full amount estimated to be paid annually to the contractor under the contract.

Source: Laws 1991, LB 849, § 36; Laws 1993, LB 138, § 55.

9-836.01 Division; sale of tangible personal property; distribution of profits.

The division may endorse and sell for profit tangible personal property related to the lottery. Any money received as profit by the division pursuant to this section shall be remitted to the State Treasurer for credit to the State Lottery Operation Trust Fund to be distributed to the Nebraska Opportunity Grant Fund, the Nebraska Education Improvement Fund, the Nebraska Environmental Trust Fund, and the Compulsive Gamblers Assistance Fund pursuant to the requirements of section 9-812.

Source: Laws 1994, LB 694, § 118; Laws 1998, LB 924, § 17; Laws 2003, LB 574, § 22; Laws 2010, LB956, § 2; Laws 2013, LB497, § 2; Laws 2021, LB528, § 3.

9-837 Lottery contractor; perform contract in compliance with other laws; failure; effect.

Each lottery contractor shall perform its contract consistent with the laws of this state, federal laws, and the laws of the state or states in which such contractor is performing or producing, in whole or in part, any of the goods or services for which the division contracted. No contracts with any lottery contractor who fails to comply with such laws shall be entered into by the director or shall be enforceable by the contractor.

Source: Laws 1991, LB 849, § 37; Laws 1993, LB 138, § 56.

9-838 Attorney General; Nebraska State Patrol; duties.

Upon request of the director or Tax Commissioner, the Attorney General and the Nebraska State Patrol shall furnish to the director any information which they may have in their possession as may be necessary to ensure security, honesty, fairness, and integrity in the operation and administration of lottery games conducted pursuant to the State Lottery Act, including investigative reports and computerized information or data. For the purpose of requesting and receiving such information, the division shall be considered to be a criminal justice agency and shall be furnished such information without charge upon proper written request.

Source: Laws 1991, LB 849, § 38; Laws 1993, LB 138, § 57; Laws 1995, LB 343, § 5.

9-839 Civil and criminal proceedings; jurisdiction.

The failure to do any act required by or pursuant to or the performance of any act prohibited by the State Lottery Act shall be deemed an act in part in the principal office of the division. Any criminal prosecution under the act may be conducted in any county where the defendant resides or has a place of business or in any county in which any violation occurred or is deemed to have occurred.

Source: Laws 1991, LB 849, § 39; Laws 1993, LB 138, § 58.

9-840 Director; studies and report.

(1) The director shall make a continuous study of the State Lottery Act to ascertain any defects in the act or in the rules and regulations promulgated pursuant to the act which could result in abuses in the administration and operation of lottery games or the act or in any evasion of such act or rules and regulations and shall report his or her findings to the Tax Commissioner for the purpose of making recommendations for improvement in the act.

(2) The director shall make a continuous study of the operation and the administration of similar laws which may be in effect in other states, any written materials on the subject which are published or available, any federal laws which may affect the operation of the state lottery, and the reaction of citizens to existing and potential features of the state lottery in order to recommend changes which will serve the purposes of the act.

Source: Laws 1991, LB 849, § 40; Laws 1993, LB 138, § 59.

9-841 Act; intent; preemption of state or local laws or regulations.

It is the intent of the State Lottery Act that all matters related to the operation of the lottery games conducted pursuant to the act shall be governed solely by the act and shall be free from regulation or legislation by all local governments. No other state or local law or regulation providing any penalty, restriction, regulation, or prohibition on the manufacture, transportation, storage, distribution, advertisement, possession, or sale of any tickets or for the operation of any lottery game shall apply to the tickets or lottery games conducted pursuant to the act.

Source: Laws 1991, LB 849, § 41; Laws 1993, LB 138, § 60.

9-842 Repealed. Laws 1993, LB 138, § 83.

ARTICLE 9

GAMING TAX AND LICENSE FEE

Section

9-901. Repealed. Laws 2007, LB 64, § 1.
9-902. Repealed. Laws 2007, LB 64, § 1.
9-903. Repealed. Laws 2007, LB 64, § 1.
9-904. Repealed. Laws 2007, LB 64, § 1.

9-901 Repealed. Laws 2007, LB 64, § 1.

9-902 Repealed. Laws 2007, LB 64, § 1.

9-903 Repealed. Laws 2007, LB 64, § 1.

9-904 Repealed. Laws 2007, LB 64, § 1.

ARTICLE 10

NEBRASKA COMMISSION ON PROBLEM GAMBLING

Section

9-1001. Funding for assistance to problem gamblers; legislative findings and intent.
9-1002. Terms, defined.
9-1003. Nebraska Commission on Problem Gambling; created; members; terms; vacancies; meetings.
9-1004. Commission; officers; expenses; duties; director; duties; rules and regulations; report.

Section
9-1005. Gamblers Assistance Program; created; duties.
9-1006. Compulsive Gamblers Assistance Fund; created; use; investment.
9-1007. Division of Behavioral Health of Department of Health and Human Services or department; restriction on expenditures; contracts; how treated; Compulsive Gamblers Assistance Fund; use.

9-1001 Funding for assistance to problem gamblers; legislative findings and intent.

The Legislature finds that the main sources of funding for assistance to problem gamblers are the Charitable Gaming Operations Fund as provided in section 9-1,101 and the State Lottery Operation Trust Fund as provided in section 9-812. It is the intent of the Legislature that such funding be used primarily for counseling and treatment services for problem gamblers and their families who are residents of Nebraska.

Source: Laws 2013, LB6, § 1.

9-1002 Terms, defined.

For purposes of sections 9-1001 to 9-1007:

(1) Commission means the Nebraska Commission on Problem Gambling;

(2) Division means the Charitable Gaming Division of the Department of Revenue;

(3) Problem gambling means maladaptive gambling behavior that disrupts personal, family, or vocational pursuits; and

(4) Program means the Gamblers Assistance Program.

Source: Laws 2013, LB6, § 2.

9-1003 Nebraska Commission on Problem Gambling; created; members; terms; vacancies; meetings.

(1) The Nebraska Commission on Problem Gambling is created. For administrative purposes only, the commission shall be within the division. The commission shall have nine members appointed by the Governor as provided in this section, subject to confirmation by a majority of the members of the Legislature. The members of the commission shall have no pecuniary interest, either directly or indirectly, in a contract with the program providing services to problem gamblers and shall not be employed by the commission or the Department of Revenue.

(2) By July 1, 2013, the Governor shall appoint members of the commission as follows:

(a) One member with medical care or mental health expertise;

(b) One member with expertise in banking and finance;

(c) One member with legal expertise;

(d) One member with expertise in the field of education;

(e) Two members who are consumers of problem gambling services;

(f) One member with data analysis expertise; and

(g) Two members who are residents of the state and are representative of the public at large.

(3) The terms of the members shall be for three years, except that the Governor shall designate three of the initial appointees to serve initial terms beginning on July 1, 2013, and ending on March 1, 2014, three of the initial appointees to serve initial terms beginning on July 1, 2013, and ending on March 1, 2015, and three of the initial appointees to serve initial terms beginning on July 1, 2013, and ending on March 1, 2016. The Governor shall appoint members to fill vacancies in the same manner as the original appointments, and such appointees shall serve for the remainder of the unexpired term.

(4) Beginning July 1, 2013, the commission shall adopt bylaws governing its operation and the commission shall meet at least four times each calendar year and may meet more often on the call of the chairperson. Each member shall attend at least two meetings each calendar year and shall be subject to removal for failure to attend at least two meetings unless excused by a majority of the members of the commission. Meetings of the commission are subject to the Open Meetings Act.

Source: Laws 2013, LB6, § 3.

Cross References

Open Meetings Act, see section 84-1407.

9-1004 Commission; officers; expenses; duties; director; duties; rules and regulations; report.

(1) The commission shall appoint one of its members as chairperson and such other officers as it deems appropriate. Members shall be reimbursed for expenses in carrying out their duties as members of the commission as provided in sections 81-1174 to 81-1177.

(2) The commission shall develop guidelines and standards for the operation of the program and shall direct the distribution and disbursement of money in the Compulsive Gamblers Assistance Fund.

(3) The commission shall appoint a director of the program, provide for office space and equipment, and support and facilitate the work of the program. The director may hire, terminate, and supervise commission and program staff, shall be responsible for the duties of the office and the administration of the program, and shall electronically provide an annual report to the General Affairs Committee of the Legislature which includes issues and policy concerns that relate to problem gambling in Nebraska. All documents, files, equipment, effects, and records belonging to the State Committee on Problem Gambling on June 30, 2013, shall become the property of the commission on July 1, 2013.

(4) The commission shall (a) provide for a process for the evaluation and approval of provider applications and contracts for treatment and other services funded from the Compulsive Gamblers Assistance Fund and (b) develop standards and guidelines for training and certification of problem gambling counselors.

(5) The commission shall provide for (a) the review and use of evaluation data, (b) the use and expenditure of funds for education regarding problem gambling and prevention of problem gambling, and (c) the creation and implementation of outreach and educational programs regarding problem gambling for Nebraska residents.

(6) The commission may adopt and promulgate rules and regulations and engage in other activities it finds necessary to carry out its duties under sections 9-1001 to 9-1007.

(7) The commission shall submit a report within sixty days after the end of each fiscal year to the Governor and the Clerk of the Legislature that provides details of the administration of the program and distribution of funds from the Compulsive Gamblers Assistance Fund. The report submitted to the Legislature shall be submitted electronically.

Source: Laws 2013, LB6, § 4; Laws 2020, LB381, § 15.

9-1005 Gamblers Assistance Program; created; duties.

The Gamblers Assistance Program is created. The program shall:

(1) Contract with providers of problem gambling treatment services to Nebraska consumers;

(2) Promote public awareness of the existence of problem gambling and the availability of treatment services;

(3) Evaluate the existence and scope of problem gambling in Nebraska and its consequences through means and methods determined by the commission; and

(4) Perform such other duties and provide such other services as the commission determines.

Source: Laws 2013, LB6, § 5.

9-1006 Compulsive Gamblers Assistance Fund; created; use; investment.

The Compulsive Gamblers Assistance Fund is created. The fund shall include revenue transferred from the State Lottery Operation Trust Fund under section 9-812 and the Charitable Gaming Operations Fund under section 9-1,101 and any other revenue received by the division or commission for credit to the fund from any other public or private source, including, but not limited to, appropriations, grants, donations, gifts, devises, bequests, fees, or reimbursements. The commission shall administer the fund for the operation of the Gamblers Assistance Program. The Director of Administrative Services shall draw warrants upon the Compulsive Gamblers Assistance Fund upon the presentation of proper vouchers by the commission. Money from the Compulsive Gamblers Assistance Fund shall be used exclusively for the purpose of providing assistance to agencies, groups, organizations, and individuals that provide education, assistance, and counseling to individuals and families experiencing difficulty as a result of problem gambling, to promote the awareness of problem gamblers assistance programs, and to pay the costs and expenses of the Gamblers Assistance Program, including travel. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1993, LB 138, § 33; R.S.Supp.,1994, § 9-804.05; Laws 1995, LB 275, § 17; Laws 2000, LB 659, § 3; Laws 2001, LB 541, § 5; R.S.Supp.,2002, § 83-162.04; Laws 2004, LB 1083, § 17; Laws 2005, LB 551, § 7; Laws 2008, LB1058, § 2; Laws 2009, LB189, § 2; R.S.1943, (2009), § 71-817; Laws 2013, LB6, § 6.

Cross References

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

9-1007 Division of Behavioral Health of Department of Health and Human Services or department; restriction on expenditures; contracts; how treated; Compulsive Gamblers Assistance Fund; use.

(1) Except as otherwise provided in subsection (2) of this section, no person acting on behalf of the Division of Behavioral Health of the Department of Health and Human Services or the department shall make expenditures not required by contract obligations entered into before July 1, 2013, until the Gamblers Assistance Program created in section 9-1005 commences its duties.

(2) Any contract between the State of Nebraska and a provider of problem gambling services in existence on July 1, 2013, shall remain in full force and effect and is binding and effective upon the parties to the contract until the contract is terminated according to its terms or renegotiated by the commission.

(3) The Compulsive Gamblers Assistance Fund shall not be subject to any nonstatutory expenditure limitation from any source and shall be available for expenditure as provided in sections 9-1001 to 9-1006.

Source: Laws 2013, LB6, § 7.

ARTICLE 11

NEBRASKA RACETRACK GAMING ACT

Section
9-1101. Act, how cited.
9-1102. Games of chance; permitted; restrictions.
9-1103. Terms, defined.
9-1104. Authorized gaming operator; license; authorized activities; condition of licensure; limitation on participation.
9-1105. Commission; administer act.
9-1106. Commission; powers and duties.
9-1107. Racing and Gaming Commission's Racetrack Gaming Fund; created; use; investment.
9-1108. Gaming operator license; applicant; fingerprinting and criminal history record information check; costs.
9-1109. Credit cards; prohibited; applicant or authorized gaming operator; requirements.
9-1110. Sports wagering.
9-1111. Game of chance; cheating; gaming device; manipulation; penalties.
9-1112. Participation in unlawful manner; violations; penalties.
9-1113. Gaming device; acts prohibited; penalties.
9-1114. Making false or misleading statement or entry or failure to maintain or make an entry; penalty.
9-1115. Participation prohibited; violations; penalties.
9-1116. Violations; general penalty provisions.
9-1117. Authorized gaming operator; license; application; contents.
9-1118. List of self-excluded persons.

9-1101 Act, how cited.

Sections 9-1101 to 9-1118 shall be known and may be cited as the Nebraska Racetrack Gaming Act.

Source: Initiative Law 2020, No. 430, § 1; Laws 2021, LB561, § 27; Laws 2022, LB876, § 14.
Effective date April 20, 2022.

9-1102 Games of chance; permitted; restrictions.

Notwithstanding any other provision of law, and to the full extent permitted by the Constitution of Nebraska, including amendments to the Constitution of Nebraska adopted contemporaneously with the enactment of the Nebraska Racetrack Gaming Act, the operation of games of chance is permitted only by authorized gaming operators within licensed racetrack enclosures as provided in the act.

Source: Initiative Law 2020, No. 430, § 2.

9-1103 Terms, defined.

For purposes of the Nebraska Racetrack Gaming Act:

(1) Authorized gaming operator means a person or entity licensed pursuant to the act to operate games of chance within a licensed racetrack enclosure;

(2) Authorized gaming operator license means a license to operate games of chance as an authorized gaming operator at a licensed racetrack enclosure;

(3)(a) Except as otherwise provided in subdivision (b) of this subdivision, authorized sporting event means a professional sporting event, a collegiate sporting event, an international sporting event, a professional motor race event, a professional sports draft, an individual sports award, an electronic sport, or a simulated game; and

(b) Authorized sporting event does not include an instate collegiate sporting event in which an instate collegiate or university team is a participant, a parimutuel wager, a fantasy sports contest, a minor league sporting event, a sporting event at the high school level or below regardless of the age of any individual participant, or any sporting event excluded by the commission;

(4) Collegiate sporting event means an athletic event or competition of an intercollegiate sport played at the collegiate level for which eligibility requirements for participation by a student athlete are established by a national association for the promotion or regulation of collegiate athletics;

(5) Commission means the State Racing and Gaming Commission;

(6) Designated sports wagering area means an area, as approved by the commission, in which sports wagering is conducted;

(7) Game of chance means any game which has the elements of chance, prize, and consideration, including any wager on a slot machine, table game, counter game, or card game, a keno lottery conducted in accordance with the Nebraska County and City Lottery Act, or sports wagering. Game of chance does not include any game the operation of which is prohibited at a casino by federal law;

(8) Gaming device means an electronic, mechanical, or other device which plays a game of chance when activated by a player using currency, a token, or other item of value;

(9) International sporting event means an international team or individual sporting event governed by an international sports federation or sports governing body, including sporting events governed by the International Olympic Committee and the International Federation of Association Football;

(10) Licensed racetrack enclosure means premises at which licensed live horseracing is conducted in accordance with the Constitution of Nebraska and applicable Nebraska law;

(11) Limited gaming device means an electronic gaming device which (a) offers games of chance, (b) does not dispense currency, tokens, or other items of value, and (c) does not have a cash winnings hopper, mechanical or simulated spinning reel, or side handle;

(12) Prohibited participant means any individual whose participation may undermine the integrity of the wagering or the sporting event or any person who is prohibited from sports wagering for other good cause shown as determined by the commission, including, but not limited to: (a) Any individual placing a wager as an agent or proxy; (b) any person who is an athlete, a coach, a referee, or a player in any sporting event overseen by the sports governing body of such person based on publicly available information; (c) a person who holds a paid position of authority or influence sufficient to exert influence over the participants in a sporting event, including, but not limited to, any coach, manager, handler, or athletic trainer, or a person with access to certain types of exclusive information, on any sporting event overseen by the sports governing body of such person based on publicly available information; or (d) a person identified as prohibited from sports wagering by any list provided by a sports governing body to the commission;

(13) Racing license means a license issued for a licensed racetrack enclosure by the commission; and

(14) Sports wagering means the acceptance of wagers on an authorized sporting event by any system of wagering as authorized by the commission. Sports wagering does not include (a) placing a wager on the performance or nonperformance of any individual athlete participating in a single game or match of a collegiate sporting event in which a collegiate team from this state is participating, (b) placing an in-game wager on any game or match of a collegiate sporting event in which a collegiate team from this state is participating, (c) placing a wager on the performance or nonperformance of any individual athlete under eighteen years of age participating in a professional or international sporting event, or (d) placing a wager on the performance of athletes in an individual sporting event excluded by the commission.

Source: Initiative Law 2020, No. 430, § 3; Laws 2021, LB561, § 28.

Cross References

Nebraska County and City Lottery Act, see section 9-601.

9-1104 Authorized gaming operator; license; authorized activities; condition of licensure; limitation on participation.

(1) The operation of games of chance at a licensed racetrack enclosure may be conducted by an authorized gaming operator who holds an authorized gaming operator license.

(2) No more than one authorized gaming operator license shall be granted for each licensed racetrack enclosure within the state. It shall not be a requirement that the person or entity applying for or to be granted such authorized gaming operator license hold a racing license or be the same person or entity who operates the licensed racetrack enclosure at which such authorized gaming operator license shall be granted.

(3) Gaming devices, limited gaming devices, and all other games of chance may be operated by authorized gaming operators at a licensed racetrack enclosure.

(4) No person younger than twenty-one years of age shall play or participate in any way in any game of chance or use any gaming device or limited gaming device at a licensed racetrack enclosure.

(5) No authorized gaming operator shall permit an individual younger than twenty-one years of age to play or participate in any game of chance or use any gaming device or limited gaming device conducted or operated pursuant to the Nebraska Racetrack Gaming Act.

(6) If the licensed racetrack enclosure at which such authorized gaming operator conducts games of chance does not hold the minimum number of live racing meets required under section 2-1205, the authorized gaming operator shall be required to cease operating games of chance at such licensed racetrack enclosure until such time as the commission determines the deficiency has been corrected.

Source: Initiative Law 2020, No. 430, § 4; Laws 2022, LB876, § 15.
Effective date April 20, 2022.

9-1105 Commission; administer act.

For purposes of providing the necessary licensing and regulation of the operation of games of chance by authorized gaming operators within licensed racetrack enclosures pursuant to the Nebraska Racetrack Gaming Act, the commission shall administer the Nebraska Racetrack Gaming Act. The commission shall have full jurisdiction over and shall supervise all gaming operations pursuant to the Nebraska Racetrack Gaming Act.

Source: Initiative Law 2020, No. 430, § 5; Laws 2021, LB561, § 29.

9-1106 Commission; powers and duties.

The commission shall:

(1) License and regulate authorized gaming operators for the operation of all games of chance authorized pursuant to the Nebraska Racetrack Gaming Act, including adopting, promulgating, and enforcing rules and regulations governing such authorized gaming operators consistent with the act;

(2) Regulate the operation of games of chance in order to prevent and eliminate corrupt practices and fraudulent behavior, and thereby promote integrity, security, and honest administration in, and accurate accounting of, the operation of games of chance which are subject to the act;

(3) Establish criteria to license applicants for authorized gaming operator licenses and all other types of gaming licenses for other positions and functions incident to the operation of games of chance, including adopting, promulgating, and enforcing rules, regulations, and eligibility standards for such authorized gaming operator licenses, gaming licenses, and positions and functions incident to the operation of games of chance;

(4) Charge fees for applications for licenses and for the issuance of authorized gaming operator licenses and all other types of gaming licenses to successful applicants which shall be payable to the commission;

(5) Charge fees to authorized gaming operators in an amount necessary to offset the cost of oversight and regulatory services to be provided which shall be payable to the commission;

(6) Impose a one-time authorized gaming operator license fee of five million dollars on each authorized gaming operator for each licensed racetrack enclosure payable to the commission. The license fee may be paid over a period of five years with one million dollars due at the time the license is issued;

(7) Grant, deny, revoke, and suspend authorized gaming operator licenses and all other types of gaming licenses based upon reasonable criteria and procedures established by the commission to facilitate the integrity, productivity, and lawful conduct of gaming within the state;

(8) Grant or deny for cause applications for authorized gaming operator licenses of not less than twenty years in duration, subject to an annual review by the commission and receipt by the commission of a fifty-thousand-dollar annual review fee, with no more than one such authorized gaming operator license granted for any licensed racetrack enclosure within the state;

(9) Conduct background investigations of applicants for authorized gaming operator licenses and all other types of gaming licenses;

(10) Adopt and promulgate rules and regulations for the standards of manufacture of gaming equipment;

(11) Inspect the operation of any authorized gaming operator conducting games of chance for the purpose of certifying the revenue thereof and receiving complaints from the public;

(12) Issue subpoenas for the attendance of witnesses or the production of any records, books, memoranda, documents, or other papers or things at or prior to any hearing as is necessary to enable the commission to effectively discharge its duties;

(13) Administer oaths or affirmations as necessary to carry out the act;

(14) Have the authority to impose, subject to judicial review, appropriate administrative fines and penalties for each violation of the act or any rules and regulations adopted and promulgated pursuant to the act in an amount not to exceed:

(a) For any licensed racetrack enclosure with an authorized gaming operator operating games of chance for one year or less, fifty thousand dollars per violation; or

(b) For any licensed racetrack enclosure with an authorized gaming operator operating games of chance for more than one year, three times the highest daily amount of gross receipts derived from wagering on games of chance during the twelve months preceding the violation at such licensed racetrack enclosure gaming facility per violation;

(15) Collect and remit administrative fines and penalties collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska;

(16) Adopt and promulgate rules and regulations for any gaming taxes assessed to authorized gaming operators;

(17) Collect and account for any gaming taxes assessed to authorized gaming operators and remit such taxes to the State Treasurer or county treasurer as required by Nebraska law;

(18) Promote treatment of gaming-related behavioral disorders;

(19) Establish procedures for the governance of the commission;

(20) Acquire necessary offices, facilities, counsel, and staff;

(21) Establish procedures for an applicant for a staff position to disclose conflicts of interest as part of the application for employment;

(22) Establish a process to allow a person to be voluntarily excluded from wagering in any game of chance under the act in accordance with section 9-1118;

(23) Remit all license and application fees collected under the Nebraska Racetrack Gaming Act to the State Treasurer for credit to the Racing and Gaming Commission's Racetrack Gaming Fund;

(24) Conduct or cause to be conducted a statewide horseracing market analysis to study the racing market as it currently exists across the state and within the locations in Nebraska of the racetracks in Adams, Dakota, Douglas, Hall, Lancaster, and Platte counties as of the date of the market analysis. Such market analysis shall be completed as soon as practicable but not later than January 1, 2025, and every five years thereafter and shall be submitted electronically to the General Affairs Committee of the Legislature and to the Governor. Such market analysis shall examine the market potential and make recommendations involving:

(a) The number of live racing days per track, number of races run, and number of horses that should be entered per race;

(b) The number of Nebraska-bred horses available in the market for running races, including foals dropped in the state for the past three years at the time of the market analysis;

(c) The circuit scheduled in the state and if any overlapping dates would be beneficial to the circuit and market as a whole;

(d) The total number of horses available for the total annual schedule, with separate analysis for thoroughbred races and quarterhorse races;

(e) The purse money available per race and per track;

(f) The strength of the potential and ongoing simulcast market;

(g) The staffing patterns and problems that exist at each track, including unfilled positions;

(h) The positive and negative effects, including financial, on each existing racetrack at the time of the market analysis in the event the commission approves a new racetrack application;

(i) The potential to attract new owners and horses from other states;

(j) The market potential for expansion at each licensed racetrack enclosure to the live race meet days and the number of live horseraces required by section 2-1205, and the room for expansion, if any, for additional licensed racetrack enclosures into the market in Nebraska and the locations most suitable for such expansion; and

(k) Any other data and analysis required by the commission;

(25) Conduct or cause to be conducted a statewide casino gaming market analysis study across the state and within each location of a racetrack in Adams, Dakota, Douglas, Hall, Lancaster, and Platte counties. Such market analysis study shall be completed as soon as practicable but not later than January 1, 2025, and every five years thereafter and shall be submitted electronically to the General Affairs Committee of the Legislature and to the Governor. The market analysis study shall include:

(a) A comprehensive assessment of the potential casino gaming market conditions;

(b) An evaluation of the effects on the Nebraska market from competitive casino gaming locations outside of the state;

(c) Information identifying underperforming or underserved markets within Nebraska;

(d) A comprehensive study of potential casino gaming revenue in Nebraska; and

(e) Any other data and analysis required by the commission;

(26) Conduct or cause to be conducted a statewide socioeconomic-impact study of horseracing and casino gaming across the state and at each licensed racetrack enclosure and gaming facility in Adams, Dakota, Douglas, Hall, Lancaster, and Platte counties. Such socioeconomic-impact study shall be completed as soon as practicable but not later than January 1, 2025, and shall be submitted electronically to the General Affairs Committee of the Legislature and to the Governor. The study shall include:

(a) Information on financial and societal impacts of horseracing and casino gaming, including crime and local businesses;

(b) An analysis of problem gambling within the state; and

(c) A comparison of the economy of counties which contain a licensed racetrack enclosure operating games of chance and counties which do not contain such a licensed racetrack enclosure as of the date of the study, which comparison shall include:

(i) The population of such counties;

(ii) Jobs created by each licensed racetrack enclosure operating games of chance in such counties;

(iii) Unemployment rates in such counties;

(iv) Information on family and household income in such counties;

(v) Retail sales in such counties;

(vi) Property values in such counties;

(vii) An analysis of the impact on community services, including police protection expenditures, fire protection expenditures, road, bridge, and sidewalk expenditures, and capital project expenditures in such counties;

(viii) Impact on community health in such counties;

(ix) Divorce rates in such counties;

(x) Information on available education and education levels in such counties;

(xi) Life expectancy in such counties;

(xii) Homelessness in such counties; and

(xiii) Any other data and analysis required by the commission;

(27) Approve or deny an application for any licensed racetrack enclosure which is not in existence or operational as of April 20, 2022, or any licensed racetrack enclosure in existence and operational as of November 1, 2020, that applies to move such licensed racetrack enclosure pursuant to section 2-1205, on the basis of the placement and location of such licensed racetrack enclosure and based on the market as it exists as of the most recent issuance of the statewide horseracing market analysis, statewide casino gaming market analy-

sis, and statewide socioeconomic-impact studies conducted by the commission pursuant to this section. The commission shall deny a licensed racetrack enclosure or gaming operator license application if it finds that approval of such application in such placement and location would be detrimental to the racing or gaming market that exists across the state based on the most recent statewide horseracing market analysis, statewide casino gaming market analysis, and statewide socioeconomic-impact studies; and

(28) Do all things necessary and proper to carry out its powers and duties under the Nebraska Racetrack Gaming Act, including the adoption and promulgation of rules and regulations and such other actions as permitted by the Administrative Procedure Act.

Source: Initiative Law 2020, No. 430, § 6; Laws 2021, LB561, § 30; Laws 2022, LB876, § 16.
Effective date April 20, 2022.

Cross References

Administrative Procedure Act, see section 84-920.

9-1107 Racing and Gaming Commission's Racetrack Gaming Fund; created; use; investment.

The Racing and Gaming Commission's Racetrack Gaming Fund is created. The fund shall consist of all license, application, and other fees collected under the Nebraska Racetrack Gaming Act. The fund shall be used for administration of the Nebraska Racetrack Gaming Act. Any money in the Racing and Gaming Commission's Racetrack Gaming 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, LB561, § 31; Laws 2022, LB876, § 19.
Effective date April 20, 2022.

Cross References

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

9-1108 Gaming operator license; applicant; fingerprinting and criminal history record information check; costs.

Any person applying for a gaming operator license pursuant to the Nebraska Racetrack Gaming Act shall be subject to fingerprinting and a check of such person's criminal history record information maintained by the Identification Division of the Federal Bureau of Investigation for the purpose of determining whether the commission has a basis to deny the license application or to suspend, cancel, or revoke the person's license. The applicant shall pay the actual cost of any fingerprinting or check of such person's criminal history record information.

Source: Laws 2021, LB561, § 32.

9-1109 Credit cards; prohibited; applicant or authorized gaming operator; requirements.

Credit cards shall not be accepted by any authorized gaming operator for payment for any wager or to purchase coins, tokens, or other forms of credit to be wagered on any game of chance. An account for the purpose of participating

in a game of chance under the Nebraska Racetrack Gaming Act may only be funded with cash, coins, a debit card, or a direct link to an account with a financial institution in the name of the player. The commission shall require an authorized gaming operator or applicant for an authorized gaming operator license to demonstrate in the license application and internal controls application the ability to restrict credit card transactions.

Source: Laws 2021, LB561, § 33.

9-1110 Sports wagering.

(1) The commission may permit an authorized gaming operator to conduct sports wagering. Any sports wager shall be placed in person or at a wagering kiosk in the designated sports wagering area at the licensed racetrack enclosure. A parimutuel wager in accordance with sections 2-1201 to 2-1218 may be placed in the designated sports wagering area at the licensed racetrack enclosure.

(2) A floor plan identifying the designated sports wagering area, including the location of any wagering kiosks, shall be filed with the commission for review and approval. Modification to a previously approved plan must be submitted for approval at least ten days prior to implementation. The area shall not be accessible to persons under twenty-one years of age and shall have a sign posted to restrict access. Exceptions to this subsection must be approved in writing by the commission.

(3) The authorized gaming operator shall submit controls for approval by the commission, that include the following for operating the designated sports wagering area:

(a) Specific procedures and technology partners to fulfill the requirements set forth by the commission;

(b) Other specific controls as designated by the commission;

(c) A process to easily and prominently impose limitations or notification for wagering parameters, including, but not limited to, deposits and wagers; and

(d) An easy and obvious method for a player to make a complaint and to enable the player to notify the commission if such complaint has not been or cannot be addressed by the sports wagering operator.

(4) The commission shall develop policies and procedures to ensure a prohibited participant is unable to place a sports wager or parimutuel wager.

Source: Laws 2021, LB561, § 34; Laws 2022, LB876, § 20.
Effective date April 20, 2022.

9-1111 Game of chance; cheating; gaming device; manipulation; penalties.

(1) Any person who knowingly cheats at any game of chance is guilty of a Class I misdemeanor.

(2) Any person who manipulates, with the intent to cheat, any component of a gaming device in a manner contrary to the designed and normal operational purpose of the component, including varying the pull of the handle of a gaming machine, with knowledge that the manipulation affects the outcome of the game or with knowledge of any event that affects the outcome of the game, is guilty of a Class I misdemeanor.

Source: Laws 2021, LB561, § 35.

9-1112 Participation in unlawful manner; violations; penalties.

(1) Any person who, in playing any game of chance designed to be played with or to receive or to be operated by tokens approved by the commission or by lawful currency of the United States, knowingly uses tokens other than those approved by the commission, uses currency that is not lawful currency of the United States, or uses currency not of the same denomination as the currency intended to be used in that game is guilty of a Class I misdemeanor.

(2) Any person who knowingly has in such person's possession within a gaming facility any device intended to be used to violate the Nebraska Racetrack Gaming Act is guilty of a Class I misdemeanor.

(3) Any person, other than a duly authorized employee of an authorized gaming operator acting in furtherance of such person's employment within a gaming facility, who knowingly has in such person's possession within a gaming facility any key or device known by such person to have been designed for the purpose of and suitable for opening, entering, or affecting the operation of any game, any dropbox, or any electronic or mechanical device connected to the game or dropbox, is guilty of a Class I misdemeanor.

(4) Any person who knowingly and with intent to use any paraphernalia for manufacturing slugs for cheating or has such paraphernalia in such person's possession is guilty of a Class I misdemeanor. Possession of more than two items of the equipment, products, or material described in subdivision (4)(a) or (b) of this section permits a rebuttable presumption that the possessor intended to use such paraphernalia for cheating. For purposes of this subsection, paraphernalia for manufacturing slugs (a) means the equipment, products, and materials that are intended for use or designed for use in manufacturing, producing, fabricating, preparing, testing, analyzing, packaging, storing, or concealing a counterfeit facsimile of tokens approved by the commission or a lawful coin of the United States, the use of which is unlawful pursuant to the Nebraska Racetrack Gaming Act, and (b) includes: (i) Lead or lead alloy; (ii) molds, forms, or similar equipment capable of producing a likeness of a gaming token or coin; (iii) melting pots or other receptacles; (iv) torches; and (v) tongs, trimming tools, or other similar equipment.

Source: Laws 2021, LB561, § 36.

9-1113 Gaming device; acts prohibited; penalties.

(1) A person who manufactures, sells, or distributes a device that is intended by such person to be used to violate any provision of the Nebraska Racetrack Gaming Act is guilty of a Class I misdemeanor.

(2) A person who marks, alters, or otherwise modifies any gaming device in a manner that (a) affects the result of a wager by determining win or loss or (b) alters the normal criteria of random selection that (i) affects the operation of a game of chance or (ii) determines the outcome of a game of chance is guilty of a Class I misdemeanor.

(3) A person who knowingly possesses any gaming device that has been manufactured, sold, or distributed in violation of the Nebraska Racetrack Gaming Act is guilty of a Class I misdemeanor.

Source: Laws 2021, LB561, § 37.

9-1114 Making false or misleading statement or entry or failure to maintain or make an entry; penalty.

A person who, in an application, book, or record required to be maintained or in a report required to be submitted by the Nebraska Racetrack Gaming Act or a rule or regulation adopted and promulgated by the commission, knowingly makes a statement or entry that is false or misleading or fails to maintain or make an entry the person knows is required to be maintained or made is guilty of a Class IV felony.

Source: Laws 2021, LB561, § 38; Laws 2022, LB876, § 21.
Effective date April 20, 2022.

9-1115 Participation prohibited; violations; penalties.

(1) A person who knowingly permits an individual whom the person knows is younger than twenty-one years of age to participate in a game of chance is guilty of a Class I misdemeanor.

(2) A person who participates in a game of chance when such person is younger than twenty-one years of age at the time of participation is guilty of a Class I misdemeanor.

Source: Laws 2021, LB561, § 39.

9-1116 Violations; general penalty provisions.

A person who willfully violates, attempts to violate, or conspires to violate any of the provisions of the Nebraska Racetrack Gaming Act for which no other penalty is provided is guilty of a Class I misdemeanor.

Source: Laws 2021, LB561, § 40.

9-1117 Authorized gaming operator; license; application; contents.

(1) Any applicant for an authorized gaming operator license shall include in the application to the commission the following:

(a) A market assessment that includes the feasibility and sustainability of the proposed licensed racetrack enclosure for operating games of chance in such proposed location as part of the market in Nebraska at the time of the application, including a study of the impact of such facility on both horseracing and the operation of games of chance in the state;

(b) An analysis of the anticipated impact on infrastructure, including water, electricity, natural gas, roads, and public safety, including police and fire departments;

(c) Zoning and initial planning approval from the city nearest the site of the proposed licensed racetrack enclosure;

(d) A full disclosure of the applicant's record as a racetrack and games of chance operator, including multi-jurisdictional experience;

(e) Evidence of how the proposed licensed racetrack enclosure will improve and give back in a meaningful and sustained way to the community in which the applicant is proposing to build such facility; and

(f) Any other information required by the commission.

(2) The commission may reject an application that does not meet the requirements of this section.

Source: Laws 2022, LB876, § 18.
Effective date April 20, 2022.

9-1118 List of self-excluded persons.

(1) The commission shall establish a list of persons self-excluded from licensed racetrack enclosures in Nebraska. A person may request such person's name to be placed on the list of self-excluded persons by filing an application with the commission, on forms prescribed by the commission, requesting to be self-excluded and agreeing to take personal responsibility for not visiting licensed racetrack enclosures in Nebraska. The application shall specify that, by applying to be a person self-excluded from licensed racetrack enclosures, the applicant agrees that during any period of voluntary exclusion the person is not eligible to collect any winnings or recover any losses resulting from any gaming activity at a licensed racetrack enclosure or be present at a licensed racetrack enclosure.

(2) The commission shall adopt and promulgate rules and regulations for the list of self-excluded persons, including:

(a) Procedures for placement on the list;

(b) The terms for self-removal from the list;

(c) Procedures for providing the list to licensed racetrack enclosures; and

(d) Other such procedures the commission determines are necessary for the effective and efficient administration of the list.

(3) The commission may revoke, limit, condition, suspend, or fine an authorized gaming operator or any officer, employee, or agent of the operator if such licensee knowingly or recklessly fails to exclude or eject from its premises any person on the list of self-excluded persons.

(4) An authorized gaming operator or the officers, agents, and employees of the operator shall not market directly to any person on any list of self-excluded persons. An authorized gaming operator shall deny access to complimentary check-cashing privileges, club programs, and other similar benefits to any person on the list of self-excluded persons.

(5) The list of self-excluded persons shall not be open to public inspection. Nothing in this section shall prohibit an authorized gaming operator from disclosing the identity of any person on the list of self-excluded persons to any affiliated gaming facility operator or other jurisdiction for the limited purpose of assisting in the proper administration of responsible gaming programs in Nebraska or as authorized by law in another jurisdiction.

(6) A person placed on the list of self-excluded persons is prohibited from entering a licensed racetrack enclosure in Nebraska and is ineligible to place a legal wager in Nebraska at such licensed racetrack enclosure. A person on the list of self-excluded persons shall not collect any winnings or recover losses resulting from prohibited gaming activity, and such winnings shall be forfeited to the commission to be used for problem gambling treatment, prevention, and education programs.

Source: Laws 2022, LB876, § 17.
Effective date April 20, 2022.

ARTICLE 12
TAXATION OF GAMES OF CHANCE

Section
9-1201. Annual gaming tax.
9-1202. Terms, defined.
9-1203. Tax; amount; collection.
9-1204. Tax; proceeds; distribution.
9-1205. Tax; report.
9-1206. Tax; delinquent; penalty; interest.
9-1207. Reports; violations; penalty.
9-1208. Severability.
9-1209. Failure to pay tax or fee; lien; procedures; priority; extension; termination; release or subordination.

9-1201 Annual gaming tax.

To the full extent permitted by the Constitution of Nebraska, including amendments to the Constitution of Nebraska adopted contemporaneously with the enactment of sections 9-1201 to 9-1208, an annual gaming tax is hereby imposed on the operation of all games of chance by authorized gaming operators within licensed racetrack enclosures.

Source: Initiative Law 2020, No. 431, § 1.

9-1202 Terms, defined.

For purposes of sections 9-1201 to 9-1209:

(1) Authorized gaming operator means a person or entity licensed pursuant to the Nebraska Racetrack Gaming Act to operate games of chance within a licensed racetrack enclosure;

(2) Designated sports wagering area means an area, as designated by the gaming commission, in which sports wagering is conducted;

(3) Dollar amount collected means the total dollar amount wagered by players of games of chance less the total dollar amount returned to such players as prizes;

(4) Game of chance means any game which has the elements of chance, prize, and consideration, including any wager on a slot machine, table game, counter game, or card game, a keno lottery conducted in accordance with the Nebraska County and City Lottery Act, or sports wagering. Game of chance does not include any game the operation of which is prohibited at a casino by federal law;

(5) Gaming commission means the State Racing and Gaming Commission;

(6) Gross gaming revenue means the dollar amount collected by an authorized gaming operator from operation of all games of chance within a licensed racetrack enclosure as computed pursuant to applicable statutes, rules, and regulations less the total of (a) all federal taxes, other than income taxes, imposed on the operation of such games of chance and (b) the amount provided to players by an authorized gaming operator as promotional gaming credits, but only to the extent such promotional gaming credits are redeemed by players to play one or more games of chance being operated by the authorized gaming operator;

(7) Licensed racetrack enclosure means a premises at which licensed live horseracing is conducted in accordance with the Constitution of Nebraska and applicable Nebraska law;

(8) Promotional gaming credit means a credit, token, or other item of value provided by an authorized gaming operator to a player for the purpose of enabling the player to play a game of chance; and

(9) Sports wagering has the same meaning as in section 9-1103.

Source: Initiative Law 2020, No. 431, § 2; Laws 2021, LB561, § 41.

Cross References

Nebraska County and City Lottery Act, see section 9-601.
Nebraska Racetrack Gaming Act, see section 9-1101.

9-1203 Tax; amount; collection.

An annual gaming tax is imposed on gross gaming revenue generated by authorized gaming operators within licensed racetrack enclosures from the operation of all games of chance equal to twenty percent of such gross gaming revenue. The gaming commission shall collect the tax and shall account for and remit such tax as set forth by law.

Source: Initiative Law 2020, No. 431, § 3.

9-1204 Tax; proceeds; distribution.

Of the tax imposed by section 9-1203, seventy-five percent shall be remitted to the State Treasurer for credit as follows: Two and one-half percent to the Compulsive Gamblers Assistance Fund, two and one-half percent to the General Fund, and seventy percent to the Property Tax Credit Cash Fund. The remaining twenty-five percent of the tax shall be remitted to the county treasurer of the county in which the licensed racetrack enclosure is located to be distributed as follows: (1) If the licensed racetrack enclosure is located completely within an unincorporated area of a county, the remaining twenty-five percent shall be distributed to the county in which such licensed racetrack enclosure is located; or (2) if the licensed racetrack enclosure is located at least partially within the limits of a city or village in such county, one-half of the remaining twenty-five percent shall be distributed to such county and one-half of the remaining twenty-five percent to the city or village in which such licensed racetrack enclosure is at least partially located.

Source: Initiative Law 2020, No. 431, § 4.

9-1205 Tax; report.

Every authorized gaming operator subject to taxation as set forth in sections 9-1201 to 9-1209 shall pay such tax by the fifteenth of each month to the gaming commission and make report thereof to the gaming commission under such rules and regulations as may be prescribed by the gaming commission.

Source: Initiative Law 2020, No. 431, § 5; Laws 2021, LB561, § 43; Laws 2022, LB876, § 22.
Effective date April 20, 2022.

9-1206 Tax; delinquent; penalty; interest.

If the tax provided for in sections 9-1201 to 9-1209 is not paid within such time as provided in section 9-1205 or as may be prescribed for payment thereof

by rules and regulations prescribed by the gaming commission, the same shall become delinquent and a penalty of ten percent shall be added thereto, together with interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, until paid.

Source: Initiative Law 2020, No. 431, § 6; Laws 2021, LB561, § 44; Laws 2022, LB876, § 23.
Effective date April 20, 2022.

9-1207 Reports; violations; penalty.

Any authorized gaming operator that willfully fails, neglects, or refuses to make any report required by sections 9-1201 to 9-1209, or by rules and regulations adopted and promulgated under sections 9-1201 to 9-1209, or that knowingly makes any false statement in any such report, is guilty of a Class IV felony.

Source: Initiative Law 2020, No. 431, § 7; Laws 2021, LB561, § 45; Laws 2022, LB876, § 24.
Effective date April 20, 2022.

9-1208 Severability.

If any section or provision of sections 9-1201 to 9-1208 is determined by a court of competent jurisdiction to be unconstitutional or otherwise void or invalid for any reason, such determination shall not affect the validity of sections 9-1201 to 9-1208 as a whole or any part thereof, other than the part so determined to be unconstitutional or otherwise void or invalid.

Source: Initiative Law 2020, No. 431, § 8.

9-1209 Failure to pay tax or fee; lien; procedures; priority; extension; termination; release or subordination.

(1) If any person liable to pay any tax or fee under the Nebraska Racetrack Gaming Act or sections 9-1201 to 9-1208 neglects or refuses to pay such tax or fee after demand, the amount of such tax or fee, including any interest, penalty, and additions to such tax, and such additional costs that may accrue, shall be a lien in favor of the gaming commission upon all property and rights to property, whether real or personal, then owned by such person or acquired by such person thereafter and prior to the expiration of the lien. Unless another date is specifically provided by law, such lien shall arise at the time of the assessment and shall remain in effect: (a) For three years from the time of the assessment or one year after the expiration of an agreement between the gaming commission and a taxpayer for payment of tax which is due, whichever is later, if the notice of lien is not filed for record in the office of the appropriate filing officer; (b) for ten years from the time of filing for record in the office of the appropriate filing officer; or (c) until such amounts have been paid or a judgment against such person arising out of such liability has been satisfied or has become unenforceable by reason of lapse of time, unless a continuation statement is filed prior to the lapse.

(2)(a) The gaming commission may present for filing or file for record in the office of the appropriate filing officer a notice of lien specifying the year the tax was due, the tax program, and the amount of the tax and any interest, penalty, or addition to such tax that are due. Such notice shall be filed for record in the office of the appropriate filing officer within three years after the time of

assessment or within one year after the expiration of an agreement between the gaming commission and a taxpayer for payment of tax which is due, whichever is later. Such notice shall contain the name and last-known address of the taxpayer, the last four digits of the taxpayer's social security number or federal identification number, the gaming commission's serial number, and a statement to the effect that the gaming commission has complied with all provisions of the Nebraska Racetrack Gaming Act and sections 9-1201 to 9-1208 in the determination of the amount of the tax and any interest, penalty, and addition to such tax required to be paid.

(b) If the assets of the taxpayer are in the control or custody of the court in any proceeding before any court of the United States or of any state or the District of Columbia, before the end of the time period in subdivision (2)(a) of this section, the notice shall be filed for record within the time period or within six months after the assets are released by the court, whichever is later.

(3)(a) A lien imposed upon real property pursuant to the Uniform State Tax Lien Registration and Enforcement Act shall be valid against any subsequent creditor when notice of such lien and the amount due has been presented for filing by the gaming commission in the office of the Secretary of State and filed in the office of the register of deeds. A lien imposed upon personal property pursuant to the Uniform State Tax Lien Registration and Enforcement Act shall be valid against any subsequent creditor when notice of such lien and the amount due has been filed by the gaming commission in the office of the Secretary of State.

(b) In the case of any prior mortgage on real property or secured transaction covering personal property so written as to secure a present debt and future advances, the lien provided in this section, when notice thereof has been filed in the office of the appropriate filing officer, shall be subject to such prior lien unless the gaming commission has notified the lienholder in writing of the recording of such tax lien, in which case the lien of any indebtedness thereafter created under such mortgage or secured transaction shall be junior to the lien provided for in this section.

(4) The lien may, within ten years from the date of filing for record of the notice of lien in the office of the appropriate filing officer, be extended by filing for record a continuation statement. Upon timely filing of the continuation statement, the effectiveness of the original notice shall be continued for ten years after the last date to which the filing was effective. After such period the notice shall lapse in the manner prescribed in subsection (1) of this section unless another continuation statement is filed prior to such lapse.

(5) When a termination statement of any tax lien issued by the gaming commission is filed in the office where the notice of lien is filed, the appropriate filing officer shall enter such statement with the date of filing in the state tax lien index where notice of the lien so terminated is entered and shall file the termination statement with the notice of the lien.

(6) The gaming commission may at any time, upon request of any party involved, release from a lien all or any portion of the property subject to any lien provided for in the Uniform State Tax Lien Registration and Enforcement Act or subordinate a lien to other liens and encumbrances if the gaming commission determines that (a) the tax amount and any interest, penalties, and additions to such tax have been paid or secured sufficiently by a lien on other property, (b) the lien has become legally unenforceable, (c) a surety bond or

other satisfactory security has been posted, deposited, or pledged with the gaming commission in an amount sufficient to secure the payment of such taxes and any interest, penalties, and additions to such taxes, or (d) the release, partial release, or subordination of the lien will not jeopardize the collection of such taxes and any interest, penalties, and additions to such taxes.

(7) A certificate by the gaming commission stating that any property has been released from the lien or the lien has been subordinated to other liens and encumbrances shall be conclusive evidence that the property has in fact been released or the lien has been subordinated pursuant to the certificate.

Source: Laws 2021, LB561, § 42.

Cross References

Nebraska Racetrack Gaming Act, see section 9-1101.
Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

CHAPTER 10
BONDS

Article.
1. General Provisions. 10-101 to 10-145.
2. Uniform Registration and Cancellation of Bonds. 10-201 to 10-209.
3. Compromise of Indebtedness. 10-301 to 10-305.
4. Internal Improvement Bonds. 10-401 to 10-411.
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10. Private Activity Bonds. 10-1001.
11. Nebraska Governmental Unit Security Interest Act. 10-1101 to 10-1106.
12. Nebraska Governmental Unit Credit Facility Act. 10-1201 to 10-1206.

Cross References

Constitutional provisions:
Limitation of state on indebtedness, see Article XIII, section 1, Constitution of Nebraska.
Special acts of Legislature authorizing indebtedness, void, see Article III, section 18, Constitution of Nebraska.
Agricultural societies, refunding provisions, see sections 2-1301 and 2-1302.
Aviation fields:
City airport authorities, see Chapter 3, articles 3 and 5, and Chapter 18, article 15.
County airport authorities, see Chapter 3, article 6.
Joint airport authorities, see Chapter 3, article 7.
Bonds of cities:
Cities of the first class, see Chapter 16.
Cities of the metropolitan class, see Chapter 14.
Cities of the primary class, see Chapter 15.
Cities of the second class and villages, see Chapter 17.
Various classes of cities and villages, see Chapters 18 and 19.
Bonds of counties:
Bridge construction and repair, see sections 23-397 and 23-398.
Courthouse and other county buildings, see section 23-120.
Other building bonds, see Chapter 23, article 3.
Road construction and improvement, see section 39-1906.
Bridges, see sections 39-835 to 39-842 and 39-856 to 39-867.
Building commissions, see section 13-1301 et seq.
Cemeteries, municipal, see Chapter 12, article 10.
Coal discovery aid bonds, see section 57-106.
Community Development Law, see section 18-2101.
Cooperative financing of municipal projects, see section 18-2401 et seq.
Docks, see section 13-1416.
Drainage districts, see Chapter 31, articles 1, 3, 4, and 5.
Fire department equipment, bonds for, see sections 18-1201 and 18-1202.
Funding bonds, issuance by:
Cities of the first class, see section 16-214.
Cities of the metropolitan class, see section 14-524.
Cities of the second class and villages, see sections 10-606 et seq. and 17-146.
Health districts, bonds for, see section 71-1622.
Heating systems, lighting systems, ice plants, see sections 19-1401 to 19-1404.
Hospitals, county, see Chapter 23, article 35.
Industrial development, revenue bonds, see section 13-1101 et seq.
Interest, general provisions, see Chapter 45.
Interlocal Cooperation Act, see section 13-801.
Irrigation district bonds, see Chapter 46.
Jail, bonds for construction of, see section 47-305.
Nebraska Investment Finance Authority, bonds authorized, see section 58-252 et seq.
Official bonds, see Chapter 11.
Park board, joint facilities, see sections 13-306 and 13-307.
Power district bonds, see Chapter 70, article 6.
Public safety equipment, bonds for, see sections 18-1201 and 18-1202.
Reclamation districts, see sections 46-567.01 to 46-567.04.

Sanitary and improvement districts, see Chapter 31, article 7.
Sanitary drainage districts, see Chapter 31, article 5.
Sewerage systems in cities, bonds for, see Chapter 18, article 5.
Sinking funds, investment of, see sections 77-2334 and 77-2341.
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ARTICLE 1

GENERAL PROVISIONS

Section

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10-101 State and county treasurers as fiscal agents; exception; bonds; where payable; coupon notes, interest on.

Except as provided in sections 10-134 to 10-141, the State Treasurer shall be the state fiscal agent, and all bonds and coupons issued by the state shall be made payable at the office of the State Treasurer. Except as provided in sections 10-134 to 10-141, the county treasurer shall be the county fiscal agent, and all bonds and coupons issued by any county, township, precinct, city, village, school district, or other political subdivision of a county shall be made payable at the office of the county treasurer, except that all revenue bonds and coupons of cities of the first class may at the discretion of such city be payable at the office of the city treasurer. If the interest on any such bonds is represented by coupon notes, such coupon notes shall contain a provision fixing the rate of interest they shall bear after due until they are paid. When any of the political subdivisions as above enumerated lies in two or more counties, the bonds shall be payable at the office of either one of the county treasurers as may be provided in the history and in the bonds or as provided in sections 10-134 to 10-141.

Source: Laws 1913, c. 15, § 1, p. 78; R.S.1913, § 365; Laws 1917, c. 7, § 1, p. 60; C.S.1922, § 282; Laws 1925, c. 90, § 1, p. 270; C.S.1929, § 11-101; R.S.1943, § 10-101; Laws 1967, c. 30, § 1, p. 148; Laws 1969, c. 51, § 1, p. 273; Laws 1983, LB 421, § 10.

10-102 Remittances; how made; expenses.

All officers, designated by law for the purpose, shall remit to the State Treasurer, or county treasurer, at least ten days before maturity of any bonds or coupons heretofore or hereafter made payable at the office of the State Treasurer, or the office of any county treasurer, sufficient money out of the tax collected for the purpose, for the redemption of such bonds and coupons. All expenses for exchange and postage, shall be a proper charge against the state, county, city, township, precinct, village, school district or other political subdivision, for which such money is remitted, and shall be allowed the treasurer in his settlement. Any and all such bonds and coupons as shall be paid by any county treasurer shall be a charge against the proper fund of any township, precinct, city, village, school district or other political subdivision for which he has collected taxes or received the funds. Each county treasurer in making remittance for the payment of bonds and coupons shall make such remittance either in New York bank exchange or federal reserve bank exchange or its equivalent.

Source: Laws 1913, c. 15, § 2, p. 78; R.S.1913, § 366; Laws 1917, c. 7, § 1, p. 61; C.S.1922, § 283; C.S.1929, § 11-102; R.S.1943, § 10-102.

10-103 Payment; cancellation and return; duty of state agent.

On receipt of any funds by the state agent, it shall be the duty of such agent to notify the officer from whom received, of the receipt thereof; and immediately on the payment of such bonds or coupons for which funds were remitted, said coupons or bonds shall be canceled and returned to the officer from whom such funds were received.

Source: Laws 1913, c. 15, § 4, p. 79; R.S.1913, § 368; C.S.1922, § 285; C.S.1929, § 11-104; R.S.1943, § 10-103.

10-104 Repealed. Laws 1983, LB 421, § 18.

10-105 Donations to railroad corporations; conditions; noncompliance; effect.

No proposition shall be submitted to the electors of any county for donations of bonds or any other valuables to any railroad corporation, unless said railroad corporation, through its authorized and responsible agent, files for record in the county clerk's office, where such donations of bonds or any other valuables are to be voted upon, a plat of the survey showing the exact line of route through said county, within at least two weeks previous to such election; and no such bonds, or other evidences of indebtedness, or donations, shall be valid if they are voted, unless said railroad corporation builds its line of road within forty rods of the survey as filed in the county clerk's office.

Source: Laws 1879, § 1, p. 151; R.S.1913, § 370; C.S.1922, § 287; C.S. 1929, § 11-106; R.S.1943, § 10-105.

10-106 County bonds; registration; procedure; certified statement; record.

The officers of any county in this state issuing bonds shall register in a book kept for that purpose (1) the notice of election, the manner and time of publication, the question submitted, and the adoption of the proposition pursuant to which such bonds were issued and (2) the date, the amount, the number, the maturity, and the place of payment of such bonds, the rate of interest thereon, and the time when and place where such interest is payable. They shall, at the time such bonds are issued, make out and transmit to the county clerk a certified statement of such registry, which shall be attested by the county clerk under his or her official seal. The county clerk, upon the receipt of such statement, shall, in a book kept for that purpose, make an accurate record of the same.

Source: Laws 1875, § 1, p. 169; R.S.1913, § 371; C.S.1922, § 288; C.S. 1929, § 11-107; R.S.1943, § 10-106; Laws 2001, LB 420, § 3.

This section applies to refunding bonds. State ex rel. Niles v. Weston, 67 Neb. 175, 93 N.W. 182 (1903).

10-107 County bonds; statement of county indebtedness; duties of county clerk; compensation.

At such times as the Auditor of Public Accounts may request, the county clerk shall make out, certify, and transmit to the auditor a full and complete statement of the bonded indebtedness of every description of such county at the date of such statement, particularly setting forth the nature of such bonds and the purpose for which the same were issued. The county clerk shall receive the same compensation for services rendered under this section and section 10-106

as is allowed by law for a copy of like records. Such compensation shall be paid by the county.

Source: Laws 1875, § 2, p. 170; R.S.1913, § 372; C.S.1922, § 289; C.S. 1929, § 11-108; R.S.1943, § 10-107; Laws 2001, LB 420, § 4.

Mandamus petition must show that Auditor of Public Accounts was furnished with necessary data. State ex rel. Niles v. Weston, 67 Neb. 175, 93 N.W. 182 (1903).

10-108 Repealed. Laws 2001, LB 420, § 38.

10-109 Repealed. Laws 2001, LB 420, § 38.

10-110 County bonds; retirement; taxes; levy and collection; duties of county clerk.

The county clerk shall ascertain from the assessment roll of the county the amount of taxable property in such county and the percentage required to be levied thereon to pay the interest and to create a sinking fund. The county clerk shall levy such percentage upon the taxable property of the county and shall place the same upon the tax roll of the county in a separate column or columns, designating the purposes for which the taxes are levied. The taxes shall be collected by the county treasurer in the same manner that other taxes are collected.

Source: Laws 1875, § 5, p. 171; R.S.1913, § 375; C.S.1922, § 292; C.S. 1929, § 11-111; R.S.1943, § 10-110; Laws 2001, LB 420, § 5.

Sinking fund tax is levied for public loans, not for floating indebtedness. Union P. Ry. Co. v. York County, 10 Neb. 612, 7 N.W. 270 (1880); Union P. R. R. Co. v. Buffalo County, 9 Neb. 449, 4 N.W. 53 (1880).

10-111 County bonds; retirement; interest; payment; sinking fund; investment; conditions.

Upon the receipt of such money by the county treasurer, he shall, out of the same, at once proceed to pay off the interest accrued upon such registered bonds, at the place where such interest is made payable. The county treasurer shall cause the coupons for all interest thus paid to be surrendered, which coupons shall be filed with and canceled by the county clerk, and his receipt taken therefor and retained by said treasurer. The money thus collected and remaining in the hands of the county treasurer after the payment of the said interest as herein provided, except a sufficient amount to pay the accruing interest upon such bonds for the current year, shall be retained as a sinking fund for the final redemption of such bonds, and shall be invested by the county treasurer, when so ordered by the county board, (1) in redeeming the bonds of the county issuing the same, (2) in the bonds of the State of Nebraska, and (3) in the bonds of the United States; *Provided*, the bonds thus purchased shall in all cases be purchased at the lowest market price, after twenty days' notice by publication in at least one newspaper published and in general circulation at the capital city or town of the state; the cost of which advertising, at legal rates, shall be paid out of the sinking fund for the redemption of such bonds.

Source: Laws 1875, § 6, p. 171; R.S.1913, § 376; C.S.1922, § 293; C.S. 1929, § 11-112; R.S.1943, § 10-111.

10-112 County bonds; retirement; payment out of state; procedure.

When the interest and principal, or interest only, of any registered bonds are payable in New York City, or elsewhere out of the state, payment shall be then made at the place so designated in such bond or coupon, or at the financial agency of the state for such purposes. In order that the funds may not be misapplied, the county treasurer shall procure a draft for the amount, to be transmitted by drawing his check on some bank in this state, and both check and draft shall be so endorsed as to show upon what bond or bonds the funds shall be applied; or at the request of the party holding or owning such bonds, payment may be made at the office of said treasurer.

Source: Laws 1875, § 7, p. 172; R.S.1913, § 377; C.S.1922, § 294; C.S. 1929, § 11-113; R.S.1943, § 10-112.

10-113 County treasurer; liability for bond funds.

The tax and funds so collected shall be deemed pledged and appropriated to the payment of the interest and principal of the registered bonds herein provided for, until fully satisfied, and the county treasurer shall be liable on his official bond for the faithful disbursement of all money so collected or received by him.

Source: Laws 1875, § 8, p. 172; R.S.1913, § 378; C.S.1922, § 295; C.S. 1929, § 11-114; R.S.1943, § 10-113.

10-114 County bonds; payment; cancellation at maturity; procedure; expenses.

When any registered bonds mature, they shall be paid off by the county treasurer at the place where payable out of any money in his or her hands or under his or her control for that purpose, and when so paid the bonds shall be endorsed Canceled by the county treasurer on the face thereof, together with the date of payment, and filed with the county clerk, who shall enter satisfaction of such bonds. If the bonds are payable out of the state, an allowance of one-fourth of one percent shall be made to the county treasurer for the expense attendant in making such payment, to be deducted from any money in his or her hands remaining after payment of such matured bonds.

Source: Laws 1875, § 9, p. 172; R.S.1913, § 379; C.S.1922, § 296; C.S. 1929, § 11-115; R.S.1943, § 10-114; Laws 1990, LB 924, § 1.

10-115 Statement of business transacted; duties of county treasurer and county clerk.

The county treasurer and county clerk shall, when ordered by the county board, publish a detailed statement of the business transacted by them under the provisions of sections 10-101 to 10-125.

Source: Laws 1875, § 10, p. 173; R.S.1913, § 380; C.S.1922, § 297; C.S.1929, § 11-116; R.S.1943, § 10-115.

10-116 Repealed. Laws 1983, LB 421, § 18.

10-117 Village and city of the second class; certified transcript of proceedings; duties of village or city clerk; lost records.

The clerk of any village or city of the second class in which any bonds are issued shall furnish a duly certified transcript to the holder of any bond of any such village or city on demand of such holder, except that if the records of such

proceedings have been destroyed by fire or other public calamity, a certified statement of the clerk of all proceedings had prior to the issuance of such bonds shall, when approved by resolution of the city council or village board, have the same force and effect as such certified transcript would have had.

Source: Laws 1885, c. 7, § 3, p. 93; R.S.1913, § 382; Laws 1921, c. 191, § 1, p. 709; C.S.1922, § 299; C.S.1929, § 11-118; R.S.1943, § 10-117; Laws 2001, LB 420, § 6.

Certified history of proceedings for issuance of bonds is required. Belza v. Village of Emerson, 159 Neb. 651, 68 N.W.2d 272 (1955).

This section requires city clerk to furnish Auditor of Public Accounts with a certified transcript of all proceedings had previous to the issuance of bonds, and when it appears therefrom that bonds were legally issued for a lawful purpose it is the auditor's duty to register them. State ex rel. City of Tekamah v. Marsh, 108 Neb. 835, 189 N.W. 381 (1922).

10-118 Repealed. Laws 2001, LB 420, § 38.

10-118.01 Repealed. Laws 2001, LB 420, § 38.

10-119 Precinct bonds; retirement; taxes; levy and collection; duties of county board and county treasurer.

The county board shall, at the usual time of levying taxes in each year, levy a tax upon all the property of the proper precinct, sufficient to pay the annual interest on the bonds and the principal thereof, in accordance with the terms of the proposition under which the bonds were issued. Taxes so levied shall be collected by the county treasurer as other taxes are collected, and the proceeds of the levy shall be retained by the county treasurer and used for the payment of interest on the bonds and the principal thereof as the same become due to the holder thereof, except that in cities having a population of more than fifty 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 money so collected shall be forwarded to or retained in the treasury of the city for the payment of bonds and interest for which the money was collected.

Source: Laws 1885, c. 8, § 2, p. 95; R.S.1913, § 384; Laws 1921, c. 191, § 2, p. 710; C.S.1922, § 301; C.S.1929, § 11-120; R.S.1943, § 10-119; Laws 2001, LB 420, § 7; Laws 2017, LB113, § 1.

10-120 Precinct refunding bonds; sale authorized; use of proceeds.

When the county board of any county issues bonds to refund the bonded indebtedness of any precinct in the State of Nebraska, and in case an exchange of said refunding bonds cannot be effected, the county board is hereby authorized to sell said refunding bonds from time to time, in such sums as may be necessary to create a fund for the redemption of the outstanding bonds aforesaid and pay interest on such bonds to the date of redemption. The money realized from the sale of said refunding bonds shall not be expended or used for any other purpose than for refunding said outstanding bonds and interest on the bonds.

Source: Laws 1885, c. 9, § 1, p. 95; R.S.1913, § 385; C.S.1922, § 302; C.S.1929, § 11-121; R.S.1943, § 10-120; Laws 1983, LB 421, § 12.

10-121 Repealed. Laws 2001, LB 420, § 38.

10-122 Repealed. Laws 2001, LB 420, § 38.

10-123 Precinct, township, or school district bonds; duty of local boards.

Precinct, township, or school district boards or officers shall file for record with the county clerk the question submitted, the notice and proof of publication, and the return of votes for and against all bonds issued by such precinct, township, or school district.

Source: G.S.1873, c. 63, § 1, p. 883; R.S.1913, § 388; C.S.1922, § 305; C.S.1929, § 11-124; R.S.1943, § 10-123; Laws 1990, LB 924, § 2.

Certificate of registration on back of bonds is evidence of corporate existence of school district. State ex rel. Hopkins v. School Dist. No. 7, of Sherman County, 21 Neb. 725, 33 N.W. 266 (1887).

Act of 1875, amending this section and relating to levy of taxes, was invalid because it contained more than one subject and was broader than the title. B. & M. R. R. Co. v. Board of County Comrs. of Saunders County, 9 Neb. 507, 4 N.W. 240 (1880).

Power to borrow money to erect schoolhouse did not authorize issuance of negotiable bonds. Ashuelot Nat. Bank of Keene v. School Dist. No. 7, of Valley County, 56 F. 197 (8th Cir. 1893).

10-124 Precinct, township, or school district bonds; duty of county clerk; record; contents; fee.

It shall be the duty of the county clerk, in a book prepared for that purpose, to record the question submitted, the notice and proof of publication, the return of votes for and against; and the fee for so doing, to be paid by the precinct, township, or school district board or officers, as the case may be, shall be the same as charged for the recording of deeds and mortgages.

Source: G.S.1873, c. 63, § 2, p. 884; R.S.1913, § 389; C.S.1922, § 306; C.S.1929, § 11-125; R.S.1943, § 10-124.

10-125 Repealed. Laws 1949, c. 12, § 1.

10-126 Bonds; when redeemable; exceptions; call premium, when authorized; procedure for calling; resolution, when required; notice; prepayment.

(1) All bonds of indebtedness, issued after September 7, 1947, by any county, precinct, city, village, school district, drainage district, or irrigation district or any other municipal corporation or governmental subdivision of the state shall be redeemable at the option of the governmental subdivision or municipal corporation issuing such bonds at any time on or after five years from the date of issuance, except that this provision shall not apply to (a) bonds of public power districts, public power and irrigation districts, metropolitan utilities districts, cities of the metropolitan and primary classes, and housing authorities of any city or village, (b) issues of revenue bonds exceeding one million dollars of cities of the first and second classes and of villages, (c) issues of bonds exceeding ten million dollars of any school district of one thousand or more students in membership as provided in the fall school district membership report pursuant to subsection (4) of section 79-528 immediately preceding the issuance of bonds, or (d) bonds issued by the Board of Regents of the University of Nebraska or the Board of Trustees of the Nebraska State Colleges. Bonds of a district created under Chapter 31 or 39 shall in addition, after annexation of the district by any municipality, be redeemable at the option of the annexing municipality at any time after annexation of such district if at the time of redemption at least five years have elapsed from date of issuance. Such condition shall be plainly set forth in all bonds of any governmental subdivision of the state or municipal corporation hereafter issued to which it applies.

(2) The issuer, except districts organized under Chapter 31 or 39, of any such bonds of indebtedness, when the total amount of bonds at par value authorized as a single issue is five hundred thousand dollars or more, may agree to pay a call premium of not to exceed four percent of the par value for the redemption of such bonds. Districts organized under Chapter 31 or 39 may agree to pay a call premium of not to exceed two percent of the par value of such bonds when a single issue is five hundred thousand dollars or more, and bonds of such districts shall have no other bond redemption call or prepayment restrictions except as provided in this section. Bonds listed in subdivisions (1)(a) through (1)(d) of this section may contain such provisions with respect to their redemption as the public power district, public power and irrigation district, metropolitan utilities district, city, village, housing authority, school district, Board of Regents, or Board of Trustees shall provide.

(3) All bonds issued which do not provide a special procedure for calling and prepayments shall be called by a resolution passed by the governing body of the obligor, which resolution shall designate the bond or bonds to be prepaid by stating the date of the bonds, the purpose for which the bonds were issued, the bond numbers of the bonds so called, and the date set for prepayment. The issuer of any bonds which are required by this section to be issued subject to an option of redemption shall, at least thirty days prior to the date set for prepayment of such bonds, send notice by mail of the call to each holder of the called bonds as shown in its records. A true copy of the resolution shall be filed by the obligor with the paying agent on or before the call date.

(4) If the obligor deposits sufficient funds with the paying agent to pay the called bonds and accrued interest to date of call in full on or before the call date, the bonds shall cease to be a liability of the obligor, otherwise the call shall be revoked, and the bonds continue in effect the same as though no call had been made.

Source: Laws 1947, c. 15, § 1, p. 81; Laws 1961, c. 23, § 1, p. 131; Laws 1961, c. 24, § 1, p. 133; Laws 1963, c. 36, § 1, p. 199; Laws 1965, c. 35, § 1, p. 226; Laws 1967, c. 31, § 1, p. 149; Laws 1969, c. 48, § 1, p. 264; Laws 1975, LB 446, § 1; Laws 1976, LB 825, § 1; Laws 1992, LB 746, § 58; Laws 2000, LB 968, § 1; Laws 2001, LB 420, § 8; Laws 2002, LB 957, § 14.

10-127 Replacement bond; issuance authorized; when.

The State Highway Commission, any county, city, village, municipal county, school district, drainage district, irrigation district, public power district, public power and irrigation district, metropolitan utilities district, the Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, community colleges, sanitary and improvement districts, rural water districts, airport authorities, hospital authorities, or any other municipal corporation or governmental subdivision of the state which has the power to issue bonds or other evidences of indebtedness may issue bonds or other evidences of indebtedness of like date, tenor, amount, and maturity to replace mutilated, destroyed, stolen, or lost bonds or other evidences of indebtedness previously issued and having attached thereto the same corresponding unmatured coupons, if any, as were attached to the mutilated, destroyed, stolen, or lost bonds or other evidences of indebtedness. Issuance of replacement bonds or other evidences of indebtedness of like date, tenor, amount, and maturity may be

made (1) in exchange and in substitution for such mutilated bond or other evidence of indebtedness and attached unmatured coupons, if any, upon surrender of such mutilated bond or other evidence of indebtedness and attached unmatured coupons, if any, or (2) in lieu of and in substitution for the destroyed, stolen, or lost bond or other evidence of indebtedness and attached unmatured coupons. In the event such bond or other evidence of indebtedness and attached unmatured coupons, if any, have been destroyed, stolen, or lost, the holder thereof shall first file with the issuer evidence satisfactory to it that such bond or other evidence of indebtedness and attached unmatured coupons have been destroyed, stolen, or lost and of such holder's ownership thereof and shall in any event furnish the issuer with indemnity satisfactory to it and shall comply with any statutory requirements and with such other requirements as the issuer may require. A charge, not exceeding the actual cost thereof, shall be imposed upon such owner to reimburse the issuer for the expenses for issuing each such new bond or evidence of indebtedness, which cost shall be paid before the delivery of the new bond or evidence of indebtedness. Instead of issuing a substituted bond or evidence of indebtedness or instead of delivery of any coupon for a bond or evidence of indebtedness, as the case may be, which has matured or which is about to mature and instead of issuing a substituted bond or other evidence of indebtedness for a bond or other evidence of indebtedness which has been called for redemption, the issuer, upon receiving evidence and being indemnified as provided in this section, at its option may pay the bond or other evidence of indebtedness or such coupon from any source lawfully available therefor without the surrender thereof.

Source: Laws 1971, LB 873, § 1; Laws 1988, LB 802, § 1; Laws 2000, LB 1135, § 2; Laws 2001, LB 142, § 21.

10-128 Replacement bond; issuance; procedure.

Each replacement bond or other evidence of indebtedness shall be authorized by a resolution of the governing body of the issuer and shall be executed by the then appropriate officers thereof.

Source: Laws 1971, LB 873, § 2; Laws 1990, LB 924, § 3; Laws 2001, LB 420, § 9.

10-129 Replacement bond; issuance; notice.

Upon the issuance of any replacement bond or other evidence of indebtedness the issuer shall notify the paying agent with respect thereto and such paying agent shall not make payment of any portion of the principal or interest of any such mutilated, destroyed, stolen or lost bond or other evidence of indebtedness which has been replaced and shall promptly notify the issuer of such bond or other evidence of indebtedness if and when any such bond or other evidence of indebtedness so replaced is ever presented for payment.

Source: Laws 1971, LB 873, § 3.

10-130 Replacement bond; blank bond; printing authorized.

When any of the issuing bodies described in section 10-127 issues bonds or other evidences of indebtedness after April 30, 1971, such body may cause to be printed a sufficient number of blank bonds or other evidences of indebtedness

as it shall deem necessary to provide for future requirements with respect to the issuance of replacement bonds or other evidences of indebtedness.

Source: Laws 1971, LB 873, § 4.

10-131 Bonds of municipal corporation or political subdivision; signatures.

Notwithstanding any other provisions of the statutes of the State of Nebraska with respect to the issuance of bonds, interest coupons, and other evidence of indebtedness by any county, city, village, municipal county, school district, public power district, public power and irrigation district, airport authority, sanitary and improvement district, or any other municipal corporation or political subdivision, if any bond or other evidence of indebtedness is signed by more than one officer of such issuer, one of the signatures shall be manually affixed thereto and the other signatures may be facsimile signatures of such officers, and with respect to any interest coupons appertaining to any bond or evidence of indebtedness, the signatures on such interest coupon may be facsimile signatures.

Source: Laws 1977, LB 265, § 1; Laws 2001, LB 142, § 22.

10-132 Bonds of municipal corporation or political subdivision; seal.

If any public officer, county clerk, city clerk, or secretary of any governing body is required to affix the seal of his or her office to any such bond or evidence of indebtedness, the seal may be a facsimile of such seal printed on the bond or evidence of indebtedness.

Source: Laws 1977, LB 265, § 2; Laws 2001, LB 420, § 10.

10-133 Bonds of municipal corporation or political subdivision; fiscal and consultant fees; how paid.

Any county, city, village, municipal county, school district, public power district, public power and irrigation district, airport authority, sanitary and improvement district, or any other municipal corporation or political subdivision is hereby authorized to pay fiscal and consultant fees incurred with respect to issuance and sale of any bonds, notes, or other evidence of indebtedness out of the proceeds from the sale of such bonds or any other funds available to the issuer, and such payment shall not constitute or be considered as a discount with respect to the sale price of the bonds, notes, or other evidence of indebtedness.

Source: Laws 1977, LB 265, § 4; Laws 2001, LB 142, § 23.

10-134 Terms, defined.

As used in sections 10-134 to 10-141, unless the context otherwise requires:

(1) Bond shall mean any bonds, notes, interim certificates, evidences of bond ownership, bond anticipation notes, warrants, or other evidence of indebtedness;

(2) Bond ordinance shall mean the ordinance or resolution adopted by the governing body of an issuer authorizing an issue of bonds and shall include any indenture or similar instrument executed by the issuer in connection with a bond issue;

(3) Fully registered bond shall mean a bond, without interest coupons, as to which the principal and interest are payable to the person shown on the records of the registrar as the owner of the bond as of each interest or principal record payment date designated by the issue in the bond ordinance;

(4) Governing body shall mean the council, board, or other legislative body having charge of the governance of the issuer;

(5) Issuer shall mean any county, city, village, school district, sanitary and improvement district, fire protection district, public corporation, or any other governmental body or political subdivision of the State of Nebraska; and

(6) Paying agent or registrar shall mean: (a) The treasurer or finance officer of the issuer; (b) any national or state bank having trust powers or any trust company; (c) any municipal securities dealer registered under Section 15B of the Securities Exchange Act of 1934, except that such a dealer may act as a paying agent or registrar only with respect to warrants or an issue of bonds maturing within five years from the date of issuance; or (d) the county treasurer of the county in which the issuer is located if such treasurer shall agree to perform such duty. The paying agent and registrar for a bond issue may be, but are not required to be, the same person or entity.

Source: Laws 1983, LB 421, § 1.

10-135 Fully registered bonds; issuance authorized.

Any issuer, otherwise authorized to issue bonds, is hereby authorized to issue such bonds as fully registered bonds pursuant to sections 10-134 to 10-141. Fully registered bonds shall be issued on such terms as the authorizing laws shall permit, except as otherwise specifically provided in sections 10-134 to 10-141, and in cases of conflict, the terms of sections 10-134 to 10-141 shall govern. Fully registered bonds shall bear interest at such rate or rates, be in such denominations, be in such form and contain such provisions for registration, reissue, and transfer, be executed in such manner, be payable at such place and by any such paying agent, and be sold in such manner and for such prices as the governing body of the issuer shall determine. Fully registered bonds may be executed with the facsimile signature of the officers of the issuer designated to execute such bonds and need not be manually executed by any officers of the issuers, except that each bond shall be authenticated as to its validity in the manner designated by the governing body of the issuer in the bond ordinance. Fully registered bonds may bear the facsimile seal of the issuer printed on the bond.

Source: Laws 1983, LB 421, § 2.

10-136 Fully registered bonds; issuer; registrar; powers and duties.

For each issue of fully registered bonds, the issuer shall designate a registrar and one or more paying agents. The registrar shall have such duties with respect to maintaining records as to ownership of fully registered bonds and handling transfers of ownership as the governing body shall determine and the registrar shall accept. To carry out transfers of ownership of bonds, the registrar may be authorized to issue replacement bonds to replace previously issued bonds or to issue other evidence of ownership of bonds, and all replacement bonds or ownership documents shall be on the same terms as the bonds initially issued by the issuer for which the replacement bonds or other ownership documents are issued. No issuer shall be responsible for payment on

any bonds of any issue in excess of (1) the principal amount of the bonds of such issue plus interest on the principal, (2) any applicable redemption premium, and (3) any fees and expenses of the registrar and paying agents which the issuer has agreed to pay. An issuer may designate in the bond ordinance a record payment date for payment of interest and the record payment date may be prior to the due date for interest on any bond. Any issuer may authorize and provide for ownership of fully registered bonds to be in book-entry form with ownership being evidenced only on the books of the registrar or in such other manner as the issuer shall provide in the bond ordinance.

Source: Laws 1983, LB 421, § 3.

10-137 Bond anticipation notes; issuance authorized; conditions.

Any issuer, except a sanitary and improvement district, which is authorized to issue warrants to pay costs of any water, sanitary, or storm sewer or other utility improvement or any street improvement, pending permanent financing by issuance of bonds, is hereby authorized to provide temporary financing for costs of such improvements by issuance of bond anticipation notes in lieu of issuing warrants. Such notes may be issued in the amount of the estimated cost of the improvements to be financed, including interest to accrue on such notes, as such estimated costs shall be determined by the governing body. Such notes shall be paid from the proceeds of bonds which the issuer is otherwise authorized to issue for such improvements and from any other funds available for the purpose. Bond anticipation notes may be issued on such terms and conditions and sold in such manner and at such prices as the governing body of the issuer shall determine. An issuer which has issued and has outstanding bond anticipation notes pursuant to this section may issue refunding notes with which to call and redeem all or any part of the outstanding notes at or before maturity or the redemption day of the notes. Such refunding notes may be issued in an amount sufficient to pay any redemption premium and interest to accrue and become payable on the notes being refunded to the date of payment of such notes. The refunding notes may be issued on such terms and conditions and sold in such manner and at such prices as the governing body of the issuer shall determine and shall be payable from the same sources as would have been available for payment of the notes being refunded.

Source: Laws 1983, LB 421, § 4.

10-138 Refunding warrants; issuance authorized; conditions.

Any issuer, except a sanitary and improvement district, which has issued outstanding warrants may issue refunding warrants with which to pay and redeem all or any part of the outstanding warrants, including interest to accrue and become payable on the warrants being refunded. Such refunding warrants may be issued on such terms and conditions and sold at such prices as the governing body of the issuer shall determine. Refunding warrants shall be payable from the same sources as would have been available for payment of the warrants being refunded.

Source: Laws 1983, LB 421, § 5.

10-139 County treasurer or other officer holding funds; duties.

Any county treasurer or other officer holding any funds of an issuer shall transfer to the issuer or to a paying agent all or such portion of such funds as

the governing body or treasurer of the issuer shall request. The county treasurer or officer making payment to the issuer or to a paying agent as requested shall have no further responsibility for the funds so transferred. Upon request, one payment shall be for the funds collected or received during the previous calendar month and shall be paid not later than the fifteenth of the following month. A second demand may be made prior to the fifteenth of the month on taxes and special assessments collected or received, during the first fifteen days of the month. The second demand shall be paid not later than the last day of the month.

Source: Laws 1983, LB 421, § 6; Laws 1998, LB 1104, § 3.

10-140 Issuance of bonds; recording requirements.

Within sixty days after the initial issuance and delivery of all fully registered bonds, the issuer shall maintain a record of the issuance including (1) the following information: (a) The name of the issuer; (b) the title or designation of the bonds; (c) the total principal amount of such bonds initially issued; (d) the date or dates of maturity of principal and the amount of principal maturing on such date or dates; (e) the interest rate or rates and the date or dates such interest is payable; (f) the place or places where the principal of and interest on the bonds are payable; (g) the costs of issuance paid and to whom; and (h) the principal purpose for which such bonds were issued and (2) a copy of the form filed for the bonds pursuant to section 149(e) of the Internal Revenue Code. Within sixty days after the initial issuance and delivery of all fully registered bonds, the issuer shall also file a record of the information required by this section with the Auditor of Public Accounts who shall maintain such information for public inspection.

Source: Laws 1983, LB 421, § 7; Laws 1986, LB 425, § 1; Laws 1993, LB 516, § 2; Laws 1995, LB 574, § 13; Laws 2001, LB 420, § 11.

10-141 Registrar's records; available for inspection; when.

The records of ownership of fully registered bonds maintained by a registrar shall not be deemed to be public records and shall be available for inspection solely pursuant to a court order or a subpoena of any governmental agency having jurisdiction to issue such subpoena or in accordance with the bond ordinance governing the fully registered bonds.

Source: Laws 1983, LB 421, § 8.

10-142 Refunding bonds; issuance; conditions; application of proceeds.

Any county, city, village, municipal county, school district, drainage district, irrigation district, metropolitan utilities district, rural water district, airport authority, or hospital authority, the Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, the governing board of any community college, or any other municipal or public corporation, governmental subdivision, or body politic or corporate created under Nebraska law exercising essential public functions of the state which has issued or shall issue bonds for any purpose, and such bonds or any part of such bonds remain unpaid and are a legal liability against such issuer and are bearing interest, is hereby authorized to issue refunding bonds with which to call and redeem all or any part of such outstanding bonds at or before the maturity or the redemption date of such bonds. Such issuer may include various series and

issues of the outstanding bonds in a single issue of refunding bonds and issue refunding bonds to pay any redemption premium and interest to accrue and become payable on the outstanding bonds being refunded. The refunding bonds may be issued and delivered at any time prior to the date of maturity or the redemption date of the bonds to be refunded that the governing body of such issuer determines to be in its best interests. The proceeds derived from the sale of the refunding bonds issued pursuant to this section may be invested in obligations of or guaranteed by the United States Government pending the time the proceeds are required for the purposes for which such refunding bonds were issued. To further secure the refunding bonds, any such issuer may enter into a contract with any bank or trust company within or without the state with respect to the safekeeping and application of the proceeds of the refunding bonds and the safekeeping and application of the earnings on the investment. All bonds issued under the provisions of this section shall be redeemable at such times and under such conditions as the governing body of the issuer shall determine at the time of issuance.

Any outstanding bonds or other evidences of indebtedness issued by any such issuer for which sufficient funds or obligations of or guaranteed by the United States Government have been pledged and set aside in safekeeping to be applied for the complete payment of such bonds or other evidence of indebtedness at maturity or upon redemption prior to maturity, interest thereon, and redemption premium, if any, shall not be considered as outstanding and unpaid.

Each new refunding bond so issued shall state on the bond (1) the object of its issue, (2) this section or sections of the law under which such issue was made, including a statement that the issue is made in pursuance of such section or sections, and (3) the date and principal amount of the bond or bonds for which the refunding bonds are being issued.

Source: Laws 1983, LB 421, § 14; Laws 1990, LB 692, § 1; Laws 2001, LB 142, § 24.

10-143 Sections, how construed.

Sections 10-134 to 10-142 shall be deemed to provide an additional alternative and complete method for doing of the things authorized in such sections and shall be deemed and construed to be supplemental and additional to powers conferred by any other laws or home rule charters and shall not be regarded to be in degradation of any powers existing on March 10, 1983, except that insofar as provisions of sections 10-134 to 10-142 are inconsistent with any other law or home rule charter, the provisions of sections 10-134 to 10-142 shall be controlling.

Source: Laws 1983, LB 421, § 16.

10-144 Bonds issued by agency or political subdivision; registration not required.

Bonds issued after May 8, 2001, by any agency or political subdivision of the state shall not be registered in the office of the Auditor of Public Accounts.

Source: Laws 2001, LB 420, § 1.

10-145 Political subdivision; Internet auction system; authorized.

Any political subdivision may, at the discretion of the governing body of the subdivision, sell bonds which the political subdivision is authorized to issue under any provision of law using an Internet auction system. The governing body shall comply with all other statutory requirements for the issuance of the bonds.

Source: Laws 2003, LB 175, § 16.

ARTICLE 2

UNIFORM REGISTRATION AND CANCELLATION OF BONDS

Section

10-201. Repealed. Laws 2001, LB 420, § 38.
10-201.01. Repealed. Laws 2001, LB 420, § 38.
10-202. Repealed. Laws 2001, LB 420, § 38.
10-203. Repealed. Laws 1990, LB 924, § 7.
10-204. Repealed. Laws 1990, LB 924, § 7.
10-205. Repealed. Laws 1990, LB 924, § 7.
10-206. Repealed. Laws 1990, LB 924, § 7.
10-207. Repealed. Laws 1990, LB 924, § 7.
10-208. Repealed. Laws 1990, LB 924, § 7.
10-209. Registration by paying agent; when; content; interest requirement; procedure; order of payment.

10-201 Repealed. Laws 2001, LB 420, § 38.

10-201.01 Repealed. Laws 2001, LB 420, § 38.

10-202 Repealed. Laws 2001, LB 420, § 38.

10-203 Repealed. Laws 1990, LB 924, § 7.

10-204 Repealed. Laws 1990, LB 924, § 7.

10-205 Repealed. Laws 1990, LB 924, § 7.

10-206 Repealed. Laws 1990, LB 924, § 7.

10-207 Repealed. Laws 1990, LB 924, § 7.

10-208 Repealed. Laws 1990, LB 924, § 7.

10-209 Registration by paying agent; when; content; interest requirement; procedure; order of payment.

Except as otherwise expressly specified by statute or the ordinance, resolution, or instrument authorizing the issuance of any bond or interest coupon mentioned in this section, whenever a bond or an interest coupon appertaining thereto issued by a county, city, village, school district, irrigation district, or other municipal or public corporation or political subdivision of the State of Nebraska is presented for payment to the county treasurer, city treasurer, or other person or corporation designated as the paying agent and there is not sufficient money to pay the same in the fund out of which such bond or coupon is payable, the county treasurer, city treasurer, or other person or corporation designated by law as the paying agent shall register such bond or coupon in a book kept by him or her for that purpose. No such bond or coupon shall be presented or registered prior to its maturity date. Each such bond or coupon so registered shall be registered in order of its presentation for payment, and in

the event that several of such bonds or coupons are presented for payment simultaneously, such bonds or coupons shall be registered in accordance with the numbers assigned to such bonds at the time of their issue or in accordance with the numbers assigned to the bonds to which such coupons appertain at the time of their issue. Thereafter money coming into such fund shall be applied to payment of such bonds or interest coupons, as the case may be, in the order of their registration. The county treasurer, city treasurer, or other person or corporation designated by law as the paying agent shall keep a record of such registrations showing the time, date, and serial number of each registration, the name of the county, city, village, irrigation district, or other municipal or public corporation or political subdivision of the state or the corporate name of the school district as described in section 79-405 issuing such bond or coupon, the date, kind, and serial number of such registered bond and of the bond to which each registered coupon appertains, the maturity date, the principal amount of the bond or coupon so registered, and the name and address of the person presenting such bond or coupon for payment. On the back of each of such bonds or coupons, the county treasurer, city treasurer, or other person or corporation designated by law as the paying agent shall enter the word Registered with the time, date, and serial number of such registration and return such bond or coupon to the person who has so presented the same for payment. All such bonds and coupons shall contain a provision fixing the rate of interest they shall bear after due if the paying agent does not have sufficient money to pay such bonds or coupons on the due date thereof, but if any such bonds or coupons shall not contain such provision, such bonds or coupons shall bear interest at the rate of nine percent per annum from due date until the paying agent has funds to pay such bonds or coupons and interest thereon.

Source: Laws 1935, c. 157, § 1, p. 579; C.S.Supp.,1941, § 11-210; R.S. 1943, § 10-209; Laws 1972, LB 983, § 1; Laws 1988, LB 1142, § 1; Laws 1996, LB 900, § 1016.

ARTICLE 3

COMPROMISE OF INDEBTEDNESS

Section

10-301. Power and duty of political subdivisions.
10-302. Conditions; procedure.
10-303. Coupon bonds; issuance; conditions; limitations.
10-304. Coupon bonds; terms; rate of interest; tax levy.
10-305. Coupon bonds; record; duty of local board.

10-301 Power and duty of political subdivisions.

Any county, precinct, township or town, city, village or school district is hereby authorized and required to compromise its indebtedness in the manner hereinafter provided.

Source: Laws 1903, c. 10, § 1, p. 63; R.S.1913, § 400; C.S.1922, § 317; C.S.1929, § 11-301; R.S.1943, § 10-301.

10-302 Conditions; procedure.

Whenever the county board of any county, the city council of any city, the board of trustees of any village, or the school board of any school district, shall be satisfied by petition or otherwise, that any such county, precinct, township or town, city, village or school district, is unable to pay in full its indebtedness,

and one-third of the resident freeholders of such county, precinct, township or town, city, village or school district shall by petition ask that such county, precinct, township or town, city, village or school district compromise such indebtedness, it is hereby required to enter into negotiations with the owner or owners, holder or holders of any such indebtedness, of whatever form, for scaling, discounting or compromising the same.

Source: Laws 1903, c. 10, § 2, p. 63; R.S.1913, § 401; C.S.1922, § 318; C.S.1929, § 11-302; R.S.1943, § 10-302.

10-303 Coupon bonds; issuance; conditions; limitations.

Whenever satisfactory arrangements are made with the owner or owners, holder or holders, or any of them, of such indebtedness, for the payment of the same, the county board, for and on behalf of any such county, precinct, township or town, or the city council of any such city, or the board of trustees of any such village, or the school board of any such school district, upon petition of two-thirds of the resident freeholder of such county, precinct, township or town, village or school district shall have the authority, and it is hereby required to issue the coupon bonds of such county, precinct, township or town, city, village or school district, and after registration to deliver the same to the owner or owners, holder or holders of such indebtedness, in satisfaction of the same, not exceeding the amount of the original indebtedness; *Provided*, the amount of bonds issued under sections 10-301 to 10-305 shall not exceed the total amount of bonded indebtedness which any such county, precinct, township or town, city, village or school district may be empowered to issue by law; *provided further*, sections 10-301 to 10-305 shall not be construed to permit the issuance under any form or authority whatever of a greater bonded indebtedness than is specifically authorized by law; *provided further*, that said sections shall not be used as a subterfuge or for any purpose for the payment of any claims for which the county, precinct, township or town, city, village or school district is authorized to issue bonds by virtue of any other specific act, nor to satisfy any claim or debt which has been wrongfully or illegally authorized.

Source: Laws 1903, c. 10, § 3, p. 63; R.S.1913, § 402; Laws 1921, c. 209, § 1, p. 744; C.S.1922, § 319; C.S.1929, § 11-303; R.S.1943, § 10-303.

10-304 Coupon bonds; terms; rate of interest; tax levy.

Before issuing bonds under the provisions of sections 10-301 to 10-303, the board issuing the same shall by resolution entered upon its records recite the number and denomination of the bonds to be issued, the rate of interest, and to whom and when payable. Such bonds shall be payable in not more than twenty years from the date of their issue, or at any time on or after five years from the date of issuance thereof, at the option of the board issuing the same. They shall bear interest payable annually or semiannually, as provided in said bonds. Said board shall levy a tax on all the taxable property in such county, precinct, township or town, city, village or school district in addition to other taxes, to pay the interest and principal of said bonds as the same shall mature.

Source: Laws 1903, c. 10, § 4, p. 64; R.S.1913, § 403; C.S.1922, § 320; C.S.1929, § 11-304; R.S.1943, § 10-304; Laws 1947, c. 15, § 3, p. 83; Laws 1969, c. 51, § 2, p. 273.

10-305 Coupon bonds; record; duty of local board.

Every board issuing bonds under the provisions of sections 10-301 to 10-304 shall keep a complete record of all transactions connected therewith.

Source: Laws 1903, c. 10, § 5, p. 64; R.S.1913, § 404; C.S.1922, § 321; C.S.1929, § 11-305; R.S.1943, § 10-305.

ARTICLE 4

INTERNAL IMPROVEMENT BONDS

Section
10-401. County and city bonds; issuance; conditions; limitations.
10-402. County and city bonds; election; proposition; contents.
10-403. County and city bonds; proposition; rate of interest.
10-404. County and city bonds; publication required; resubmission limited.
10-405. County and city bonds; payment; tax levy.
10-406. Railroad aid bonds; precinct, township, city of the second class, or village; petition; election; issuance; conditions; limitations.
10-407. Courthouse bonds; city of the second class; election; proposition; issuance; conditions; limitations; resubmission.
10-408. Courthouse bonds; election; procedure.
10-409. Precinct, township, city of the second class, or village bonds; petition; election; issuance; conditions; limitations; tax levy.
10-410. Precinct, township, city of the second class, or village bonds; issuance; conditions; record.
10-411. Precinct, township, city of the second class, or village bonds; payment; taxes; levy and collection.

10-401 County and city bonds; issuance; conditions; limitations.

Any county or city in the State of Nebraska is hereby authorized to issue bonds to aid in the construction of any railroad or other work of internal improvement in an amount to be determined by the county board of such county or the city council of such city not exceeding three and five-tenths percent of the taxable valuation of all taxable property in the county or city. The county board or city council shall first submit the question of the issuing of such bonds to a vote of the legal voters of the county or city in the manner provided by law for submitting to the people of a county the question of borrowing money.

Source: Laws 1869, § 1, p. 92; R.S.1913, § 405; C.S.1922, § 322; C.S. 1929, § 11-401; R.S.1943, § 10-401; Laws 1979, LB 187, § 18; Laws 1992, LB 719A, § 16.

1. Constitutionality
2. Internal improvements
3. Submission of proposition
4. Issuance of bonds
5. Limitation on amount
6. Miscellaneous

1. Constitutionality

Act constituting this article sustained as constitutional. Colburn v. McDonald, 72 Neb. 431, 100 N.W. 961 (1904); Dawson County v. McNamar, 10 Neb. 276, 4 N.W. 991 (1880); Hollenbeck v. Hahn, 2 Neb. 377 (1871).

2. Internal improvements

Beet sugar mill not grinding for toll is not work of internal improvement, and bonds cannot be issued to aid in construction. Getchell v. Benton, 30 Neb. 870, 47 N.W. 468 (1890).

A bridge across a river is a work of internal improvement, and county bonds voted to erect it are valid even though entire bridge is within limits of county. State ex rel. Peterson v. Keith County, 16 Neb. 508, 20 N.W. 856 (1884).

A steam gristmill is not a work of internal improvement for which bonds may be voted. State ex rel. Bowen v. Adams County, 15 Neb. 568, 20 N.W. 96 (1884).

A water gristmill is a work of internal improvement for which bonds may be voted. Traver v. Merrick County, 14 Neb. 327, 15 N.W. 690 (1883).

A courthouse is not a work of internal improvement under this article. Dawson County v. McNamar, 10 Neb. 276, 4 N.W. 991 (1880).

Precinct may issue bonds for bridge as internal improvement. South Platte Land Co. v. Buffalo County, 7 Neb. 253 (1878).

Precinct bonds may be issued to aid in building wagon bridge across river as work of internal improvement, even though builders of bridge are authorized to collect tolls. Fremont Bldg. Assn. v. Sherwin, 6 Neb. 48 (1877).

What constitutes a work of internal improvement must be tested by the benefits to be derived by the public, and not by its extent or cost, and under this test a bridge across the Platte River is a work of internal improvement. Union P. Ry. Co. v. Colfax County Comrs., 4 Neb. 450 (1876).

Bonds to aid on construction of irrigation canal are authorized. Date of issuance is when county parts with money and recital of date in bonds is not conclusive. Chicago, B. & Q. R. R. Co. v. Dundy County, 3 Neb. Unof. 391, 91 N.W. 554 (1902).

Bonds may be issued to aid in improving the water power of a river for the purpose of propelling public gristmills as a work of internal improvement. Blair v. Cuming County, 111 U.S. 363 (1884).

A steam gristmill is not a work of internal improvement. Osborne v. Adams County, 106 U.S. 181 (1882) affirmed on rehearing 109 U.S. 1 (1883).

A bridge may be a work of internal improvement for which a precinct may issue bonds, notwithstanding it is to be maintained as a toll bridge. County Commissioners v. Chandler, 96 U.S. 205 (1877).

Bonds may be issued as a donation to a railroad company outside of county, and even outside of state, if the purpose of the road is to give to the county a connection which is desirable with some other region. Railroad Co. v. County of Otoe, 83 U.S. 667 (1872).

Bonds may be issued as a work of internal improvement to aid in construction of canals for irrigation purposes. Keith County v. Citizen's Saving & Loan Assn., 116 F. 13 (8th Cir. 1902).

Statutory authorization to construct canals for irrigation and water power as works of internal improvement is not invalid on ground that a canal so constructed might be devoted primarily to private use, since aid can only be given to construction of waterworks devoted to public use. City of Kearney v. Woodruff, 115 F. 90 (8th Cir. 1902).

A canal constructed for the purpose of irrigating lands in the State of Nebraska is a work of internal improvement for which a county may issue bonds, although its waters are drawn from sources outside of the state. Perkins County v. Graff, 114 F. 441 (8th Cir. 1902).

Building of courthouse is not a work of internal improvement for which bonds may be issued, while building of bridges is. Lewis v. Board of County Comrs. of Sherman County, 5 F. 269 (Cir. Ct., D. Neb. 1881).

3. Submission of proposition

Issuance of revenue bonds by county to defray cost of construction of interstate bridge requires affirmative approval at an election duly held. Ahern v. Richardson County, 127 Neb. 659, 256 N.W. 515 (1934).

Where vote upon issuance of bonds by county to aid railroad is induced by false representations of ownership of railroad by another railroad, bond issue will be enjoined. Nash v. Baker, 37 Neb. 713, 56 N.W. 376 (1893).

Proposition submitted must provide for levying of tax to pay principal as well as interest of bonds sought to be issued. Cook v. City of Beatrice, 32 Neb. 80, 48 N.W. 828 (1891).

A city created out of a village may, prior to election of mayor and council, order an election and issue bonds through the instrumentality of village officers. State ex rel. Fremont, E. & M. V. R. R. Co. v. Babcock, 25 Neb. 709, 41 N.W. 654 (1889).

Under this section, question of issuing bonds must be submitted to a vote of the legal voters. State ex rel. City of Fremont v. Babcock, 25 Neb. 500, 41 N.W. 450 (1889).

4. Issuance of bonds

Bonds authorized by electors to be issued to two individuals to aid in building mill cannot be issued to a partnership having additional members. George v. Cleveland, 53 Neb. 716, 74 N.W. 266 (1898).

The provisions of section 10-104 apply to bonds issued under this article. Brinkworth v. Grable, 45 Neb. 647, 63 N.W. 952 (1895).

Where road is not built by donee, neither donee nor vendee is entitled to bonds. Township of Midland v. Gage County Board, 37 Neb. 582, 56 N.W. 317 (1893).

Bonds issued to alternative donee are voidable only, and innocent purchaser can enforce them. North v. Platte County, 29 Neb. 447, 45 N.W. 692 (1890).

Where bonds are to be issued when railroad is completed and ready for running of trains, railroad company is entitled to bonds although it fails to construct depot within specified time. Townsend v. Lamb, 14 Neb. 324, 15 N.W. 727 (1883).

Bonds signed and sealed outside county may be valid. Jones v. Hurlburt, 13 Neb. 125, 13 N.W. 5 (1882).

Precincts may issue bonds in aid of works of internal improvement, and remedy to enforce payment of bonds is to mandamus county commissioners to levy and collect tax. State ex rel. Chandler v. Bd. of County Comrs. of Dodge County, 10 Neb. 20, 4 N.W. 370 (1880).

Bonds sought to be issued in excess of ten percent of the assessed valuation of county are invalid. Reineman v. C. C. & B. H. Ry., 7 Neb. 310 (1878).

Authorization by vote to subscribe for stock in a railroad company did not empower county commissioners of county to donate bonds to railroad company. Hamlin v. Meadville, 6 Neb. 227 (1877).

Bonds issued under this article without registration and certification are unenforceable. Frank v. Butler County, 139 F. 119 (8th Cir. 1905).

5. Limitation on amount

Precinct may issue bonds in addition to county limit. State ex rel. A. & N. R. R. v. County Comrs. of Lancaster County, 6 Neb. 214 (1877).

Bonds issued in excess of ten percent of assessed valuation are invalid, and fact that bonds were registered and stated they were issued according to law does not estop county from asserting invalidity. Dixon County v. Field, 111 U.S. 83 (1884).

6. Miscellaneous

Issuance of bonds by sanitary district is not controlled by this section. Lang v. Sanitary District, 160 Neb. 754, 71 N.W.2d 608 (1955).

Bonds issued by a city for waterworks which are owned by the city are not donations, and are not to be included in determining aggregate of evidences of indebtedness donated for works of internal improvements. State ex rel. City of Lincoln v. Babcock, 19 Neb. 230, 27 N.W. 98 (1886).

Electors cannot delegate to commissioners power to decide between two donees. Spurck v. L. & N. W. R. R. Co., 14 Neb. 293, 15 N.W. 701 (1883); Jones v. Hurlburt, 13 Neb. 125, 13 N.W. 5 (1882).

Unpaid interest not figured in aggregate. Jones v. Hurlburt, 13 Neb. 125, 13 N.W. 5 (1882).

Petition for mandamus must show particular description of works of internal improvement. State ex rel. Osborne v. Thorne, 9 Neb. 458, 4 N.W. 63 (1880).

In federal court, county may be sued at law on bonds issued by precinct to aid in construction of internal improvements. Nemaha County v. Frank, 120 U.S. 41 (1887).

Action at law lies in federal court against county on bonds issued by precinct, as mandamus is only granted in federal courts in aid of existing jurisdiction. Davenport v. County of Dodge, 105 U.S. 377 (1881).

Bonds issued by precinct are obligations of the county, and suit thereon against county may be maintained at law in federal court. Clapp v. Otoe County, 104 F. 473 (8th Cir. 1900).

10-402 County and city bonds; election; proposition; contents.

The proposition of the question must be accompanied by a provision to levy a tax annually for the payment of the interest on said bonds as it becomes due; *Provided*, an additional amount shall be levied and collected to pay the principal of said bonds when it shall become due.

Source: Laws 1869, § 2, p. 92; Laws 1870, § 1, p. 15; R.S.1913, § 406; C.S.1922, § 323; C.S.1929, § 11-402; R.S.1943, § 10-402.

Where proposition submitted provides for levying tax to pay interest but fails to provide levy for principal, bond issue may be enjoined. Cook v. City of Beatrice, 32 Neb. 80, 48 N.W. 828 (1891).

Submission of proposition to levy tax is mandatory and must be complied with in issuing bonds. State ex rel. Berry v. Babcock, 21 Neb. 599, 33 N.W. 247 (1887).

If proposition submitted does not include provision to levy tax for payment of interest, bonds are void. Hamlin v. Meadville, 6 Neb. 227 (1877).

10-403 County and city bonds; proposition; rate of interest.

The proposition shall state the rate of interest such bond shall draw, and when the principal and interest shall be made payable.

Source: Laws 1869, § 3, p. 92; R.S.1913, § 407; C.S.1922, § 324; C.S. 1929, § 11-403; R.S.1943, § 10-403.

10-404 County and city bonds; publication required; resubmission limited.

Upon a majority of the votes cast being in favor of the proposition submitted, the county board, in the case of a county, and the city council, in the case of a city, shall cause the proposition and the result of the vote to be entered upon the records of said county or city, and a notice of its adoption to be published for two successive weeks in any newspaper in said county or city, if there be one, and if not, then without such publication; and shall thereupon issue said bonds, which shall be and continue a subsisting debt against such county or city until they are paid and discharged; *Provided*, that the question of bond issues in such county or city, when defeated, shall not be resubmitted in substance for a period of six months from and after the date of said election.

Source: Laws 1869, § 4, p. 92; R.S.1913, § 408; C.S.1922, § 325; Laws 1923, c. 69, § 1, p. 206; C.S.1929, § 11-404; R.S.1943, § 10-404; Laws 1971, LB 534, § 2.

Section is specifically limited to counties and cities. Lang v. Sanitary District, 160 Neb. 754, 71 N.W.2d 608 (1955).

If notice is not published, bonds are void. Wilbur v. Wyatt, 63 Neb. 261, 88 N.W. 499 (1901).

10-405 County and city bonds; payment; tax levy.

It shall be the duty of the proper officers of such county or city to cause to be annually levied, collected and paid to the holders of such bonds a special tax on all taxable property within said county or city sufficient to pay the annual interest as the same becomes due. When the principal of said bonds becomes due such officers shall in like manner levy and collect an additional amount sufficient to pay the same as it becomes due; *Provided*, not more than twenty percent of the principal of said bonds shall be collected in any one year.

Source: Laws 1869, § 5, p. 93; Laws 1870, § 2, p. 15; R.S.1913, § 409; C.S.1922, § 326; C.S.1929, § 11-405; R.S.1943, § 10-405; Laws 1947, c. 15, § 4, p. 83.

Sanitary districts never have been included. Lang v. Sanitary District, 160 Neb. 754, 71 N.W.2d 608 (1955).

Where bonds are issued by county to aid in construction of a railroad, taxable property in territory added to the county after the voting of bonds is liable to taxation for their payment. Chicago, St. P., M. & O. Ry. Co. v. Cuming County, 31 Neb. 374, 47 N.W. 1121 (1891).

10-406 Railroad aid bonds; precinct, township, city of the second class, or village; petition; election; issuance; conditions; limitations.

Any precinct, township, city of the second class, or village organized according to law is hereby authorized to issue bonds in aid of the construction of steam railroads, or railroads using electricity or gasoline as motive power, of standard gauge, to an extent not exceeding three and five-tenths percent of the taxable value of the taxable property at the last assessment within such precinct, township, city of the second class, or village, in the manner provided in this section:

(1) A petition for such purpose signed by not less than fifty freeholders or by not less than ten percent of all the freeholders, whichever number is the least, of the precinct, township, city of the second class, or village shall be presented to the county board, city council of cities of the second class, board of trustees of villages, or the board authorized by law to conduct the business of such precinct, township, city of the second class, or village. Such petition shall set forth the nature of the work contemplated, the amount of bonds sought to be voted, the rate of interest, and the length of time the bonds will run, which in no event shall be less than five years nor more than twenty years from the date thereof. The petitioners shall give bond, to be approved by the county board, city council of cities of the second class, or board of trustees of villages, for the payment of expenses of the election in the event that the proposition fails to receive a majority of the votes cast at such election;

(2) Upon receiving such petition, the county board, city council of cities of the second class, or board of trustees of villages shall give notice and call an election in the precinct, township, city of the second class, or village, as the case may be. The notice, call, and election shall be governed by the laws regulating the election for voting bonds for a county; and

(3) Upon a majority of the votes cast being in favor of the proposition submitted, the county board, city council of cities of the second class, or board of trustees of villages, as the case may be, shall issue the bonds in accordance with the petition and notice of election. Such bonds shall be signed by the chairperson of the county board and attested by the county clerk in the case of precinct or township bonds, by the mayor and city clerk in the case of city bonds, and by the chairperson of the board of trustees and village clerk in case of village bonds and shall be attested by their respective seals. Such bonds shall be a subsisting debt against such precinct, township, city of the second class, or village until they are paid and discharged.

Source: Laws 1909, c. 79, § 1, p. 341; R.S.1913, § 410; C.S.1922, § 327; Laws 1929, c. 164, § 1, p. 569; C.S.1929, § 11-406; R.S.1943, § 10-406; Laws 1947, c. 15, § 5, p. 83; Laws 1969, c. 51, § 3, p. 274; Laws 1971, LB 534, § 3; Laws 1979, LB 187, § 19; Laws 1992, LB 719A, § 17.

10-407 Courthouse bonds; city of the second class; election; proposition; issuance; conditions; limitations; resubmission.

The mayor and council of cities of the second class shall have the power to borrow money and pledge the property and credit of such city upon its negotiable bonds in an amount not to exceed one and eight-tenths percent of the taxable valuation of the taxable property within the limits of such city for the purpose of aiding in the building, erecting, constructing, or repairing and furnishing of a county courthouse, in addition to bonds already voted by the county, if authority for the issuance of such bonds has first been obtained by a majority vote of the qualified electors of such city voting on a proposition for such purpose at any general or special election. Such proposition shall be submitted to such electors in the manner provided by law for the submission of propositions to aid in the construction of railroads and other internal improvements. Such bonds shall be sold for not less than par and shall run not to exceed twenty years. The proposition to submit the issue of creating bonded indebtedness therein shall not be resubmitted on the same subject at an election within six months after such proposition has failed to pass.

Source: Laws 1889, c. 9, § 1, p. 81; R.S.1913, § 411; C.S.1922, § 328; Laws 1923, c. 142, § 1, p. 354; C.S.1929, § 11-407; R.S.1943, § 10-407; Laws 1969, c. 51, § 4, p. 275; Laws 1971, LB 534, § 4; Laws 1979, LB 187, § 20; Laws 1980, LB 599, § 1; Laws 1992, LB 719A, § 18.

10-408 Courthouse bonds; election; procedure.

The election at which any such proposition shall be voted upon shall in all respects be conducted and the returns shall be canvassed and declared in the manner now provided by law for such purposes at general elections held in such cities.

Source: Laws 1889, c. 9, § 2, p. 82; R.S.1913, § 412; C.S.1922, § 329; C.S.1929, § 11-408; R.S.1943, § 10-408.

10-409 Precinct, township, city of the second class, or village bonds; petition; election; issuance; conditions; limitations; tax levy.

Any precinct, township, city of the second class, or village organized according to law is hereby authorized to issue bonds in aid of works of internal improvements, such as improving streets in cities of the second class and villages, highways, bridges, jails, city and town halls, high schools, county high schools, school dormitories, and the drainage of swamp and wet lands, within such municipal divisions, and for the construction or purchase of a telephone system for use of the inhabitants thereof, in an amount not exceeding seven-tenths of one percent of the taxable valuation of all the taxable property as shown by the last assessment within such precinct, township, city of the second class, or village, in the manner directed in this section:

(1) A petition signed by not less than fifty freeholders of the precinct, township, city of the second class, or village shall be presented to the county board, city council of cities of the second class, board of trustees of villages, or the board authorized by law to conduct the business of such precinct, township, city of the second class, or village. Such petition shall set forth the nature of the work contemplated, the amount of bonds sought to be voted, the rate of interest, and the length of time the bonds will run, which in no event shall be less than two years nor more than twenty years from the date thereof. The petitioners shall give bond, to be approved by the county board, city council of

cities of the second class, or board of trustees of villages, for the payment of the expenses of the election in the event that the proposition fails to receive a majority of the votes cast at such election; and

(2) Upon the receipt of such petition, the county board, city council of cities of the second class, or board of trustees of villages shall give notice and call an election in the precinct, township, city of the second class, or village, as the case may be. Such notice, call, and election shall be governed by the laws regulating an election for voting bonds for a county. When a proposition is submitted for the issuance of bonds for the acquisition of a site or the construction of a single building to be used as a city hall, auditorium, fire station, or community house in cities of the second class, it shall be required, as a condition precedent to the issuance of such bonds, that a majority of the votes cast shall be in favor of such proposition. Bonds in such a city shall not be issued for such purpose in the aggregate to exceed one and four-tenths percent of the taxable valuation of all the taxable property in such city as shown by the last assessment within such city. The mayor and council in cities of the second class upon the issuance of bonds shall have the power to levy a tax each year not to exceed three and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such city for the purpose of maintaining the city hall constructed as provided in this section.

Source: Laws 1885, c. 58, § 1, p. 268; Laws 1899, c. 49, § 1, p. 261; Laws 1907, c. 76, § 1, p. 286; R.S.1913, § 413; Laws 1921, c. 58, § 1, p. 241; C.S.1922, § 330; C.S.1929, § 11-409; Laws 1931, c. 23, § 1, p. 96; Laws 1939, c. 5, § 1, p. 64; C.S.Supp.,1941, § 11-409; R.S.1943, § 10-409; Laws 1947, c. 15, § 6, p. 84; Laws 1953, c. 287, § 1, p. 926; Laws 1955, c. 45, § 1, p. 160; Laws 1967, c. 33, § 1, p. 153; Laws 1969, c. 51, § 5, p. 275; Laws 1971, LB 534, § 5; Laws 1979, LB 187, § 21; Laws 1980, LB 599, § 2; Laws 1992, LB 719A, § 19.

1. Election proceeding
2. Bonds authorized
3. Miscellaneous

1. Election proceeding

Precinct special election to issue bridge bonds held valid. Petition, notice, and official ballot considered and held sufficient. Lewis v. Eyerly, 120 Neb. 343, 232 N.W. 570 (1930).

Nonresident freeholders owning land in precinct may join in petition. Brooks v. MacLean, 95 Neb. 16, 144 N.W. 1067 (1914).

Terms of proposition set forth in notice of election define authority of county board in contracting with reference to work of internal improvement. Keith County v. Ogallala Power Irrigation Co., 64 Neb. 35, 89 N.W. 375 (1902).

Married woman who is freeholder is lawful petitioner. Cummings v. Hyatt, 54 Neb. 35, 74 N.W. 411 (1898).

To confer jurisdiction on county commissioners to order election to vote bonds by a township in aid of internal improvements, it is necessary that a petition be presented signed by not less than fifty freeholders of the township. Hoxie v. Scott, 45 Neb. 199, 63 N.W. 387 (1895).

Where signing of petition is induced by false representations, bond issue will be enjoined. Wullenwaber v. Dunigan, 30 Neb. 877, 47 N.W. 420 (1890).

President and board of trustees, before election of mayor and council, may call election. State ex rel. Fremont, E. & M. V. R. R. Co. v. Babcock, 25 Neb. 709, 41 N.W. 654 (1889).

In absence of petition signed by fifty freeholders setting forth the nature of the work contemplated, the amount of bonds to be voted, the rate of interest, and date when principal and interest become due, proceedings are invalid. Adoption of amount of tax to be levied is mandatory. State ex rel. Omaha & R. V. R. R. Co. v. Babcock, 21 Neb. 187, 31 N.W. 682 (1887).

2. Bonds authorized

Authority is provided for issuance of bonds for minor political subdivisions. Lang v. Sanitary District, 160 Neb. 754, 71 N.W.2d 608 (1955).

Bonds for normal school are not authorized, as it is not one of the objects enumerated in qualifying clause for which bonds may be issued. State ex rel. Ainsworth Precinct v. Weston, 69 Neb. 695, 96 N.W. 668 (1903).

Bonds for irrigation purposes are authorized. Cummings v. Hyatt, 54 Neb. 35, 74 N.W. 411 (1898); Chicago, B. & Q. R.R. Co. v. Dundy County, 3 Neb. Unof. 391, 91 N.W. 554 (1902).

Bonds issued under this section to aid in construction of courthouse are valid in hands of bona fide purchaser, even though petition asking for calling of election was signed by less than fifty freeholders. Chilton v. Town of Gratton, 82 F. 873 (Cir. Ct., D. Neb. 1897).

3. Miscellaneous

County is liable for expense of publishing notice of township election. Kearney County v. Stein, 26 Neb. 132, 41 N.W. 1071 (1889).

10-410 Precinct, township, city of the second class, or village bonds; issuance; conditions; record.

If a majority of the votes cast at such election are in favor of the proposition, the county board, city council of cities of the second class, or board of trustees of villages shall, as the case may be, without delay, cause to be prepared and shall issue the bonds in accordance with the petition and notice of election. The bonds shall be signed by the chairperson of the county board, or the person authorized to sign county bonds, and be attested by the county clerk, mayor and city clerk of cities of the second class, chairperson of the board of trustees and village clerk of villages, and be attested by the respective seals. The county clerk, village clerk of villages, or city clerk of cities of the second class, as the case may be, shall enter upon the records of the board or council, the petition, bond, notice and call for the election, canvass of the vote, the number, amount, and interest, and the date at which each bond issued shall become payable.

Source: Laws 1885, c. 58, § 2, p. 269; Laws 1899, c. 49, § 2, p. 262; R.S.1913, § 414; Laws 1917, c. 8, § 1, p. 62; C.S.1922, § 331; C.S.1929, § 11-410; R.S.1943, § 10-410; Laws 1967, c. 33, § 2, p. 154; Laws 1971, LB 534, § 6; Laws 2001, LB 420, § 12.

Two-thirds majority vote is required to give validity to bonds. Lang v. Sanitary District, 160 Neb. 754, 71 N.W.2d 608 (1955).

10-411 Precinct, township, city of the second class, or village bonds; payment; taxes; levy and collection.

The county boards, city councils of cities of the second class, or boards of trustees of villages or the person charged with levying the taxes, shall each year until the bonds issued under the authority of section 10-409 be paid, levy upon the taxable property in the precinct, township, city of the second class or village, a tax sufficient to pay the interest and five percent of the principal as a sinking fund; and at the tax levy preceding the maturity of any such bonds, levy an amount sufficient to pay the principal and interest due on said bonds.

Source: Laws 1885, c. 58, § 3, p. 270; Laws 1899, c. 49, § 3, p. 263; R.S.1913, § 415; C.S.1922, § 332; C.S.1929, § 11-411; R.S.1943, § 10-411.

Levy of tax for sanitary drainage district authorized. Lang v. Sanitary District, 160 Neb. 754, 71 N.W.2d 608 (1955).

ARTICLE 5
FUNDING BONDS OF COUNTIES

Section
10-501. Issuance; conditions; limitations.
10-502. Terms; conditions.
10-503. Sale; price; duties of county board; vote.
10-504. Sale; proceeds; disposition; exchange.
10-505. Payment; notice to holders; cancellation; form.
10-506. Record; contents; duty of county treasurer.
10-507. Tax levy; limit.
10-508. County board; adopt rules and regulations.
10-509. Prohibited acts; penalty.

10-501 Issuance; conditions; limitations.

The county board of any county in the State of Nebraska is hereby empowered to issue coupon bonds of any denomination, as it deems best, sufficient to

pay the outstanding and unpaid bonds, warrants, and indebtedness of such county. The county board of any county may limit the provisions of sections 10-501 to 10-509 to any fund or funds of the county. No bonds shall be issued to a greater amount than three and five-tenths percent of the taxable valuation of such county, and the county board shall first submit the question of issuing bonds to a vote of the qualified electors of such county.

Source: Laws 1879, § 132, p. 387; Laws 1883, c. 28, § 1, p. 191; R.S.1913, § 416; C.S.1922, § 333; C.S.1929, § 11-501; R.S.1943, § 10-501; Laws 1979, LB 187, § 22; Laws 1992, LB 719A, § 20.

There was no authority to issue refunding bonds prior to act of 1883. State ex rel. Otoe County v. Babcock, 23 Neb. 802, 37 N.W. 645 (1888).

Bonds held valid by federal court in hands of a bona fide holder may be compromised and bonds issued under this article to refund prior issue. State ex rel. Leese v. Wilkinson, 20 Neb. 610, 31 N.W. 376 (1887).

County commissioners have no authority to employ private parties to refund county bonds, and divert a portion of the amount received therefor from the public treasury. State ex rel. Webster v. Board of County Comrs. of Lancaster County, 20 Neb. 419, 30 N.W. 538 (1886).

Total issues restricted to ten percent of assessed valuation. State ex rel. Wiant v. Babcock, 18 Neb. 141, 24 N.W. 556 (1885).

This section does not authorize levy of sinking fund tax to pay floating indebtedness. Union P. R. R. Co. v. Buffalo County, 9 Neb. 449, 4 N.W. 53 (1880).

Limitation of amount of bonds to ten percent of assessed valuation applies only to bonds issued under this article without regard to bonds previously issued. Valley County v. McLean, 79 F. 728 (8th Cir. 1897).

10-502 Terms; conditions.

Any bonds hereafter issued under the provisions of sections 10-501 to 10-509 shall be for the payment by the county issuing the same of the sum specified therein, made payable at the office of the county treasurer, and to run not more than twenty years nor less than five years, with interest payable semiannually; the bonds and coupons shall be signed by the chairman of the board, and countersigned by the county clerk of the county; *Provided,* such bonds may be made redeemable at any time after five years, at the option of the county board.

Source: Laws 1879, § 133, p. 387; R.S.1913, § 417; C.S.1922, § 334; C.S.1929, § 11-502; R.S.1943, § 10-502; Laws 1969, c. 51, § 6, p. 277.

Antedating, not to evade law, does not invalidate bonds. State ex rel. Hoffman v. Moore, 46 Neb. 590, 65 N.W. 193 (1895).

10-503 Sale; price; duties of county board; vote.

It shall be the duty of the county board of any county issuing bonds under the provisions of sections 10-501 to 10-509 to ascertain the highest price at which said bonds can be negotiated and to embrace in the proposition submitted to the qualified electors under said sections the minimum price at which said bonds shall be sold. If by the issuance of the proposed bonds, the rate of interest on the said indebtedness will be reduced, and the amount of the indebtedness will not be increased, a majority of the votes cast shall be sufficient to adopt the proposition.

Source: Laws 1879, § 134, p. 388; Laws 1883, c. 28, § 1, p. 192; R.S.1913, § 418; C.S.1922, § 335; C.S.1929, § 11-503; R.S.1943, § 10-503; Laws 1983, LB 421, § 13.

Constitutionality of 1883 amendment sustained permitting issuance of refunding bonds by majority vote. State ex rel. Douglas County v. Cornell, 54 Neb. 72, 74 N.W. 432 (1898).

10-504 Sale; proceeds; disposition; exchange.

It shall be the duty of the board issuing bonds under the provisions of sections 10-501 to 10-509 to negotiate said bonds, and all the proceeds arising

from the sale of said bonds shall be paid into the county treasury of said county, and shall be applied solely to the redemption and payment of the unpaid bonds, warrants and indebtedness of said county; *Provided,* the county board of any county may exchange such bonds at not less than their par value, for the outstanding indebtedness of such county; *Provided further,* no bonds shall be issued, for the purpose of such exchange, for a less sum than fifty dollars.

Source: Laws 1879, § 135, p. 388; Laws 1883, c. 28, § 1, p. 192; R.S.1913, § 419; C.S.1922, § 336; C.S.1929, § 11-504; R.S.1943, § 10-504.

10-505 Payment; notice to holders; cancellation; form.

Whenever bonds subject to sections 10-501 to 10-509 are sold and the proceeds paid into the county treasury, it shall be the duty of the county treasurer to immediately notify the holders of all bonds, warrants, orders, certificates, or audited accounts intended to be redeemed and paid under the provisions of sections 10-501 to 10-509; and the holders of such bonds, warrants, orders, certificates, or audited accounts, dated prior to the issuing of such bonds, shall present the same for payment, and the county treasurer shall pay the same out of the funds so provided, and the county treasurer shall forthwith cancel such bonds, warrants, orders, certificates, or audited accounts so presented and paid, by writing across the face of each of them with red ink, plainly and legibly, the following words (properly filling the blank): ''Canceled from bonds and warrants, bond funds this .... day of .... 20.....

Signed ...., county treasurer. Signed ...., holder.''

Source: Laws 1879, § 136, p. 388; Laws 1883, c. 28, § 1, p. 192; R.S.1913, § 420; C.S.1922, § 337; C.S.1929, § 11-505; R.S.1943, § 10-505; Laws 2004, LB 813, § 1.

10-506 Record; contents; duty of county treasurer.

The treasurer of said county shall record in a book kept for that purpose a statement of all the bonds issued, giving the number, amount, date, and to whom issued; and shall also keep and record in said book a statement of all the bonds, warrants, orders, certificates and audited accounts so taken, giving their number, date, amount of principal and interest, if any, to whom issued, by whom presented for redemption, and as often as he may be called upon by the said board so to do, he shall present a statement thereof, and of all his doings in the premises, to the said county board.

Source: Laws 1879, § 137, p. 389; Laws 1883, c. 28, § 1, p. 193; R.S.1913, § 421; C.S.1922, § 338; C.S.1929, § 11-506; R.S.1943, § 10-506.

10-507 Tax levy; limit.

The county board of any county issuing bonds under the provisions of sections 10-501 to 10-509 shall levy a tax annually for the payment of the interest on said bonds as it becomes due; *Provided,* an additional amount shall be levied and collected sufficient to pay the principal of such bonds at maturity;

and provided, not more than twenty percent of the principal of said bonds shall be levied and collected in any one year.

Source: Laws 1879, § 138, p. 389; R.S.1913, § 422; C.S.1922, § 339; C.S.1929, § 11-507; R.S.1943, § 10-507.

10-508 County board; adopt rules and regulations.

The county board is hereby directed to adopt such rules and regulations governing all officers and other persons in the payment, redemption, cancellation and destruction of such warrants, orders, certificates and audited accounts as it deems necessary and sufficient to protect the interests of the county in furtherance of the provisions of sections 10-501 to 10-509.

Source: Laws 1879, § 139, p. 389; R.S.1913, § 423; C.S.1922, § 340; C.S.1929, § 11-508; R.S.1943, § 10-508.

10-509 Prohibited acts; penalty.

If any person or officer, contrary to the provisions of sections 10-501 to 10-509, shall knowingly issue or deliver, or put in circulation, use, or in any manner dispose of, contrary to law, any warrant, order, certificate or audited account, intended to be redeemed or paid under the provisions of said sections, either before or after the same has been paid or canceled, and thereby defraud, or attempt to defraud, any corporation, county, state or person, he shall be guilty of a Class IV felony.

Source: Laws 1879, § 140, p. 389; R.S.1913, § 424; C.S.1922, § 341; C.S.1929, § 11-509; R.S.1943, § 10-509; Laws 1977, LB 40, § 69.

ARTICLE 6

FUNDING BONDS; GENERAL

Section
10-601. Repealed. Laws 1983, LB 421, § 18.
10-602. Repealed. Laws 1983, LB 421, § 18.
10-603. Repealed. Laws 1983, LB 421, § 18.
10-604. Repealed. Laws 1983, LB 421, § 18.
10-605. Repealed. Laws 1983, LB 421, § 18.
10-606. City of the second class and village; issuance; limitations; election; notice.
10-607. City of the second class; internal improvement and railroad aid refunding bonds; issuance; conditions; limitations; election.
10-608. City of the second class; internal improvement and railroad aid refunding bonds; issuance; requirements.
10-609. Precinct refunding bonds; issuance; condition.
10-610. Precinct refunding bonds; terms; recitals; remedies.
10-611. Precinct refunding bonds; payable to bearer; delivery; sale; price.
10-612. Precinct refunding bonds; payment; tax levy.
10-613. Repealed. Laws 1987, LB 623, § 4.
10-614. Repealed. Laws 1987, LB 623, § 4.
10-615. Refunding bonds; sanitary and improvement district; road improvement district; fire protection district; issuance; conditions.
10-616. Refunding bonds; issuance by annexing city or village.
10-617. Refunding bonds; construction of sections.

10-601 Repealed. Laws 1983, LB 421, § 18.

10-602 Repealed. Laws 1983, LB 421, § 18.

10-603 Repealed. Laws 1983, LB 421, § 18.

10-604 Repealed. Laws 1983, LB 421, § 18.

10-605 Repealed. Laws 1983, LB 421, § 18.

10-606 City of the second class and village; issuance; limitations; election; notice.

Any city of the second class and any village in the State of Nebraska may issue bonds for the purpose of funding any and all indebtedness now existing or hereafter created, now due or to become due; *Provided,* said bonds shall be payable in not less than two years and not more than twenty years from date of their issue, and that said bonds shall bear interest at a rate set by the governing body, with interest coupons attached, payable annually or semiannually; and may levy a tax on all the taxable property in the city or village in addition to other taxes for the payment of said coupons as they respectively become due, and the taxes levied to pay the same shall be payable only in cash or coupons; *Provided,* the city council of said cities or said board of trustees of said villages shall further authorize the issuing of said bonds by ordinance when so instructed by a majority of all of the votes cast at an election held in such city or village for that purpose; notice of said election shall be published in four issues of some legal newspaper, published in the city or village seeking to issue bonds, or if there be no newspaper published in said city or village then by posting said notices in five conspicuous places in said city or village for at least four weeks prior to the date of said election.

Source: Laws 1881, c. 19, § 1, p. 161; Laws 1911, c. 22, § 1, p. 142; R.S.1913, § 429; C.S.1922, § 346; Laws 1925, c. 42, § 1, p. 162; C.S.1929, § 11-605; R.S.1943, § 10-606; Laws 1969, c. 51, § 10, p. 279.

A claim sounding in contract, which may be enforced in the courts, is an indebtedness for the payment of which funding bonds may be issued. State ex rel. City of Tekamah v. Marsh, 108 Neb. 835, 189 N.W. 381 (1922).

10-607 City of the second class; internal improvement and railroad aid refunding bonds; issuance; conditions; limitations; election.

Any city of the second class in the State of Nebraska which has heretofore voted and issued bonds to aid in the construction of any railroad or other work of internal improvement and which bonds or any part thereof still remain unpaid and are a legal liability against such city, and have been finally so determined by a court of competent jurisdiction, and bearing interest at ten percent per annum, is hereby authorized to issue coupon bonds at a rate of interest set by the governing body, to be substituted in place of and exchanged for such bonds heretofore issued, whenever such city can effect such substitution and exchange, which substitution and exchange shall not exceed dollar for dollar; *Provided,* such substitution and exchange shall have first been duly authorized by a majority vote of the people of said city at an election to be held for the purpose as provided in section 10-606.

Source: Laws 1881, c. 19, § 2, p. 162; R.S.1913, § 430; C.S.1922, § 347; C.S.1929, § 11-606; R.S.1943, § 10-607; Laws 1969, c. 51, § 11, p. 280.

10-608 City of the second class; internal improvement and railroad aid refunding bonds; issuance; requirements.

The bonds issued under the provisions of section 10-607 shall have recited therein the object of their issue, and the section of the law under which the issue is made, stating the issue to be in pursuance thereof, and shall also state the number, date and amount of the bond or bonds for which it was substituted, and such new bond shall not be delivered until the surrender of the bond or bonds so designated.

Source: Laws 1881, c. 19, § 3, p. 162; R.S.1913, § 431; C.S.1922, § 348; C.S.1929, § 11-607; R.S.1943, § 10-608.

10-609 Precinct refunding bonds; issuance; condition.

Whenever it shall be determined by the final judgment of any court of competent jurisdiction, that any bonds purporting to have been issued by the county board of any county not under township organization for or on behalf of any precinct or de facto precinct within said county, for a lawful debt of said county payable by a tax levy upon the property in the said precinct or de facto precinct, said county board is hereby authorized to issue special precinct refunding bonds for the purpose of paying said indebtedness.

Source: Laws 1901, c. 10, § 1, p. 61; R.S.1913, § 432; C.S.1922, § 349; C.S.1929, § 11-608; R.S.1943, § 10-609.

10-610 Precinct refunding bonds; terms; recitals; remedies.

The said funding bonds shall be in such denominations as the board shall elect, shall mature not later than twenty years from their date, and may be payable at an earlier date if the county board so decides, shall bear interest which in rate and amount per annum shall not be greater than that of the bonds originally issued, payable annually or semiannually, shall bear coupons for the amount of the annual interest, shall contain a recital of the indebtedness for which they were issued, and shall have the same remedies for the enforcement as the original debt which they are intended to refund.

Source: Laws 1901, c. 10, § 2, p. 61; R.S.1913, § 433; C.S.1922, § 350; C.S.1929, § 11-609; R.S.1943, § 10-610; Laws 1969, c. 51, § 12, p. 280.

10-611 Precinct refunding bonds; payable to bearer; delivery; sale; price.

The said bonds shall be payable to bearer and may be delivered either to the holders and owners of the judgments for the payment of which they are issued, or may be sold under the direction of the county board and delivered to the purchasers and the proceeds used to pay the judgments; but the said funding bonds shall not be sold for less than their par value.

Source: Laws 1901, c. 10, § 4, p. 62; R.S.1913, § 434; C.S.1922, § 351; C.S.1929, § 11-610; R.S.1943, § 10-611.

10-612 Precinct refunding bonds; payment; tax levy.

For the purpose of meeting the indebtedness evidenced by the said funding bonds the county board shall cause to be annually levied upon all the real and personal property within the precinct or within the limits of the former or de facto precinct against which the said bonds have been adjudged to be a liability, a tax sufficient to pay the annual interest upon the said funding bonds, and not less than five percent of the principal, for the purpose of creating a sinking fund

to pay the principal at maturity, and at the tax levy preceding the maturity of such bonds shall levy an amount sufficient to pay the principal and the remaining interest due on said bonds.

Source: Laws 1901, c. 10, § 5, p. 62; R.S.1913, § 435; C.S.1922, § 352; C.S.1929, § 11-611; R.S.1943, § 10-612.

10-613 Repealed. Laws 1987, LB 623, § 4.

10-614 Repealed. Laws 1987, LB 623, § 4.

10-615 Refunding bonds; sanitary and improvement district; road improvement district; fire protection district; issuance; conditions.

Any sanitary and improvement district, any road improvement district, and any fire protection district in the State of Nebraska which has issued or which will issue bonds for any purpose, and such bonds or any part of such bonds are unpaid, are a legal liability against such district, and are bearing interest, may issue refunding bonds with which to call and redeem all or any part of such outstanding bonds at or before the maturity or the redemption date of such bonds, may include various series and issues of the outstanding bonds in a single issue of refunding bonds, and may issue refunding bonds to pay any redemption premium and interest to accrue and become payable on the outstanding bonds being refunded or refunding bonds issued. The refunding bonds may be issued and delivered at any time prior to the date of maturity or the redemption date of the bonds to be refunded that the governing body or the administrator determines to be in the best interest of any such district. The proceeds derived from the sale of the refunding bonds issued pursuant to this section may be invested in obligations of or guaranteed by the United States Government pending the time the proceeds are required for the purpose for which such refunding bonds were issued. To further secure the refunding bonds, any such district may enter into a contract with any bank or trust company, within or without the state, with respect to the safekeeping and application of the proceeds of the refunding bonds and the safekeeping and application of the earnings on the investment of such proceeds. Any outstanding bonds, which shall have been called for redemption and which have sufficient funds or obligations of or guaranteed by the United States Government set aside in safekeeping to be applied for the complete payment of such bonds, interest on such bonds, and redemption premium, if any, on the redemption date, shall not be considered as outstanding and unpaid, and such bonds shall be fully secured by and be payable from such funds or obligations so deposited. Each new refunding bond so issued shall state on the bond (1) the object of its issue, (2) this section of the law under which such issue was made, including a statement that the issue is made pursuant to such section, and (3) the date and principal amount of the bond or bonds for which the refunding bonds are being issued.

Source: Laws 1987, LB 623, § 1.

10-616 Refunding bonds; issuance by annexing city or village.

Any city or village which has annexed all or part of any sanitary and improvement district, any road improvement district, or any fire protection district and has become legally liable for the bonds or warrants of the district or any part thereof shall also be authorized to exercise the powers set forth in

section 10-615 with respect to such bonds or to issue refunding bonds upon such terms as the governing body shall deem appropriate to call and redeem such warrants at or before maturity.

Source: Laws 1987, LB 623, § 2.

10-617 Refunding bonds; construction of sections.

Sections 10-615 and 10-616 shall be deemed to provide an additional, alternative, and complete method for doing the things authorized in such sections, shall be deemed and construed to be supplemental and additional to the powers conferred by any other laws, and shall not be regarded to be in degradation of any powers existing on April 7, 1987, except that insofar as sections 10-615 and 10-616 are inconsistent with any other law or home rule charter, such sections shall be controlling.

Source: Laws 1987, LB 623, § 3.

ARTICLE 7

SCHOOL DISTRICT BONDS

Section

10-701. Issuance; purposes; power of district officers.
10-702. Issuance; election required; resubmission limited; submission at a statewide election; resolution; notice; counting boards.
10-703. Issuance; election; resolution of board; petition; form; content; exception.
10-703.01. Issuance; election; notice; counting of ballots; canvass of vote.
10-704. Repealed. Laws 2018, LB377, § 87.
10-705. Terms; rate of interest.
10-706. Repealed. Laws 1983, LB 421, § 18.
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10-708. Repealed. Laws 1983, LB 421, § 18.
10-709. Repealed. Laws 1983, LB 421, § 18.
10-710. Repealed. Laws 1983, LB 421, § 18.
10-711. Tax levy; sinking fund; exception; funds; distribution.
10-712. School district, defined.
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10-715. Sinking fund; liability of county treasurer; unexpended balance; disposition.
10-716. Payment; duty of county treasurer; expenses; record; duty of county clerk.
10-716.01. Repealed. Laws 2018, LB377, § 87.
10-717. Refunding bonds; authorized; limitation.
10-718. Refunding bonds; required statement.
10-719. Refunding bonds; election not required; payment; tax levy.

10-701 Issuance; purposes; power of district officers.

The district officers of any school district in Nebraska shall have power, on the terms and conditions set forth in sections 10-702 to 10-716, to issue the bonds of the district for the purpose of (1) purchasing a site for and erecting thereon a schoolhouse or schoolhouses or a teacherage or teacherages, or for such purchase or erection, or purchasing an existing building or buildings for use as a schoolhouse or schoolhouses, including the site or sites upon which such building or buildings are located, and furnishing the same, in such district, (2) retiring registered warrants, and (3) paying for additions to or repairs for a schoolhouse or schoolhouses or a teacherage or teacherages.

Source: Laws 1879, § 1, p. 170; R.S.1913, § 447; C.S.1922, § 365; C.S. 1929, § 11-901; R.S.1943, § 10-701; Laws 1949, c. 13, § 1, p. 75; Laws 1951, c. 15, § 1, p. 93; Laws 1969, c. 49, § 1, p. 266.

Procedure for issuance of bonds by school district is authorized. State ex rel. School Dist. v. Board of Equalization, 166 Neb. 785, 90 N.W.2d 421 (1958).

Posted notices of election to vote school bonds is sufficient in districts of less than one hundred fifty pupils. Union P. R. R. Co. v. School Dist. No. 9, of Merrick County, 114 Neb. 578, 208 N.W. 738 (1926).

Prior to 1879, upon division of school district which was subject to bonded indebtedness, territory detached from district was liable for its proportionate share of indebtedness. Manahan v. Adams County, 77 Neb. 829, 110 N.W. 860 (1906).

Where every voter then in the district was present at school meeting at which bonds were voted, lack of request for calling of special meeting and want of notice did not invalidate bonds. State ex rel. Hopper v. School Dist. No. 13 of Webster County, 13 Neb. 466, 14 N.W. 382 (1882).

10-702 Issuance; election required; resubmission limited; submission at a statewide election; resolution; notice; counting boards.

The question of issuing school district bonds may be submitted at a special election or such question may be voted on at an election held in conjunction with the statewide primary or statewide general election. No bonds shall be issued until the question has been submitted to the qualified electors of the district and a majority of all the qualified electors voting on the question have voted in favor of issuing the same, at an election called for the purpose, upon notice given by the officers of the district at least twenty days prior to such election. If the election for issuing bonds is held as a special election, the procedures provided in section 10-703.01 shall be followed. The question of bond issues in such districts, when defeated, shall not, except in case of fire or other disaster or in the case of a newly created district, be resubmitted in substance for a period of six months from and after the date of such election.

When the question of issuing bonds is to be submitted at a statewide primary or statewide general election as ordered by a resolution of a majority of the members of the board of education, such order shall be made in writing and filed with the county clerk or election commissioner by March 1 for the statewide primary election or September 1 for the statewide general election. The order calling for the school bond election shall be filed with the county clerk or election commissioner in the county having the greatest number of electors entitled to vote on the question. The county clerk or election commissioner receiving such order shall conduct the school bond election for the school district as provided in the Election Act.

A special notice of the election shall be published by the board of education in a newspaper or newspapers of general circulation within the district stating the day of the election, the hours during which the polls will be open, and any other information deemed necessary in informing the public of the bond issue. The notice shall be made at least twenty days prior to the election.

If the question of submitting bonds for the school district is voted upon in one or more counties and the ballots have been certified across county lines, the election boards in the counties where the ballots are cast shall count the ballots on election day the same as all other ballots are counted and seal the same in their ballots-cast container along with other ballots.

The canvassing boards in each county shall canvass the returns in the same manner as other returns are canvassed.

The county clerk or election commissioner in any adjoining county voting on the bond issue shall certify the returns to the county clerk or election commissioner of the county having the greatest number of electors entitled to vote on the question of issuing bonds.

The county clerk or election commissioner in such county shall enter the total returns from any adjoining county or counties to the total votes recorded in his

or her official book of votes cast and shall certify the returns to the board of education for which such bond election was held.

Source: Laws 1879, § 2, p. 170; R.S.1913, § 448; Laws 1917, c. 9, § 1, p. 65; C.S.1922, § 366; C.S.1929, § 11-902; R.S.1943, § 10-702; Laws 1949, c. 13, § 2, p. 75; Laws 1965, c. 36, § 1, p. 228; Laws 1967, c. 34, § 1, p. 157; Laws 1971, LB 534, § 7; Laws 1973, LB 550, § 1; Laws 1984, LB 920, § 28; Laws 1994, LB 76, § 465; Laws 2020, LB1055, § 1.

Cross References

Election Act, see section 32-101.

Issuance of bonds by school district required authorization by fifty-five percent of legal votes cast at election. Haggard v. Misko, 164 Neb. 778, 83 N.W.2d 483 (1957).

Ballots improperly cast or rejected for illegality cannot be counted in determining vote cast. Greathouse v. Dix Rural High School Dist., 155 Neb. 883, 54 N.W.2d 58 (1952).

Under a requirement that a proposal for issuance of school district bonds be adopted by three-fifths of the ballots cast, ballots improperly cast or rejected for illegality cannot be counted. Miller v. Mersch, 152 Neb. 746, 42 N.W.2d 652 (1950).

This section is not the only valid legislation under which bonds may be voted for repairing, remodeling, and enlarging schoolhouse. Taxpayers League of Wayne County v. Benthack, 136 Neb. 277, 285 N.W. 577 (1939).

Posted notices of election to vote school bonds is sufficient in districts of less than one hundred fifty pupils. Union P. R. R. Co. v. School Dist. No. 9, of Merrick County, 114 Neb. 578, 208 N.W. 738 (1926).

Statutory provision for publishing notice of school bond election is directory, and posting of notice did not invalidate election where result of election could not possibly have been changed. State ex rel. School Dist. No. 2 of Pierce County v. Marsh, 108 Neb. 749, 189 N.W. 283 (1922).

Notice of election published in a weekly paper for a period of twenty days was sufficient. State ex rel. School Dist. of the City of Lincoln v. Barton, 91 Neb. 357, 136 N.W. 22 (1912).

Under prior act, two-thirds of those present and voting was necessary to vote bonds. Allen v. School Dist. Nos. 19 and 41, Joint, of Buffalo and Hall Counties, 89 Neb. 205, 130 N.W. 1050 (1911).

Women, entitled to vote at school elections, may vote on bonds. Olive v. School Dist. No. 1, 86 Neb. 135, 125 N.W. 141 (1910).

10-703 Issuance; election; resolution of board; petition; form; content; exception.

A vote shall be ordered upon the issuance of such bonds, either (1) upon resolution of a majority of the members of the school board or board of education, or (2) whenever a petition shall be presented to the district board suggesting that a vote be taken for or against the issuing of such amount of bonds as may therein be asked for (a) to purchase a site for or build a schoolhouse or schoolhouses or a teacherage or teacherages, or to purchase an existing building or buildings for use as a schoolhouse or schoolhouses, including the site or sites upon which such building or buildings are located, (b) for furnishing the necessary furniture and apparatus for the same, (c) for retiring registered warrants, (d) for paying for additions to or repairs for a schoolhouse or schoolhouses or a teacherage or teacherages, or (e) for all of these purposes, which petition shall be signed by at least ten percent of the qualified voters of such district.

Source: Laws 1879, § 3, p. 171; Laws 1887, c. 75, § 1, p. 596; R.S.1913, § 449; C.S.1922, § 367; C.S.1929, § 11-903; R.S.1943, § 10-703; Laws 1949, c. 13, § 3, p. 75; Laws 1969, c. 49, § 2, p. 267.

This section does not apply to school district of Lincoln. State ex rel. School Dist. of the City of Lincoln v. Barton, 91 Neb. 357, 136 N.W. 22 (1912).

School board is without power to call an election to issue bonds for any purpose not suggested in petition signed by the necessary number of electors of district. Allen v. School Dist. Nos. 19 and 41, Joint, of Buffalo and Hall Counties, 89 Neb. 205, 130 N.W. 1050 (1911).

Petition to call election is condition precedent to issuance of bonds, and decision of board on sufficiency of petition is not conclusive but is a judicial question cognizable by the courts. Fullerton v. School Dist. of the City of Lincoln, 41 Neb. 593, 59 N.W. 896 (1894).

Bonds may be issued for either one or all of the purposes stated in this section. School Dist. No. 11, of Dakota County v. Chapman, 152 F. 887 (8th Cir. 1907).

10-703.01 Issuance; election; notice; counting of ballots; canvass of vote.

In all special elections called for voting on the question of issuing bonds of the school district, the county clerk or election commissioner or, if the school

district lies in more than one county, the county clerk or election commissioner in the county having the greatest number of electors entitled to vote on the question shall designate the polling places and appoint the election officials, who need not be the regular election officials, and otherwise conduct the election as provided under the Election Act except as otherwise specifically provided in this section. Any special election held under this section shall be subject to section 32-405. The school district shall designate the form of ballot and reimburse the county clerk or election official for the expenses of conducting the election as provided in sections 32-1201 to 32-1208 and at the minimum rate as described in subdivision (2)(d) of section 32-1203. The school district officers shall give notice of the election at least twenty days prior to the election and cause the sample ballot to be published in a newspaper of general circulation in the school district one time not more than ten days nor less than three days prior to the election, and no notice of the election shall be required to be given by the county clerk or election commissioner. The notice of election shall state where ballots for early voting may be obtained.

The ballots shall be counted by the county clerk or election commissioner conducting the election and two disinterested persons appointed by him or her. When the polls are closed, the receiving board shall deliver the ballots to the county clerk or election commissioner conducting the election who, with the two disinterested persons appointed by him or her, shall proceed to count the ballots.

Ballots for early voting shall be furnished to the county clerk or election commissioner and ready for distribution by the county clerk or election commissioner conducting the election not less than fifteen days prior to the election.

When a school district lies in more than one county, the county clerk or election commissioner in any other county containing part of such school district shall, upon request, certify its registration books for those precincts in which the school district is located to the county clerk or election commissioner conducting the election and shall immediately forward all requests for ballots for early voting to the county clerk or election commissioner charged with the issuing of such ballots. Not less than five days prior to the election, the school district officers shall certify to the county clerk or election commissioner conducting the election a list of all registered voters of the school district in any other county or counties qualified to vote on the bond issue.

All ballots cast at the election shall be counted by the same board. When all the ballots have been counted, the returns of such election shall be turned over to the school board or board of education of the district in which the election was held for the purpose of making a canvass thereof.

The two disinterested persons appointed on the counting board shall receive wages at no less than the minimum rate set in section 48-1203 for each hour of service rendered.

Source: Laws 1957, c. 352, § 1, p. 1198; Laws 1959, c. 26, § 1, p. 175; Laws 1972, LB 661, § 2; Laws 1973, LB 550, § 2; Laws 1979, LB 421, § 1; Laws 1984, LB 920, § 29; Laws 1992, LB 424, § 1; Laws 1994, LB 76, § 466; Laws 1997, LB 764, § 2; Laws 2002, LB 935, § 1; Laws 2003, LB 521, § 1; Laws 2005, LB 98, § 1; Laws 2014, LB946, § 1; Laws 2015, LB575, § 1.

Cross References

Election Act, see section 32-101.

In school district election, mail ballots are required to be endorsed by election official. Mommsen v. School Dist. No. 25, 181 Neb. 187, 147 N.W.2d 510 (1966).

This section is not unconstitutional because it delegates to school board the power to designate the polling places at which election is held. Peterson v. Cook, 175 Neb. 296, 121 N.W.2d 399 (1963).

10-704 Repealed. Laws 2018, LB377, § 87.

10-705 Terms; rate of interest.

The bonds issued under sections 10-701 to 10-716 shall draw such interest as shall be agreed upon.

Source: Laws 1879, § 6, p. 171; Laws 1907, c. 130, § 1, p. 430; R.S.1913, § 452; C.S.1922, § 369; C.S.1929, § 11-905; R.S.1943, § 10-705; Laws 1969, c. 51, § 14, p. 282.

10-706 Repealed. Laws 1983, LB 421, § 18.

10-707 Issuance; statement; contents; certification.

It shall be the duty of the proper officers of any school district in which any bonds may be voted under the authority of any law of this state, before the issuance of such bonds, to make a written statement of all proceedings relative to the vote upon the issuance of such bonds and the notice of the election, the manner and time of giving notice, the question submitted, and the result of the canvass of the vote on the proposition pursuant to which it is proposed to issue such bonds, together with a full statement of the taxable valuation, the number of children of school age residing in the district, and the total bonded indebtedness of the school district voting such bonds. Such statement shall be certified to under oath by the proper school board of the district.

Source: Laws 1879, § 8, p. 172; R.S.1913, § 454; C.S.1922, § 371; C.S. 1929, § 11-907; R.S.1943, § 10-707; Laws 1979, LB 187, § 24; Laws 1992, LB 719A, § 22; Laws 2001, LB 420, § 13.

This section, generally described, requires certification under oath of the procedures and results of a bond election. It does not require certification of the preliminary proceedings that led to the election, including the school board vote that called for it. Pierce v. Drobny, 279 Neb. 251, 777 N.W.2d 322 (2010).

10-708 Repealed. Laws 1983, LB 421, § 18.

10-709 Repealed. Laws 1983, LB 421, § 18.

10-710 Repealed. Laws 1983, LB 421, § 18.

10-711 Tax levy; sinking fund; exception; funds; distribution.

It shall be the duty of the county board in each county to levy annually upon all the taxable property in each school district in such county a tax sufficient to pay the interest accruing upon any bonds issued by such school district and to provide a sinking fund for the final redemption of the same. Such levy shall be made with the annual levy of the county and the taxes collected with other taxes and when collected shall be paid over to the county treasurer of the county in which the administrative office of such school district is located and shall remain in the hands of such county treasurer as a specific fund for the payment of the interest upon such bonds and for the final payment of the same at maturity. At the request of the school board of any district, the county board

shall omit making a levy to pay the principal of the bonds when no bonds will be due within fifteen years thereafter.

Source: Laws 1879, § 13, p. 173; R.S.1913, § 458; C.S.1922, § 375; C.S.1929, § 11-911; Laws 1933, c. 22, § 2, p. 193; C.S.Supp.,1941, § 11-911; R.S.1943, § 10-711; Laws 1969, c. 50, § 1, p. 269; Laws 1990, LB 924, § 6.

In absence of an order by the school board to county treasurer to pay school bonds out of sinking fund, county is not liable for interest accruing on such bonds even though bonds were payable and sinking fund sufficient to discharge them. School District No. 22, of Harlan County v. Harlan County, 127 Neb. 4, 254 N.W. 701 (1934).

Levy of tax for bonds is subject to tax limitation for all school purposes. School Dist. of Central City v. Chicago, B. & Q. R. R. Co., 60 Neb. 454, 83 N.W. 667 (1900).

District liable to holder of bond where county treasurer deposited fund in insolvent bank. Jacobson v. Cary, 51 Neb. 762, 71 N.W. 723 (1897).

Where levy of taxes in one year to pay bonds issued by a school district would be a burden on taxpayers, court on mandamus may apportion the levy over a number of years. State ex rel. Gregory v. School Dist. No. 7, of Sherman County, 22 Neb. 700, 36 N.W. 278 (1888).

Transfer from sinking fund to general fund enjoined. Levy beyond limit is not authorized. Union P. Ry. Co. v. Dawson County, 12 Neb. 254, 11 N.W. 307 (1882).

10-712 School district, defined.

The phrase school district, as used in section 10-711, is hereby declared to mean the school district as it existed immediately prior to and at the time of the issuance of any bonds by said school district, including all lands, property and inhabitants contained in said school district at the time of the issuance of any bonds, and all portions of said district subsequently separated from said district, whether by the formation of a new district or by any change of boundaries of the original district.

Source: Laws 1879, § 14, p. 173; R.S.1913, § 459; C.S.1922, § 376; C.S.1929, § 11-912; R.S.1943, § 10-712.

New consolidated district held liable for bonds of one of two former districts comprised therein, notwithstanding this section. Clother v. Maher, 15 Neb. 1, 16 N.W. 902 (1883).

10-713 Sinking fund; investment; requirements; interest earned; how credited.

Any money in the hands of any treasurer as a sinking fund for the redemption of bonds which are a valid and legal obligation of the school district to which such money belongs or for the payment of interest on any such bonds, and which is not currently required to retire bonds and pay interest on bonds, shall be invested by the treasurer, when so ordered by the school board or board of education, (1) in bonds, treasury bills or notes of the United States, or (2) in interest-bearing time certificates of deposit in depositories approved and authorized to receive county money, but in no greater amount in any such depository than the same is authorized to receive deposits of county funds. The interest earned on such investments shall be credited to the sinking fund from which the invested funds were drawn.

Source: Laws 1879, § 15, p. 174; R.S.1913, § 460; C.S.1922, § 377; Laws 1923, c. 50, § 1, p. 170; C.S.1929, § 11-913; R.S.1943, § 10-713; Laws 1965, c. 37, § 1, p. 229.

School district sinking fund should be invested by county treasurer only when ordered by school board. School District No. 22, of Harlan County v. Harlan County, 127 Neb. 4, 254 N.W. 701 (1934).

10-714 Payment out of state; procedure.

When the interest and principal, or interest only, of such registered bonds are payable in New York City, or elsewhere out of the state, payment shall be

therein made at the place so designated in such bond or coupon, or at the commercial agency of the state for such purposes. In order that the funds may not be misapplied, the treasurer shall procure a draft for the amount to be transmitted by drawing his check on some bank in this state, and both check and draft shall be so endorsed as to show upon what bond or bonds the funds shall be applied; or, at the request of the party holding or owning said bonds, payment may be made at the office of said treasurer.

Source: Laws 1879, § 16, p. 174; R.S.1913, § 461; C.S.1922, § 378; C.S.1929, § 11-914; R.S.1943, § 10-714.

10-715 Sinking fund; liability of county treasurer; unexpended balance; disposition.

The tax and funds so collected shall be deemed pledged and appropriated to the payment of the interest and principal of the registered bonds herein provided for, until fully satisfied, and the treasurer shall be liable on his official bond for the faithful disbursement of all money so collected or received by him. After the principal and interest of such bonds shall have been fully paid, and all obligations for which such fund and taxes were raised have been discharged, the county clerk, upon the order of the county board, shall notify the county treasurer to transfer all such funds remaining in his hands to the credit of the district to which they belong.

Source: Laws 1879, § 17, p. 175; Laws 1885, c. 82, § 1, p. 331; R.S.1913, § 462; C.S.1922, § 379; C.S.1929, § 11-915; R.S.1943, § 10-715.

Failure to make provision for transfer from general fund to building fund indicates legislative intent to withhold authority for such transfer. State ex rel. School Dist. v. Board of Equalization, 166 Neb. 785, 90 N.W.2d 421 (1958).

10-716 Payment; duty of county treasurer; expenses; record; duty of county clerk.

When any registered bonds shall mature, the same shall be paid off by the treasurer at the place where the same shall be payable out of any money in his hands or under his control for that purpose, and when so paid the same shall be endorsed by the treasurer on the face thereof Canceled, together with the date of such payment; and thereupon be filed with the clerk, who shall enter satisfaction of such bonds upon the records of such school district. In case such bonds are payable out of the state, an allowance of one-fourth of one percent shall be made to the treasurer for the expense attendant in making such payment, to be deducted from any money in his hands remaining after payment of such matured bonds.

Source: Laws 1879, § 18, p. 175; R.S.1913, § 463; C.S.1922, § 380; C.S.1929, § 11-916; R.S.1943, § 10-716.

10-716.01 Repealed. Laws 2018, LB377, § 87.

10-717 Refunding bonds; authorized; limitation.

Any school district in the State of Nebraska which has heretofore voted and issued, or which shall hereafter vote and issue, bonds to build or furnish a schoolhouse, or for any other purpose, and which bonds, or any part thereof, still remain unpaid, and remain and are a legal liability against such district and are bearing interest, is hereby authorized to issue refunding bonds with which to call and redeem all or any part of such outstanding bonds at or before

the maturity or the redemption date thereof, and may include various series and issues of the outstanding bonds in a single issue of refunding bonds, and issue refunding bonds to pay any redemption premium and interest to accrue and become payable on the outstanding bonds being refunded. The refunding bonds may be issued and delivered at any time prior to the date of maturity or the redemption date of the bonds to be refunded that the school district determines to be in the best interest of the district. The proceeds derived from the sale of refunding bonds issued pursuant to this section may be invested in obligations of, or guaranteed by, the United States Government pending the time the proceeds are required for the purposes for which such refunding bonds were issued. To further secure the refunding bonds, the school district may enter into a contract with any bank or trust company, within or without the state, with respect to the safekeeping and application of the proceeds of the refunding bonds and the safekeeping and application of the earnings on the investment. Any outstanding bonds, which shall have been called for redemption and which have sufficient funds or obligations of, or guaranteed by, the United States Government set aside in safekeeping to be applied for the complete payment of such bonds, interest thereon, and redemption premium, if any on the redemption date, shall not be considered as outstanding and unpaid bonds. All bonds issued under the provisions of sections 10-717 to 10-719 must, on their face, contain a clause that the district issuing such bonds shall have the right to redeem such bonds at the expiration of five years from the date of the issuance thereof.

Source: Laws 1879, § 1, p. 176; Laws 1893, c. 32, § 1, p. 360; Laws 1905, c. 139, § 1, p. 574; R.S.1913, § 464; C.S.1922, § 381; C.S.1929, § 11-917; R.S.1943, § 10-717; Laws 1955, c. 16, § 1, p. 86; Laws 1969, c. 51, § 15, p. 282; Laws 1981, LB 313, § 1.

10-718 Refunding bonds; required statement.

Each new refunding bond so issued shall state therein (1) the object of its issue, (2) the section or sections of the law under which the issue thereof was made, including a statement that the issue is made in pursuance thereof, and (3) the date and principal amount of the bond or bonds for which the refunding bonds are being issued.

Source: Laws 1879, § 2, p. 177; R.S.1913, § 465; C.S.1922, § 382; C.S. 1929, § 11-918; R.S.1943, § 10-718; Laws 1955, c. 16, § 2, p. 87; Laws 1981, LB 313, § 2.

10-719 Refunding bonds; election not required; payment; tax levy.

The new bonds as issued shall not require a vote of the people to authorize such issue, and they shall be paid, and the levy be made and tax collected for their payment, in accordance with laws governing the said bonds heretofore issued.

Source: Laws 1879, § 3, p. 176; R.S.1913, § 466; C.S.1922, § 383; C.S. 1929, § 11-919; R.S.1943, § 10-719.

ARTICLE 8

COUNTY AID BONDS

Section
10-801. Issuance; purposes; limit; election required; power of county board.

Section
10-802. Issuance; terms; election; notice; vote.
10-803. Election; proposition; contents; proceeds of sale of bonds; disposition; procedure; expenses.
10-804. Election; proposition; contents; payment; tax levy.
10-805. Election; proposition; contents; sinking fund; creation; use.
10-806. Bondholders' rights.
10-807. Misrepresentations for aid; penalty.

10-801 Issuance; purposes; limit; election required; power of county board.

The county board of any county of this state shall have authority to issue the bonds of such county in an amount not to exceed one and eight-tenths percent of the taxable valuation of the county and not to exceed one million dollars for the purpose of raising money to be advanced or loaned by such county to destitute and needy sufferers from cyclone, tornado, or destructive windstorm in such county. No such bonds shall be issued until the question of the issuing of the same has been submitted to the electors of the county at a general or special election as provided by sections 10-801 to 10-807.

Source: Laws 1913, c. 229, § 1, p. 662; R.S.1913, § 471; C.S.1922, § 388; C.S.1929, § 11-1001; R.S.1943, § 10-801; Laws 1979, LB 187, § 25; Laws 1980, LB 599, § 3; Laws 1992, LB 719A, § 23.

10-802 Issuance; terms; election; notice; vote.

If the people of any county in the State of Nebraska, or a considerable number thereof, shall be in destitute, dependent, or needy circumstances on account of any cyclone, tornado or destructive windstorm, the county board of such county may call an election, and said board and the county clerk of such county shall give notice of such election by publication in two consecutive issues of one or more newspapers published and of general circulation in such county, and by posting a notice at the polling places in each election precinct therein. If a majority of the votes cast at such election shall be in favor of issuing said bonds, the county board shall issue the bonds of the county payable in not more than ten years, with interest payable semiannually. The county shall reserve to itself the privilege of paying off all or any part of said bonds, at any time on or after five years, by inserting a provision to that effect in the proposition submitting said bonds, and in the bonds when issued.

Source: Laws 1913, c. 229, § 2, p. 663; R.S.1913, § 472; C.S.1922, § 389; C.S.1929, § 11-1002; R.S.1943, § 10-802; Laws 1947, c. 15, § 7, p. 86; Laws 1969, c. 51, § 16, p. 282.

10-803 Election; proposition; contents; proceeds of sale of bonds; disposition; procedure; expenses.

The proceeds of such bonds shall be used for the purpose of assisting destitute or needy sufferers from any cyclone, tornado or destructive windstorm, to repair or rebuild their homes or dwelling houses, damaged or destroyed by such cyclone, tornado or windstorm, such assistance to be provided in the following manner: The county may loan or advance to any such destitute or needy sufferer, for the purpose of repairing or rebuilding his or her dwelling house, such sum as may be determined upon by the county board or by the board named by the county board for that purpose, upon the borrower executing his or her note to the county, secured by a mortgage upon the

premises upon which such dwelling house or home is or is to be located. The county may at any time transfer or assign such note and mortgage for a valuable consideration, upon approval by the county board. Such note and mortgage may be executed for a period of not more than ten years. The loans of such money shall be made by a board of five resident freeholders of such county, who shall be appointed by the county board thereof, and shall be named in the proposition submitting such bonds to the vote of the electors of the county. The county board shall provide the details for effecting the loans, and the manner in which and the conditions under which the same shall be made; but all such provisions shall be determined upon by the county board prior to the submission of such bonds, and shall be set forth in the proposition submitting the same to the vote of the electors. The county board may use or set aside not more than five percent of the proceeds of the sale of such bonds for the purpose of paying the expenses of the board provided for, and its employees, in administering and carrying out the provisions of sections 10-801 to 10-807.

Source: Laws 1913, c. 229, § 3, p. 663; R.S.1913, § 473; C.S.1922, § 390; C.S.1929, § 11-1003; R.S.1943, § 10-803.

10-804 Election; proposition; contents; payment; tax levy.

The proposition, when submitted, shall state the amount necessary to be raised each year for the payment of the interest on said bonds, and for the payment of the principal thereof at maturity. When such bonds shall have been issued, the proper officers of such county shall cause to be annually levied and collected a special tax upon all taxable property of such county to raise the annual amount designated in said proposition, and to pay the interest and principal of said bonds as the same become due and payable.

Source: Laws 1913, c. 229, § 5, p. 664; R.S.1913, § 475; C.S.1922, § 392; C.S.1929, § 11-1005; R.S.1943, § 10-804.

10-805 Election; proposition; contents; sinking fund; creation; use.

The proposition, when submitted to the electors, shall provide for a sinking fund, to which shall be credited the proceeds of loans sold by or repaid to the county; and such fund, when available, shall be used to pay the interest on said bonds and the principal thereof at maturity; *Provided, however,* any part of the sinking fund may be reloaned for the purposes specified in sections 10-801 to 10-807, when authorized by the county board.

Source: Laws 1913, c. 229, § 6, p. 664; R.S.1913, § 476; C.S.1922, § 393; C.S.1929, § 11-1006; R.S.1943, § 10-805.

10-806 Bondholders' rights.

Any county which shall have issued its bonds pursuant to sections 10-801 to 10-807 shall be estopped from pleading want of consideration therefor, and the proper officers of such county may be compelled by mandamus, or otherwise, to levy the tax herein authorized.

Source: Laws 1913, c. 229, § 7, p. 665; R.S.1913, § 477; C.S.1922, § 394; C.S.1929, § 11-1007; R.S.1943, § 10-806.

10-807 Misrepresentations for aid; penalty.

Any person who shall make any false statement to the county board or to the board provided for in sections 10-801 to 10-807, or to any of its assistants or employees, for the purpose of obtaining a loan or aid of any kind, as a sufferer from cyclone, tornado or destructive windstorm, shall be guilty of a Class I misdemeanor.

Source: Laws 1913, c. 229, § 4, p. 664; R.S.1913, § 474; C.S.1922, § 391; C.S.1929, § 11-1004; R.S.1943, § 10-807; Laws 1977, LB 40, § 70.

ARTICLE 9

REFINANCING GENERAL INDEBTEDNESS BY ISSUING BONDS OR BORROWING MONEY

Section
10-901. Repealed. Laws 1947, c. 179, § 3.
10-902. Repealed. Laws 1947, c. 179, § 3.
10-903. Repealed. Laws 1947, c. 179, § 3.
10-904. Repealed. Laws 1947, c. 179, § 3.
10-905. Repealed. Laws 1947, c. 179, § 3.
10-906. Repealed. Laws 1947, c. 179, § 3.
10-907. Repealed. Laws 1947, c. 179, § 3.
10-908. Repealed. Laws 1947, c. 179, § 3.
10-909. Repealed. Laws 1947, c. 179, § 3.
10-910. Repealed. Laws 1947, c. 179, § 3.
10-911. Repealed. Laws 1947, c. 179, § 3.

10-901 Repealed. Laws 1947, c. 179, § 3.

10-902 Repealed. Laws 1947, c. 179, § 3.

10-903 Repealed. Laws 1947, c. 179, § 3.

10-904 Repealed. Laws 1947, c. 179, § 3.

10-905 Repealed. Laws 1947, c. 179, § 3.

10-906 Repealed. Laws 1947, c. 179, § 3.

10-907 Repealed. Laws 1947, c. 179, § 3.

10-908 Repealed. Laws 1947, c. 179, § 3.

10-909 Repealed. Laws 1947, c. 179, § 3.

10-910 Repealed. Laws 1947, c. 179, § 3.

10-911 Repealed. Laws 1947, c. 179, § 3.

ARTICLE 10

PRIVATE ACTIVITY BONDS

Section
10-1001. Governor; powers.

10-1001 Governor; powers.

To permit the orderly continuation of the issuance of private activity bonds pursuant to the Internal Revenue Code, the Governor may by executive order:

(1) Allocate or establish a method for the allocation of the private activity bond state ceiling set forth in the Internal Revenue Code among any or all entities in the State of Nebraska having the authority to issue private activity bonds or governmental bonds; and

(2) Delegate any administrative authority vested in him or her under this section to any state agency or any instrumentality which exercises essential public functions.

Source: Laws 1988, LB 1233, § 1; Laws 1995, LB 574, § 14.

ARTICLE 11

NEBRASKA GOVERNMENTAL UNIT SECURITY INTEREST ACT

Section
10-1101. Act, how cited.
10-1102. Applicability of act.
10-1103. Terms, defined.
10-1104. Perfection.
10-1105. Priority.
10-1106. Enforcement; determination of default.

10-1101 Act, how cited.

Sections 10-1101 to 10-1106 shall be known and may be cited as the Nebraska Governmental Unit Security Interest Act.

Source: Laws 2000, LB 929, § 17.

10-1102 Applicability of act.

The creation of security interests and pledges by governmental units is controlled by other provisions of law. The Nebraska Governmental Unit Security Interest Act governs the perfection, priority, and enforcement of all security interests created by governmental units.

Source: Laws 2000, LB 929, § 18.

10-1103 Terms, defined.

For purposes of the Nebraska Governmental Unit Security Interest Act:

(1) Authorizing statute means any statute which authorizes the issuance of bonds;

(2) Bond means any bond, note, warrant, loan agreement, lease, lease-purchase agreement, pledge agreement, agreement authorized by the governing body of a generating power agency pursuant to section 70-682, or other evidence of indebtedness for which a security interest is granted or a pledge made upon revenue or other property, including any limited tax revenue, to provide for payment or security;

(3) Governmental unit means the State of Nebraska, any county, school district, city, village, public power district, sanitary and improvement district, educational service unit, community college area, natural resources district, airport authority, fire protection district, hospital authority, joint entity created under the Interlocal Cooperation Act, joint public agency, instrumentality, or any other district, authority, or political subdivision of the State of Nebraska and governmental units as defined in subdivision (a)(45) of section 9-102, Uniform Commercial Code;

(4) Measure means any ordinance, resolution, or other enactment authorizing the issuance of bonds or authorizing an indenture with respect to bonds pursuant to an authorizing statute; and

(5) Owner means any holder, registered owner, or beneficial owner of a bond.

Source: Laws 2000, LB 929, § 19; Laws 2016, LB897, § 1.

Cross References

Interlocal Cooperation Act, see section 13-801.

10-1104 Perfection.

Any security interest created by a governmental unit pursuant to an authorizing statute is perfected by the adoption of the measure or measures from the date on which the measure takes effect without the need for any physical delivery, filing, or recording in any office.

Source: Laws 2000, LB 929, § 20.

10-1105 Priority.

The priority of any security interest created by a governmental unit shall be governed by the contractual terms set forth in the measure or measures, including the terms of any indenture or any other agreement approved by the measure or measures, adopted by the governmental unit. No security interest having priority over an existing security interest may be created in violation of the terms of an existing measure governing outstanding bonds.

Source: Laws 2000, LB 929, § 21.

10-1106 Enforcement; determination of default.

The terms of any applicable authorizing statute shall govern the enforcement of any security interest to the extent that the authorizing statute contains express provisions relating to enforcement or authorizes a governmental unit to contract with respect to enforcement. In the absence of any such express provisions in an authorizing statute, the following provisions apply:

(1) Any measure may include provisions determining what events constitute events of default. In the absence of any express provision relating to default in any measure, the governmental unit is in default so long as any default in payment with respect to principal, interest, or premium on a bond has occurred and remains uncured;

(2) Any trustee designated in or under the terms of a measure shall have the right, if a default has occurred, to have a receiver appointed for the collection of any revenue or property in which a security interest is granted, and if the revenue is from any revenue-producing undertaking, any such receiver may also be appointed to operate and manage such revenue-producing undertaking for the benefit of the owners of the bonds in accordance with the terms of the measure or measures authorizing their issuance;

(3) If there is no trustee designated in or under the terms of a measure, any owner of a bond shall have the right, if a default has occurred, to have a receiver appointed for the collection of any revenue or property in which a security interest is granted and, if the revenue is from any revenue-producing undertaking, any such receiver may also be appointed to operate and manage

such revenue-producing undertaking for the benefit of the owners of the bonds in accordance with the terms of the measure or measures authorizing their issuance;

(4) Any trustee designated in or under the terms of any measure or any owner of a bond, if there is no trustee designated, shall have the right to bring proceedings against the governing body of the governmental unit to order the imposing of rates or charges with respect to any revenue-producing undertaking sufficient to provide for payment of principal, interest, and premium on a bond or bonds as the same fall due; and

(5) Any trustee designated in or under the terms of any measure or any owner of a bond shall have the right to exercise any other remedy provided by law.

Source: Laws 2000, LB 929, § 22.

ARTICLE 12

NEBRASKA GOVERNMENTAL UNIT CREDIT FACILITY ACT

Section

10-1201. Act, how cited.
10-1202. Legislative findings.
10-1203. Terms, defined.
10-1204. Credit facility; authorized; approval; terms and conditions.
10-1205. Credit facility or related agreement; payments authorized.
10-1206. Act; construction with other law or home rule charters.

10-1201 Act, how cited.

Sections 10-1201 to 10-1206 shall be known and may be cited as the Nebraska Governmental Unit Credit Facility Act.

Source: Laws 2009, LB377, § 1.

10-1202 Legislative findings.

The Legislature hereby finds and declares that there currently exist and may hereafter exist conditions which make it difficult for governmental units to issue and sell their bonds or other evidences of indebtedness and to obtain credit at reasonable interest rates and that the United States Government has authorized certain of its agencies and instrumentalities to provide credit support for state and local governmental units under more favorable terms.

Source: Laws 2009, LB377, § 2.

10-1203 Terms, defined.

For purposes of the Nebraska Governmental Unit Credit Facility Act:

(1) Authorizing statute means any statute which authorizes the issuance of bonds by a governmental unit;

(2) Bank means any federally chartered or state-chartered bank, savings and loan association, building and loan association, insurance company, or any other public or private agency which insures or guarantees the indebtedness of other persons or governmental units;

(3) Bond means any bond, note, interim certificate, evidence of bond ownership, bond anticipation note, warrant, or other evidence of indebtedness issued under any authorizing statute;

(4) Credit facility means any agreement or other instrument providing for a guarantee or other contractual arrangement providing direct or indirect assurance for payment of principal or interest or both principal and interest on any bond issued by a governmental unit, including, but not limited to, any letter of credit, contract of guarantee, contract of insurance, standby purchase contract, or any other contract for purchase or other agreement as to assurance of payment;

(5) Governmental unit means any county, school district, city, village, public power district, public power and irrigation district, sanitary and improvement district, educational service unit, community college area, natural resources district, airport authority, fire protection district, hospital district, hospital authority, housing authority, joint entity created under the Interlocal Cooperation Act, joint public agency created under the Joint Public Agency Act, instrumentality, or any other district, authority, or political subdivision of the State of Nebraska;

(6) Measure means any ordinance, resolution, or other enactment by a governmental unit, or any amendment or supplement to any such ordinance, resolution, or other enactment authorizing the issuance of bonds or authorizing an indenture with respect to bonds pursuant to an authorizing statute;

(7) Terms and conditions means the terms and conditions of a credit facility, which may include, but are not limited to, (a) representations and warranties; (b) payment of fees and expenses; (c) reimbursement of amounts advanced and payment of interest on amounts advanced; (d) holding harmless for additional taxes or increased costs payable by the credit facility provider; (e) remarketing or resale of purchased bonds; (f) indemnification for liabilities incurred by a credit facility provider; (g) affirmative and negative covenants relating to bonds for which assurance is provided; (h) provisions relating to defaults and remedies upon default; and (i) such other provisions as may be determined by the governing body of a governmental unit to be either customary or appropriate in obtaining a credit facility; and

(8) United States governmental enterprise means any agency or instrumentality of the United States Government. For all purposes of the Nebraska Governmental Unit Credit Facility Act, the term United States governmental enterprise shall be conclusively construed as including, but not limited to, any of the Federal Home Loan Banks, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

Source: Laws 2009, LB377, § 3.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

10-1204 Credit facility; authorized; approval; terms and conditions.

Any governmental unit in the State of Nebraska may obtain credit support for its bonds by entering into or obtaining a credit facility for any of its bonds from any United States governmental enterprise or from any bank providing a credit facility which is confirmed or otherwise supported by a credit facility provided by a United States governmental enterprise. Any credit facility shall be approved by a measure adopted before or after issuance of any bonds. Each credit

facility shall have such terms and conditions as shall be approved by a measure adopted by the governmental unit before or after the issuance of bonds.

Source: Laws 2009, LB377, § 4.

10-1205 Credit facility or related agreement; payments authorized.

Any credit facility or related agreement may provide for payment of amounts owing by the governmental unit from any resources of the governmental unit as may be deemed appropriate by the governing body, including taxes and other revenue. Any amounts required to reimburse the provider of a credit facility for amounts advanced for payment of principal and interest or for purchase of a bond or for related fees and expenses shall have the same status under sections 13-520 and 77-3442 as the indebtedness for which the credit facility has been provided. Such indebtedness includes, without limitation, the payments of principal and interest for which the advance or purchase was made or the fees and expenses incurred.

Source: Laws 2009, LB377, § 5.

10-1206 Act; construction with other law or home rule charters.

The Nebraska Governmental Unit Credit Facility Act shall be independent of and in addition to any other provision of law of the State of Nebraska or provisions of home rule charters, and any credit facility may be obtained under the act for any purpose authorized in the act even though other laws of the State of Nebraska or provisions of home rule charters may provide for the obtaining of a credit facility for the same or similar purposes. The act shall not be considered amendatory of or limited by any other law of the State of Nebraska or provisions of home rule charters, and any credit facility may be obtained under the act without complying with the restrictions or requirements of any other law of the State of Nebraska, except when specifically required by the act, or without complying with the restrictions or requirements of home rule charters. Nothing in the act shall prohibit or limit the obtaining of any credit facility in accordance with other applicable laws of the State of Nebraska or of home rule charters, if the governing body of a governmental unit determines to obtain such credit facility under such other laws or charter or otherwise limit the provisions of any home rule charter.

Source: Laws 2009, LB377, § 6.

CHAPTER 11
BONDS AND OATHS, OFFICIAL

Article.
1. Official Bonds and Oaths. 11-101 to 11-130.
2. State Bond Approval. 11-201 to 11-204.

Cross References

Constitutional provisions:
Bonds required of government officers, see Article IV, section 26, Constitution of Nebraska.
Official oath, see Article XV, section 1, Constitution of Nebraska.
Actions upon official bonds:
By whom and how brought, see sections 25-2101 and 25-2102.
Limitation of action, see section 25-209.
Venue, see section 25-403.01.

ARTICLE 1
OFFICIAL BONDS AND OATHS

Section
11-101. Oath of office; officers of state and political subdivisions, except constitutional officers; form; endorsement on bonds; filing.
11-101.01. Oath of office; state and political subdivisions; employees; form.
11-101.02. Oath of office; false statement; penalty.
11-101.03. Oath; affirmation; effect.
11-101.04. Repealed. Laws 1985, LB 7, § 1.
11-102. Bonds; state officers; form.
11-103. Bonds; county, township, school district, precinct officers; form.
11-104. Bonds or insurance coverage; municipal officers; form.
11-105. Bonds and oaths; filing; time.
11-106. Bonds; state and district officers; approval; filing; place; recording.
11-107. Bonds; county, precinct, township officers; approval; filing; place; recording.
11-108. Bonds; state officers; sureties; number; qualification; affidavits required.
11-109. Bonds; county and precinct officers; sureties; number; qualification.
11-110. Bonds; recording; copies; fee.
11-111. Bonds; endorsement of approval required.
11-112. Bonds; terms.
11-113. Bonds; irregularities; effect.
11-114. Bonds; sureties; public officers or deputies and attorneys, ineligible.
11-115. Bonds; failure to furnish; show cause order; effect.
11-116. Bonds; officers appointed to fill vacancies; requirements.
11-117. Bonds and oaths; officers reelected, reappointed, holding over; requirements.
11-118. Bonds; successive terms; sureties; qualification.
11-119. Bonds; officers; penal sums.
11-120. Repealed. Laws 1978, LB 653, § 40.
11-121. Bond or insurance; persons entrusted with public funds; penal sum; approval.
11-122. Bonds; county treasurer; power of county board to require; failure to furnish; effect.
11-123. Bonds; guaranty companies; eligibility; approval.
11-124. Bonds; guaranty companies; failure to pay judgment; penalty.
11-125. Bonds; county officers; premium paid by county; conditions.
11-126. Bonds; deputies or employees of county officers; alternatives.
11-127. Bonds; premium paid by county; manner of paying.
11-128. Bond; State Treasurer; premium paid by state; conditions.

Section
11-129. Bond; premium paid by state; manner of paying.
11-130. Bonds; suretyship; joint control of funds.

11-101 Oath of office; officers of state and political subdivisions, except constitutional officers; form; endorsement on bonds; filing.

All state, district, county, precinct, township, municipal, and especially appointed officers, except those mentioned in Article XV, section 1, of the Constitution of the State of Nebraska, shall, before entering upon their respective duties, take and subscribe the following oath, which shall be endorsed upon their respective bonds:

I, ..., do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Nebraska, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely and without mental reservation or for purpose of evasion; and that I will faithfully and impartially perform the duties of the office of . . . ., according to law, and to the best of my ability. And I do further swear that I do not advocate, nor am I a member of any political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence; and that during such time as I am in this position I will not advocate nor become a member of any political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence. So help me God.

If any such officer is not required to give bond, the oath shall be filed in the office of the Secretary of State, or of the clerk of the county, city, village, or other municipal subdivision of which he shall be an officer.

Source: Laws 1881, c. 13, § 1, p. 94; R.S.1913, § 5707; C.S.1922, § 5037; C.S.1929, § 12-101; R.S.1943, § 11-101; Laws 1951, c. 206, § 2, p. 766.

1. Effect of failure to take oath
2. Officers required to take oath
3. Officers not required to take oath

1. Effect of failure to take oath

Failure of acting county attorney to take oath and give bond does not subject his acts to collateral attack. State ex rel. Gossett v. O'Grady, 137 Neb. 824, 291 N.W. 497 (1940).

County judge justified in refusing to approve bond of county officer where oath not endorsed thereon, and mandamus will not lie to compel approval unless bond complies with statute. State ex rel. Baird v. Slattery, 108 Neb. 415, 187 N.W. 899 (1922).

Failure of acting deputy clerk of district court to take oath and give bond does not deprive court of jurisdiction to enter judgment in cases where the acting deputy clerk filed petition and issued summons. Haskell v. Dutton, 65 Neb. 274, 91 N.W. 395 (1902).

2. Officers required to take oath

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

Road overseer of township must take and subscribe oath under section 23-242, and filing of oath and bond under this section is not sufficient. State ex rel. Luckey v. Weber, 124 Neb. 84, 245 N.W. 407 (1932).

County judge should take the oath provided by Article XV, section 1, of the Constitution, and not the oath under this section, but taking wrong oath does not operate to vacate office. Duffy v. State ex rel. Edson, 60 Neb. 812, 84 N.W. 264 (1900).

3. Officers not required to take oath

A person designated by court to make sale of mortgaged premises under foreclosure decree need not take and file oath. Wright v. Stevens, 55 Neb. 676, 76 N.W. 441 (1898).

Person designated by court to hold sale need not take the oath prescribed by this section. Northwestern Mutual Life Ins. Co. v. Mulvihill, 53 Neb. 538, 74 N.W. 78 (1898).

Special master appointed by court in foreclosure proceedings need not take and file an oath, or execute a bond. Omaha L. & T. Co. v. Bertrand, 51 Neb. 508, 70 N.W. 1120 (1897).

School district officers are not required to take oath prescribed by this section, as the term ''district'' applies only to judicial districts, and the term ''municipal'' to villages, towns, and cities. Frans v. Young, 30 Neb. 360, 46 N.W. 528 (1890).

11-101.01 Oath of office; state and political subdivisions; employees; form.

All persons in Nebraska, with the exception of executive and judicial officers and members of the Legislature who are required to take the oath prescribed by

Article XV, section 1, of the Constitution of Nebraska, who are paid from public funds for their services, including teachers and all other employees paid from public school funds, shall be required to take and subscribe an oath in writing, before a person authorized to administer oaths in this state, and file same with the Department of Administrative Services, or the county clerk of the county where such services are performed, which oath shall be as follows:

I, ..., do solemnly swear that I will support and defend the Constitution of the United States and the Constitution of the State of Nebraska, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or for purpose of evasion; and that I will faithfully and impartially perform the duties of the office of . . . . according to law, and to the best of my ability. And I do further swear that I do not advocate, nor am I a member of any political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence; and that during such time as I am in this position I will not advocate nor become a member of any political party or organization that advocates the overthrow of the government of the United States or of this state by force or violence. So help me God.

Source: Laws 1951, c. 206, § 1, p. 765; Laws 1967, c. 35, § 1, p. 158.

11-101.02 Oath of office; false statement; penalty.

If any false statement is made in taking either of the oaths prescribed in sections 11-101 and 11-101.01, the person making such false statement shall be deemed guilty of a Class IV felony. No person convicted of perjury in taking the oath as prescribed in either section 11-101 or 11-101.01, shall hold any nonelective position, job, or office for the State of Nebraska, or any political subdivision thereof, where the remuneration of such position, job, or office is paid in whole or in part by public money or funds of the State of Nebraska, or of any political subdivision thereof.

Source: Laws 1951, c. 206, § 3, p. 767; Laws 1977, LB 40, § 71.

11-101.03 Oath; affirmation; effect.

Whenever an oath is required by section 11-101 or 11-101.01, the affirmation of a person conscientiously scrupulous of taking an oath shall have the same effect.

Source: Laws 1951, c. 206, § 5, p. 768.

11-101.04 Repealed. Laws 1985, LB 7, § 1.

11-102 Bonds; state officers; form.

All official bonds of state officers must be in form joint and several, and made payable to the State of Nebraska in such penalty and with such conditions as required by sections 11-101 to 11-122, or the law creating or regulating the office; *Provided, however,* all bonds of state officers in excess of one hundred thousand dollars, when executed by more than one guaranty, surety, fidelity or bonding company as sureties, may be several in form and limit the liability of

any one company to an amount less than the total penalty of the bond, provided that the aggregate amount shall not be less than the penalty required by law.

Source: Laws 1881, c. 13, § 2, p. 94; R.S.1913, § 5708; C.S.1922, § 5038; C.S.1929, § 12-102; Laws 1935, c. 21, § 1, p. 104; C.S.Supp.,1941, § 12-102; R.S.1943, § 11-102.

Bond of village treasurer, joint and several in form, is not void as to surety because of failure of principal to sign it. Village of Hampton v. Gausman, 136 Neb. 550, 286 N.W. 757 (1939).

11-103 Bonds; county, township, school district, precinct officers; form.

All official bonds of county, township, school district, and precinct officers must be in form joint and several, and made payable to the county in which the officer giving the same shall be elected or appointed, in such penalty and with such conditions as required by sections 11-101 to 11-122 or the law creating or regulating the duties of the office.

Source: Laws 1881, c. 13, § 3, p. 95; R.S.1913, § 5709; C.S.1922, § 5039; C.S.1929, § 12-103; R.S.1943, § 11-103.

1. Form
2. Validity
3. Effect

1. Form

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

Term of office need not be set out in bond. Perkins County v. Miller, 55 Neb. 141, 75 N.W. 577 (1898).

Bond of deputy sheriff must run to county. Riggs v. Miller, 34 Neb. 666, 52 N.W. 567 (1892).

Failure to insert names of sureties in body of bond is immaterial. Stewart v. Carter, 4 Neb. 564 (1876).

2. Validity

Bond given by one entrusted with state or county funds is an official bond, and a provision therein which is in violation of statute and requires an official duty of the officer which is not required by law is against public policy and void. United States F. & G. Co. v. McLaughlin, 76 Neb. 307, 107 N.W. 577 (1906).

Joint bond is good as to sureties. Clark v. Douglas, 58 Neb. 571, 79 N.W. 158 (1899).

Official bond being in form joint, instead of joint and several, is not void. Perkins County v. Miller, 55 Neb. 141, 75 N.W. 577 (1898).

Until delivery of bond to proper officer and its approval, bond is not binding upon the obligors, and withdrawal of surety and erasure of name prior to delivery without knowledge or consent of others releases all. Hagler v. State, 31 Neb. 144, 47 N.W. 692 (1891).

A constable's bond, voluntarily given with a reasonable sum fixed as penalty therein, is binding on sureties. Noble v. Himeo, 12 Neb. 193, 10 N.W. 499 (1881); Williams v. Golden, 10 Neb. 432, 6 N.W. 766 (1880).

Bond running to "the people of the State of Nebraska", instead of to Dodge County was merely irregular, which could not be taken advantage of by officer or his surety in action on bond. Kopplekom v. Huffman, 12 Neb. 95, 10 N.W. 577 (1881).

Official bond of sheriff is not void because given to state instead of proper county as obligee. Huffman v. Koppelkom, 8 Neb. 344, 1 N.W. 243 (1879).

3. Effect

While all official bonds of county officers must be payable to county, one who performs duties of deputy county officer, holding himself out as such, is officer de facto and liable to prosecution, notwithstanding failure to take oath or give bond. Baker v. State, 112 Neb. 654, 200 N.W. 876 (1924).

Sureties on official bond are not liable for acts which are not required by law to be performed by officers. Ottenstein v. Alpaugh, 9 Neb. 237, 2 N.W. 219 (1879).

11-104 Bonds or insurance coverage; municipal officers; form.

(1) All official bonds of officers of cities, towns, and villages shall be executed pursuant to section 11-103, except that they shall be made payable to the city, town, or village in which the officers giving such bonds shall be elected or appointed, in such penalty as the city council or board of trustees of the village may fix.

(2) In any city or village, in place of the individual bonds required to be furnished by municipal officers, a schedule, position, blanket bond or undertaking, or evidence of equivalent insurance may be given by municipal officers, or a single corporate surety fidelity, schedule, position, or blanket bond or undertaking, or evidence of insurance coverage covering all the officers, including

officers required by law to furnish an individual bond or undertaking, may be furnished. The municipality may pay the premium for the bond or insurance coverage. The bond or insurance coverage shall be, at a minimum, an aggregate of the amounts fixed by law or by the person, council, or board authorized by law to fix the amounts and with such terms and conditions as may be required.

Source: Laws 1881, c. 13, § 4, p. 95; R.S.1913, § 5710; C.S.1922, § 5040; C.S.1929, § 12-104; R.S.1943, § 11-104; Laws 2007, LB347, § 1.

Police officers of Omaha are required to give bond to city as obligee for faithful performance of official duty. Curnyn v. Kinney, 119 Neb. 478, 229 N.W. 894 (1930).

11-105 Bonds and oaths; filing; time.

(1) Official bonds, with the oath endorsed thereon, shall be filed in the proper office within the following time:

(a) Of all officers elected at any general election, following receipt of their election certificate and not later than ten days before the first Thursday after the first Tuesday in January next succeeding the election;

(b) Of all appointed officers, within thirty days after their appointment; and

(c) Of officers elected at any special election and city and village officers, within thirty days after the canvass of the votes of the election at which they were chosen.

(2) The filing of the bond with the oath endorsed thereon does not authorize a person to take any official action prior to the beginning of his or her term of office pursuant to Article XVII, section 5, of the Constitution of Nebraska.

(3) In counties which provide a bond for county officers pursuant to subdivision (22) of section 11-119, such county officers are not required to comply with the timing requirements of subsection (1) of this section with regard to their official bond but shall file their oaths of office in the proper offices prior to the beginning of their terms of office.

Source: Laws 1881, c. 13, § 5, p. 95; R.S.1913, § 5711; C.S.1922, § 5041; C.S.1929, § 12-105; R.S.1943, § 11-105; Laws 1976, LB 534, § 1; Laws 2013, LB311, § 1.

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

It is the duty of person elected to county office to file bond in amount required by statute, with oath endorsed thereon, on or before specified time. State ex rel. Baird v. Slattery, 108 Neb. 415, 187 N.W. 899 (1922).

Sureties have right at any time before bond is delivered to revoke their principal's authority to bind them, but until such revocation the right of the principal to deliver bond is presumed to continue. The failure of officer to file his bond and have it approved within time creates a vacancy in the office. Paxton v. State, 59 Neb. 460, 81 N.W. 383 (1899).

Failure to file is excused by neglect or omission of officers to issue certificate of election. State ex rel. Barton v. Frantz, 55 Neb. 167, 75 N.W. 546 (1898).

One who is reelected to office is required to file a new oath and bond. State ex rel. Berge v. Lansing, 46 Neb. 514, 64 N.W. 1104 (1895).

When an incumbent of an office holds over on account of the nonelection of a successor he must file oath and bond within ten days from time at which his successor, if elected, should have qualified. State ex rel. Thayer v. Boyd, 31 Neb. 682, 48 N.W. 739 (1891), 51 N.W. 602 (1892).

11-106 Bonds; state and district officers; approval; filing; place; recording.

The official bonds of all state and district officers except Governor shall be approved by the Governor, and filed and recorded in the office of the Secretary of State. The official bond of the Governor shall be approved by the Chief Justice of the Supreme Court. The official bond of the Secretary of State shall be filed and recorded in the office of the Director of Administrative Services.

Source: Laws 1881, c. 13, § 6, p. 95; R.S.1913, § 5712; C.S.1922, § 5042; C.S.1929, § 12-106; R.S.1943, § 11-106.

The Governor, not the Secretary of State, approves the bond of State Treasurer, and Secretary of State can only receive, file, and record the bond. State v. Paxton, 65 Neb. 110, 90 N.W. 983 (1902); Paxton v. State, 60 Neb. 763, 84 N.W. 254 (1900).

11-107 Bonds; county, precinct, township officers; approval; filing; place; recording.

The official bonds of all county, precinct and township officers shall be approved by the county board, except the official bonds of the county commissioners or supervisors, which shall be approved by the county judge. All such bonds shall be filed and recorded in the office of the county clerk, except the bonds of the county clerk and members of the county board, which shall be filed and recorded in the office of the county judge. The official bond of a school district treasurer must be approved by the president and secretary, and filed in the office of the treasurer of the county.

Source: Laws 1881, c. 13, § 7, p. 95; R.S.1913, § 5713; C.S.1922, § 5043; C.S.1929, § 12-107; R.S.1943, § 11-107; Laws 1959, c. 27, § 1, p. 177.

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

County judge will not be compelled by mandamus to approve bond of county commissioner where oath not endorsed thereon. State ex rel. Baird v. Slattery, 108 Neb. 415, 187 N.W. 899 (1922).

Bond must be filed and approved, or no action can be had against sureties. Fire Assn. of Philadelphia v. Ruby, 58 Neb. 730, 79 N.W. 723 (1899).

All bonds of county officers, except commissioners and supervisors, are required to be approved by the county board and filed and recorded in the office of the county clerk, but sureties cannot escape liability because bond was not filed and approved in time. Holt County v. Scott, 53 Neb. 176, 73 N.W. 681 (1897).

In approving bonds, county board acts as a body, and the approval is not the act of a member or individual members thereof as persons. Board must approve bond of county treasurer. Stoner v. Keith County, 48 Neb. 279, 67 N.W. 311 (1896).

Until bond of officer is filed and approved, he is not a de jure officer. McMillin v. Richards, 45 Neb. 786, 64 N.W. 242 (1895).

11-108 Bonds; state officers; sureties; number; qualification; affidavits required.

Each official bond of a state officer shall be executed by the officer as principal and by at least three residents of the state as sureties who shall be worth in the aggregate the amount of the bond over and above all their present indebtedness; and affidavits of the sureties, showing the value of the property owned by each and subject to levy and sale under execution in this state, shall be made and presented to the officer approving such bond, and shall be filed therewith; or the bond of any state officer may be executed by the officer as principal and by a guaranty, surety, fidelity or bonding company as surety, or by two or more of such companies as sureties. Only such companies as are legally authorized to transact business in this state shall be eligible to suretyship on the bond of a state officer.

Source: Laws 1881, c. 13, § 8, p. 96; Laws 1905, c. 10, § 1, p. 63; R.S.1913, § 5714; C.S.1922, § 5044; C.S.1929, § 12-108; R.S. 1943, § 11-108.

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

When an officer writes his name in the body of paper prepared by himself as an official bond, and subscribes his oath of office endorsed thereon, which instrument is delivered, accepted and approved as his official bond, it is valid even though the signature of the officer is omitted at the bottom of the bond. State v. Hill, 47 Neb. 456, 66 N.W. 541 (1896).

11-109 Bonds; county and precinct officers; sureties; number; qualification.

All official bonds of county, precinct and other local officers shall be executed by the principal named in such bonds and by at least two sufficient sureties who shall be freeholders of the county in which such bonds are given; or any official bond of a county, precinct or local officer may be executed by the

officer as principal and by a guaranty, surety, fidelity or bonding company as surety, or by two or more of such companies. Only such companies as are legally authorized to transact business in this state shall be eligible to suretyship on the bond of a county, precinct or other local officer.

Source: Laws 1881, c. 13, § 9, p. 96; Laws 195, c. 10, § 1, p. 63; R.S.1913, § 5715; C.S.1922, § 5045; C.S.1929, § 12-109; R.S.1943, § 11-109.

Principal is required to execute bond. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

Expense of county treasurer's bond, when legally executed, with qualified bonding company as surety, and approved is a binding obligation of county. Haase v. Buffalo County, 86 Neb. 145, 124 N.W. 1130 (1910).

11-110 Bonds; recording; copies; fee.

The officers with whom any official bonds are required by law to be filed shall carefully record and preserve the same in their respective offices, and shall give certified copies thereof, when required, under the seal of their office, and shall be entitled to receive for the same the usual fee allowed by law for certified copies of records in other cases.

Source: Laws 1881, c. 13, § 10, p. 96; R.S.1913, § 5716; C.S.1922, § 5046; C.S.1929, § 12-110; R.S.1943, § 11-110.

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

11-111 Bonds; endorsement of approval required.

The approval of each official bond shall be endorsed upon such bond by the officer approving the same, and no bond shall be filed and recorded until so approved.

Source: Laws 1881, c. 13, § 11, p. 97; R.S.1913, § 5717; C.S.1922, § 5047; C.S.1929, § 12-111; R.S.1943, § 11-111.

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

County judge will not be compelled by mandamus to approve bond of county commissioner where oath not endorsed thereon. State ex rel. Baird v. Slattery, 108 Neb. 415, 187 N.W. 899 (1922).

If bond is executed by sufficient competent sureties, approval may be compelled by mandamus. Woodward v. State ex rel. Thomssen, 58 Neb. 598, 79 N.W. 164 (1899).

11-112 Bonds; terms.

All official bonds shall obligate the principal and sureties for the faithful discharge of all duties required by law of such principal, and shall inure to the benefit of any persons injured by a breach of the conditions of such bonds.

Source: Laws 1881, c. 13, § 12, p. 97; R.S.1913, § 5718; C.S.1922, § 5048; C.S.1929, § 12-112; R.S.1943, § 11-112.

Sheriff and surety on his official bond are required to respond in damages to any person for a breach of duty imposed by law. O'Dell v. Goodsell, 149 Neb. 261, 30 N.W.2d 906 (1948).

Statute, by construction, constitutes part of bond, and the scope of statutory obligation cannot validly be limited by any other provision in the instrument. Village of Hampton v. Gausman, 136 Neb. 550, 286 N.W. 757 (1939).

County judge is liable on his official bond for trust funds lost by reason of insolvency of bank in which he deposited them though he acted in good faith and without negligence in selecting depository. Ericsson v. Streitz, 132 Neb. 692, 273 N.W. 17 (1937).

Recovery authorized thereon by person injured by negligent acts committed by policeman in exercise of municipal authority, although bond runs to city as obligee. Curnyn v. Kinney, 119 Neb. 478, 229 N.W. 894 (1930).

A bond given for the faithful discharge of the duties of one legally entrusted with state and county funds is an official bond, and the statutory provisions relative thereto enter and become a part of the contract. United States Fidelity & Guaranty Co. v. McLaughlin, 76 Neb. 307, 107 N.W. 577 (1906).

This section requires of a principal, who is a custodian of public money, the absolute accounting for and payment over of money coming into his official position. Adams v. Weisberger, 62 Neb. 326, 87 N.W. 16 (1901).

Money paid to the clerk of district court by referee in partition proceeding, in obedience to court order directing money to be brought into court, is received by the clerk in his official capacity. Dirks v. Juel, 59 Neb. 353, 80 N.W. 1045 (1899).

Counties may recover on official bonds of their officers for all damages caused by their neglect of duty. Toncray v. Dodge County, 33 Neb. 802, 51 N.W. 235 (1892).

Liability on bond is original and primary, and action may be brought against both principal and sureties without suit having first been brought against the officer for the tort. Kane v. Union Pacific Railroad, 5 Neb. 105 (1876).

11-113 Bonds; irregularities; effect.

No official bond shall be rendered void by reason of any informality or irregularity in its execution or approval.

Source: Laws 1881, c. 13, § 13, p. 97; R.S.1913, § 5719; C.S.1922, § 5049; C.S.1929, § 12-113; R.S.1943, § 11-113.

Bond of public officer, joint and several in form, is not void as to surety because of failure of principal to sign it. Village of Hampton v. Gausman, 136 Neb. 550, 286 N.W. 757 (1939).

Approval of bond after instead of before filing thereof is an irregularity which has no effect upon its validity. State v. Paxton, 65 Neb. 110, 90 N.W. 983 (1902).

The making of official bond joint in form, instead of joint and several, is a mere irregularity which does not invalidate the instrument. Term need not be stated. Perkins County v. Miller, 55 Neb. 141, 75 N.W. 577 (1898).

11-114 Bonds; sureties; public officers or deputies and attorneys, ineligible.

No state or county officers, or their deputies, shall be taken as security on the bond of any administrator, executor, or other officer from whom by law bond is or may be required, and no practicing attorney shall be taken as surety on any official bond, or bond in any legal proceedings in the district in which he may reside.

Source: Laws 1881, c. 13, § 14, p. 97; R.S.1913, § 5720; C.S.1922, § 5050; C.S.1929, § 12-114; R.S.1943, § 11-114.

A practicing attorney should not sign in a legal proceeding as surety, but if bond is approved, the attorney is estopped from alleging its invalidity and it may be enforced against him. In re Estate of Kothe, 131 Neb. 531, 268 N.W. 464 (1936), judgment of affirmance vacated on rehearing, 131 Neb. 780, 270 N.W. 117 (1936).

A practicing attorney is not a proper surety on an appeal bond, but bond is not invalid. Chase v. Omaha L. & T. Co., 56 Neb. 358, 76 N.W. 896 (1898).

Attorney should not become a surety upon a bond in a legal proceeding, and if he signs such a bond the clerk should not approve it. If it is approved, the surety is bound thereby. Luce v. Foster, 42 Neb. 818, 60 N.W. 1027 (1894); Tessier v. Crowley, 17 Neb. 207, 22 N.W. 422 (1885).

11-115 Bonds; failure to furnish; show cause order; effect.

If any person elected or appointed to any office neglects to have his or her official bond executed and approved as provided by law and filed for record within the time limited by sections 11-101 to 11-122, the officer with whom the bond is required to be filed shall immediately issue an order to such person to show cause why he or she has failed to properly file such bond and why his or her office should not be declared vacant. If such person properly files the official bond within ten days of the issuance of the show cause order for appointed officials or before the date for taking office for elected officials, such filing shall be deemed to be in compliance with sections 11-101 to 11-122. If such person does not file the bond within ten days of the issuance of such order for appointed officials or before the date for taking office for elected officials and sufficient cause is not shown within that time, his or her office shall thereupon ipso facto become vacant, and such vacancy shall thereupon immediately be filled by election or appointment as the law may direct in other cases of vacancy in the same office. This section does not apply to county officers covered pursuant to subdivision (22) of section 11-119.

Source: Laws 1881, c. 13, § 15, p. 97; R.S.1913, § 5721; C.S.1922, § 5051; C.S.1929, § 12-115; R.S.1943, § 11-115; Laws 1976, LB 534, § 2; Laws 2013, LB311, § 2.

1. Vacancy
2. Effect
3. Miscellaneous

1. Vacancy

Where school district treasurer fails to have official bond executed, approved, and filed, the office becomes ipso facto vacant. School District of Omaha v. Adams, 151 Neb. 741, 39 N.W.2d 550 (1949).

Failure of person reelected or reappointed to take oath and give bond within time provided creates vacancy the same as with newly elected or appointed officer. State ex rel. Berge v. Lansing, 46 Neb. 514, 64 N.W. 1104 (1895).

2. Effect

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

Where person elected to county office fails to file bond in required amount, with oath endorsed thereon, on or before time specified, approval will not be compelled by mandamus. State ex rel. Baird v. Slattery, 108 Neb. 415, 187 N.W. 899 (1922).

If newly appointed officer fails to qualify, incumbent may qualify anew under section 11-117. State ex rel. Shaw v. Rosewater, 79 Neb. 450, 113 N.W. 206 (1907).

Where bond was presented in time but not approved by reason of neglect of approving officer, no forfeiture of office results. Duffy v. State ex rel. Edson, 60 Neb. 812, 84 N.W. 264 (1900).

Incumbent has right, within ten days after his successor is declared ineligible, to give bond, qualify, and hold over until successor is elected and qualified. Richards v. McMillin, 36 Neb. 352, 54 N.W. 566 (1893).

3. Miscellaneous

Official bond, after approval, should be returned to obligor, and by him filed in proper office, and until so filed, it is not effective. Paxton v. State, 59 Neb. 460, 81 N.W. 383 (1899).

This section does not apply to a claimant who through carelessness, negligence or willful omission of election board failed to receive certificate of election. State ex rel. Barton v. Frantz, 55 Neb. 167, 75 N.W. 546 (1898).

This section does not apply where the incumbent holds over on account of the failure to elect a successor. State ex rel. Thayer v. Boyd, 31 Neb. 682, 48 N.W. 739 (1891), 51 N.W. 602 (1892).

This section does not apply to school district officers. Frans v. Young, 30 Neb. 360, 46 N.W. 528 (1890).

11-116 Bonds; officers appointed to fill vacancies; requirements.

Any person appointed to fill a vacancy, before entering upon the duties of the office, must give a bond corresponding in substance and form with the bond required of the officer originally elected or appointed, as herein provided.

Source: Laws 1881, c. 13, § 16, p. 97; R.S.1913, § 5722; C.S.1922, § 5052; C.S.1929, § 12-116; R.S.1943, § 11-116.

11-117 Bonds and oaths; officers reelected, reappointed, holding over; requirements.

When the incumbent of an office is reelected or reappointed he shall qualify by taking the oath and giving the bond as above directed, but when such officer has had public funds or property in his control, his bond shall not be approved until he has produced and fully accounted for such funds and property. When it is ascertained that the incumbent of an office holds over by reason of the nonelection or nonappointment of a successor, or of the neglect or refusal of the successor to qualify, he shall qualify anew within ten days from the time at which his successor, if elected, should have qualified.

Source: Laws 1881, c. 13, § 17, p. 97; R.S.1913, § 5723; C.S.1922, § 5053; C.S.1929, § 12-117; R.S.1943, § 11-117.

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

Township officer must in addition to filing oath and bond under this section comply with requirements of section 23-242. State ex rel. Luckey v. Weber, 124 Neb. 84, 245 N.W. 407 (1932).

Death of newly elected officer before beginning of term, without qualifying, does not create a vacancy where there is a qualified member who qualifies anew and whose term of office does not expire until successor is elected. State ex rel. Schroeder v. Swanson, 121 Neb. 459, 237 N.W. 407 (1931).

Where officer appointed to fill vacancy is entitled to hold over, and files proper bond in due time, fact that county board refused to act upon same within time prescribed by law will not create vacancy. State ex rel. County Attorney v. Willott, 103 Neb. 798, 174 N.W. 429 (1919).

If newly elected or appointed officer fails to qualify, present incumbent may qualify anew. State ex rel. Shaw v. Rosewater, 79 Neb. 450, 113 N.W. 206 (1907).

Provisions of section are mandatory; incumbents reelected must qualify anew; and must render an accounting of all public funds on hand before bond can be approved. Woodward v. State ex rel. Thomssen, 58 Neb. 598, 79 N.W. 164 (1899).

Officers or incumbents, reelected, reappointed, or holding over where successor has been elected but fails to qualify, must qualify in same manner as newly elected officers. State ex rel. Berge v. Lansing, 46 Neb. 514, 64 N.W. 1104 (1895).

Incumbent holding over must qualify anew within ten days from time at which his successor should have qualified. State ex rel. Roche v. Cosgrove, 34 Neb. 386, 51 N.W. 974 (1892).

11-118 Bonds; successive terms; sureties; qualification.

No person shall be surety for the same officer for more than two successive terms of the same office; but this provision shall not apply to incorporated surety companies.

Source: Laws 1881, c. 13, § 18, p. 98; Laws 1905, c. 11, § 1, p. 64; R.S.1913, § 5724; C.S.1922, § 5054; C.S.1929, § 12-118; R.S. 1943, § 11-118.

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

11-119 Bonds; officers; penal sums.

The following named officers shall execute a bond with penalties of the following amounts:

(1) The Governor, one hundred thousand dollars;

(2) The Lieutenant Governor, one hundred thousand dollars;

(3) The Auditor of Public Accounts, one hundred thousand dollars;

(4) The Secretary of State, one hundred thousand dollars;

(5) The Attorney General, one hundred thousand dollars;

(6) The State Treasurer, not less than one million dollars and not more than double the amount of money that may come into his or her hands, to be fixed by the Governor;

(7) Each county attorney, a sum not less than one thousand dollars to be fixed by the county board;

(8) Each clerk of the district court, not less than five thousand dollars or more than one hundred thousand dollars to be determined by the county board;

(9) Each county clerk, not less than one thousand dollars or more than one hundred thousand dollars to be determined by the county board, except that when a county clerk also has the duties of other county offices the minimum bond shall be two thousand dollars;

(10) Each county treasurer, not less than ten thousand dollars and not more than the amount of money that may come into his or her hands, to be determined by the county board;

(11) Each sheriff, in counties of not more than twenty thousand inhabitants, five thousand dollars, and in counties over twenty thousand inhabitants, ten thousand dollars;

(12) Each district superintendent of public instruction, one thousand dollars;

(13) Each county surveyor, five hundred dollars;

(14) Each county commissioner or supervisor, in counties of not more than twenty thousand inhabitants, one thousand dollars, in counties over twenty thousand and not more than thirty thousand inhabitants, two thousand dollars, in counties over thirty thousand and not more than fifty thousand inhabitants, three thousand dollars, and in counties over fifty thousand inhabitants, five thousand dollars;

(15) Each register of deeds in counties having a population of more than sixteen thousand five hundred inhabitants, not less than two thousand dollars

or more than one hundred thousand dollars to be determined by the county board;

(16) Each township clerk, two hundred fifty dollars;

(17) Each township treasurer, two thousand dollars;

(18) Each county assessor, not more than five thousand dollars and not less than two thousand dollars;

(19) Each school district treasurer, not less than five hundred dollars or more than double the amount of money that may come into his or her hands, the amount to be fixed by the president and secretary of the district;

(20) Each road overseer, two hundred fifty dollars;

(21) Each member of a county weed district board and the manager thereof, such amount as may be determined by the county board of commissioners or supervisors of each county with the same amount to apply to each member of any particular board;

(22) In any county, in lieu of the individual bonds required to be furnished by county officers, a schedule, position, or blanket bond or undertaking may be given by county officers, or a single corporate surety fidelity, schedule, position, or blanket bond or undertaking covering all the officers, including officers required by law to furnish an individual bond or undertaking, may be furnished. The county may pay the premium for the bond. The bond shall be, at a minimum, an aggregate of the amounts fixed by law or by the person or board authorized by law to fix the amounts, and with such terms and conditions as may be required by sections 11-101 to 11-130; and

(23) Each learning community coordinating council treasurer, not less than five hundred dollars or more than double the amount of money that may come into his or her hands, the amount to be fixed by the learning community coordinating council.

All other state officers, department heads, and employees shall be bonded or insured as required by section 11-201.

Source: Laws 1881, c. 13, § 19, p. 98; Laws 1901, c. 11, § 1, p. 63; Laws 1905, c. 12, § 1, p. 66; R.S.1913, § 5725; Laws 1917, c. 110, § 1, p. 282; C.S.1922, § 5055; Laws 1927, c. 156, § 1, p. 417; C.S. 1929, § 12-119; Laws 1933, c. 115, § 1, p. 460; Laws 1935, c. 22, § 1, p. 105; C.S.Supp.,1941, § 12-119; R.S.1943, § 11-119; Laws 1947, c. 16, § 4, p. 97; Laws 1951, c. 14, § 1, p. 89; Laws 1963, c. 38, § 1, p. 206; Laws 1965, c. 538, § 31, p. 1716; Laws 1967, c. 36, § 1, p. 160; Laws 1969, c. 52, § 1, p. 350; Laws 1971, LB 298, § 1; Laws 1972, LB 1032, § 93; Laws 1973, LB 226, § 1; Laws 1974, LB 7, § 1; Laws 1975, LB 103, § 1; Laws 1978, LB 653, § 6; Laws 1983, LB 369, § 1; Laws 1988, LB 1030, § 1; Laws 1995, LB 179, § 1; Laws 1999, LB 272, § 1; Laws 2004, LB 884, § 8; Laws 2009, LB392, § 1.

Deputy attorney general is required to give bond while assistant attorney general is not. Carlsen v. State, 127 Neb. 11, 254 N.W. 744 (1934).

Approval of bond in double amount required for particular office will not be compelled by mandamus. State ex rel. Baird v. Slattery, 108 Neb. 415, 187 N.W. 899 (1922).

The amendment of 1901 to this section was unconstitutional because broader than title. Prowett v. Nance County, 82 Neb. 400, 117 N.W. 996 (1908); Knight v. Lancaster County, 74 Neb. 82, 103 N.W. 1064 (1905).

11-120 Repealed. Laws 1978, LB 653, § 40.

11-121 Bond or insurance; persons entrusted with public funds; penal sum; approval.

Any officer or person who is entrusted with funds belonging to the State of Nebraska or any county thereof, which may come into his or her possession by any appropriation or otherwise, shall be responsible for the same upon his or her bond or equivalent commercial insurance policy. When any officer or person is entrusted with any such fund and there is no provision of law requiring him or her to give a bond or equivalent commercial insurance policy in a certain specified sum, he or she shall give bond or equivalent commercial insurance policy in double the amount of the sum so entrusted to him or her, which in the case of state funds shall be approved by the Chief Justice of the Supreme Court, and deposited in the office of the Secretary of State. In the case of county funds, such bonds or equivalent commercial insurance policy shall be approved by the county board and deposited in the county clerk's office. No warrant shall be issued or money paid over to such officer or person until the bond is filed as provided in this section. This section shall not be construed to require any additional bond or insurance to be furnished by state officers or employees bonded or insured as specified in section 11-201.

Source: Laws 1881, c. 13, § 21, p. 100; Laws 1905, c. 11, § 2, p. 64; R.S.1913, § 5727; C.S.1922, § 5057; C.S.1929, § 12-121; R.S. 1943, § 11-121; Laws 1978, LB 653, § 7; Laws 2004, LB 884, § 9.

It is the duty of board to effect a settlement with county treasurer and approve his bond, if on a settlement, all funds in his hands are accounted for. State ex rel. Clark v. Vinnedge, 79 Neb. 270, 112 N.W. 858 (1907).

Bonds given by state or county officers are official bonds, and statutory provisions relative thereto enter into and become part of contract. United States F. & G. Co. v. McLaughlin, 76 Neb. 307, 107 N.W. 577 (1906), affirmed on rehearing 76 Neb. 310, 109 N.W. 390 (1906).

Purpose of Legislature was to make the county treasurer an insurer. Thomssen v. Hall County, 63 Neb. 777, 89 N.W. 389, 57 L.R.A. 303 (1902).

Sureties, executing county treasurer's bond with this section in view as forming part of their contract, are not released by board requiring and taking additional sureties. Holt County v. Scott, 53 Neb. 176, 73 N.W. 681 (1897).

Treasurer is insurer of all money officially coming into his hands; bondsmen are liable for all money lost. Bush v. Johnson County, 48 Neb. 1, 66 N.W. 1023 (1896).

This section does not impliedly prohibit the deposit for safekeeping of funds received by officer. State v. Hill, 47 Neb. 456, 66 N.W. 541 (1896).

11-122 Bonds; county treasurer; power of county board to require; failure to furnish; effect.

The county board of any one of the counties of this state may require the county treasurer to give additional surety or sureties whenever in its opinion the existing security shall have become insufficient, and such board is hereby also empowered to demand and receive from such county treasurer an additional bond as required by law with good and sufficient surety or sureties in such sum as said board, or a majority thereof, may direct, whenever in its opinion more money shall have passed or is about to pass into the hands of such treasurer than is or would be recovered under the penalty in the previous bond. If any county treasurer shall fail or refuse to give such additional security or bond for and during the time of ten days from and after the day on which said board shall have required such treasurer so to do, his office shall be considered vacant, and another treasurer shall be appointed agreeable to the provisions of law.

Source: Laws 1881, c. 13, § 21, p. 100; Laws 1905, c. 11, § 2, p. 65; R.S.1913, § 5727; C.S.1922, § 5057; C.S.1929, § 12-121; R.S. 1943, § 11-122.

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

No officer of the state is authorized to demand additional sureties of the State Treasurer after his bond has been approved and filed. Paxton v. State, 59 Neb. 460, 81 N.W. 383 (1899).

Provision for requiring and receiving additional bond is sufficient consideration for execution of second bond. Stoner v. Keith County, 48 Neb. 279, 67 N.W. 311 (1896).

11-123 Bonds; guaranty companies; eligibility; approval.

Whenever any recognizance, stipulation, bond or undertaking, conditioned for the faithful performance of any duty or for doing or refraining from doing anything in such recognizance, stipulation, bond or undertaking specified, is, by the laws of this state, required or permitted to be given with one surety or with two or more sureties, the execution of the same, or the guaranteeing of the performance of the conditions thereof, shall be sufficient when executed or guaranteed solely by a corporation duly organized and existing under the laws of this state, or of any state of the United States, having a paid-up capital of not less than one hundred thousand dollars and having power under its charter to guarantee or insure the fidelity of persons holding places of public and private trust, to become surety on bonds and obligations of persons and corporations, and to become surety on any bond, recognizance or other writing in the nature of a bond, in the same manner that natural persons may, subject to all the rights and liabilities of such persons; *Provided*, such corporation is approved as surety upon such recognizance, stipulation, bond or undertaking by the head of the department, court, judge, officer, board or body executive, legislative or judicial, required or authorized to approve or accept the same.

Source: Laws 1895, c. 22, § 1, p. 122; R.S.1913, § 5728; C.S.1922, § 5058; C.S.1929, § 12-122; Laws 1935, c. 98, § 3, p. 327; C.S.Supp.,1941, § 12-122; R.S.1943, § 11-123.

This section as originally enacted in 1895 was unconstitutional. Fidelity & Deposit Co. of Maryland v. Libby, 72 Neb. 850, 101 N.W. 994 (1904).

Surety company must be empowered to transact business in Nebraska before mandamus will lie to compel approval of bond. Woodward v. State ex rel. Thomssen, 58 Neb. 598, 79 N.W. 164 (1899).

11-124 Bonds; guaranty companies; failure to pay judgment; penalty.

If any such corporation fails, neglects, or refuses to pay any fine, judgment, or decree rendered against it upon any such recognizance, stipulation, bond, or undertaking, from which no appeal, writ of error, or supersedeas is taken for ninety days after the entry of such judgment or decree, it shall forfeit all rights to do business in this state until such judgment or decree is fully paid or satisfied.

Source: Laws 1895, c. 22, § 3, p. 123; R.S.1913, § 5730; C.S.1922, § 5059; C.S.1929, § 12-123; R.S.1943, § 11-124; Laws 2000, LB 921, § 1.

11-125 Bonds; county officers; premium paid by county; conditions.

If any county treasurer, county attorney, clerk of the district court, county clerk, county assessor, register of deeds, county sheriff, county commissioner or supervisor, or acting officer who is appointed as provided by section 32-561 furnishes a bond executed by a surety company authorized by the laws of this state to execute such bond and such bond is approved by the county board, then the county may pay the premium for such bond. Any surety bond so executed and approved shall contain a covenant to the effect that when the stated term of the bond is reduced to a shorter term by reason of the death, resignation, or removal from office of such official for a cause not imposing

liability on the bond, the obligor shall refund to the county the unearned portion of the premium so paid for the term of the bond subject to a reasonable minimum premium charge.

Source: Laws 1905, c. 49, § 1, p. 294; R.S.1913, § 5731; C.S.1922, § 5060; C.S.1929, § 12-124; Laws 1935, c. 25, § 1, p. 118; Laws 1941, c. 17, § 1, p. 101; C.S.Supp.,1941, § 12-124; Laws 1943, c. 21, § 1(1), p. 112; R.S.1943, § 11-125; Laws 1972, LB 1032, § 94; Laws 1994, LB 76, § 467; Laws 1999, LB 272, § 2; Laws 2021, LB355, § 1.

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

It is mandatory that county board pays premiums upon bonds of officers and employees designated, if and when bonds are approved. Douglas County v. Belitz, 142 Neb. 376, 6 N.W.2d 370 (1942).

The expense of county treasurer's bond legally executed by qualified bonding company as surety, approved and accepted by board, is a binding obligation of county. Haase v. Buffalo County, 86 Neb. 145, 124 N.W. 1130 (1910).

11-126 Bonds; deputies or employees of county officers; alternatives.

Whenever any deputy or employee of any county treasurer, county attorney, clerk of the district court, county clerk, county assessor, register of deeds, county sheriff, or county commissioner or supervisor shall be required by law or the order of the county board of any county to supply bond, either (1) such deputy or employee shall furnish a bond by a surety company, which bond shall be approved by the county board, and the county may pay the premium for such bond; or (2) the county board may arrange and pay for the writing of a blanket corporate surety bond for the benefit of the county, bonding (a) all such employees of the county or (b) all such deputy county officials or (c) both subdivisions (a) and (b) of this subdivision.

Source: Laws 1941, c. 17, § 1, p. 101; C.S.Supp.,1941, § 12-124; Laws 1943, c. 21, § 1(2), p. 113; R.S.1943, § 11-126; Laws 1947, c. 78, § 1, p. 245; Laws 1983, LB 369, § 2; Laws 1999, LB 272, § 3.

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

11-127 Bonds; premium paid by county; manner of paying.

Upon the execution and approval of the bonds upon which the county pays premium, the county board shall direct the county clerk to draw warrants upon the county treasurer in payment of such premiums against the general fund of the county, such warrants to be signed by the chairman of the county board, countersigned by the county clerk, and sealed with the county seal.

Source: Laws 1905, c. 49, § 2, p. 295; C.S.1913, § 5732; C.S.1922, § 5061; C.S.1929, § 12-125; Laws 1941, c. 17, § 2, p. 102; C.S.Supp.,1941, § 12-125; R.S.1943, § 11-127.

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

11-128 Bond; State Treasurer; premium paid by state; conditions.

Whenever the State Treasurer in giving the bond required from him by law shall furnish a bond executed by a surety company authorized by the laws of this state to execute such bond, and such bond shall be approved by the Governor, then in each case the state shall pay the premium for such bond, not

to exceed one-half of one percent per annum of the penalty in the bond so executed and approved.

Source: Laws 1905, c. 209, § 1, p. 703; R.S.1913, § 5733; C.S.1922, § 5062; C.S.1929, § 12-126; Laws 1935, c. 24, § 1, p. 117; C.S.Supp.,1941, § 12-126; R.S.1943, § 11-128.

11-129 Bond; premium paid by state; manner of paying.

Upon the execution of such bond it shall be the duty of the Director of Administrative Services to draw a warrant for the payment of such premium, countersigned by the State Treasurer and paid out of the appropriation made therefor.

Source: Laws 1905, c. 209, § 3, p. 703; R.S.1913, § 5734; C.S.1922, § 5063; C.S.1929, § 12-127; R.S.1943, § 11-129; Laws 1969, c. 53, § 1, p. 353.

11-130 Bonds; suretyship; joint control of funds.

It shall be lawful for any person of whom a bond, undertaking or other obligation is required, to agree with his surety or sureties for the deposit of any or all money and assets for which he and his surety or sureties are or may be held responsible, with a bank, savings bank, safe-deposit or trust company, authorized by law to do business as such, or with other depository approved by the court or a judge thereof, if such deposit is otherwise proper, for the safekeeping thereof, in such manner as to prevent the withdrawal of such money or assets or any part thereof, without the written consent of such sureties, or upon an order of court, or a judge thereof, made on such notice to such surety or sureties as such court or judge may direct. Such agreement shall not in any manner release from or change the liability of the principal or sureties as established by the terms of the bond.

Source: Laws 1943, c. 23, § 1, p. 115; R.S.1943, § 11-130.

Elected county officials are required to give individual official bonds. Blanket bond is not sufficient. Foote v. County of Adams, 163 Neb. 406, 80 N.W.2d 179 (1956).

ARTICLE 2
STATE BOND APPROVAL

Section
11-201. Bonds or insurance; state officers and employees; Risk Manager; Secretary of State; Attorney General; powers and duties.
11-201.01. Bonds or insurance; officers and employees; benefits; inure to state; exception.
11-202. Bonds or insurance; officers and employees; premiums; payment.
11-203. Bonds; state officers and employees; Risk Manager; file list with Clerk of the Legislature.
11-204. Repealed. Laws 1959, c. 264, § 1.

11-201 Bonds or insurance; state officers and employees; Risk Manager; Secretary of State; Attorney General; powers and duties.

It shall be the duty of the Risk Manager:

(1) To prescribe the amount, terms, and conditions of any bond or equivalent commercial insurance when the amount or terms are not fixed by any specific

statute. The Risk Manager, in prescribing the amount, deductibles, conditions, and terms, shall consider the type of risks, the relationship of the premium to risks involved, the past and projected trends for premiums, the ability of the Tort Claims Fund, the State Self-Insured Property Fund, and state agencies to pay the deductibles, and any other factors the manager may, in his or her discretion, deem necessary in order to accomplish the provisions of sections 2-1201, 3-103, 8-104, 8-105, 9-807, 11-119, 11-121, 11-201, 11-202, 37-110, 48-158, 48-609, 48-618, 48-804.03, 53-109, 54-191, 55-123, 55-126, 55-127, 55-150, 57-917, 60-1303, 60-1502, 71-222.01, 72-1241, 77-366, 80-401.02, 81-111, 81-151, 81-5,167, 81-8,128, 81-8,141, 81-1108.14, 81-2002, 83-128, 84-106, 84-206, and 84-801;

(2) To pass upon the sufficiency of and approve the surety on the bonds or equivalent commercial insurance of all officers and employees of the state, when approval is not otherwise prescribed by any specific statute;

(3) To arrange for the writing of corporate surety bonds or equivalent commercial insurance for all the officers and employees of the state who are required by statute to furnish bonds;

(4) To arrange for the writing of the blanket corporate surety bond or equivalent commercial insurance required by this section; and

(5) To order the payment of corporate surety bond or equivalent commercial insurance premiums out of the State Insurance Fund created by section 81-8,239.02.

All state employees not specifically required to give bond by section 11-119 shall be bonded under a blanket corporate surety bond or insured under equivalent commercial insurance for faithful performance and honesty in an amount determined by the Risk Manager.

The Risk Manager may separately bond any officer, employee, or group thereof under a separate corporate surety bond or equivalent commercial insurance policy for performance and honesty pursuant to the standards set forth in subdivision (1) of this section if the corporate surety or commercial insurer will not bond or insure or excludes from coverage any officer, employee, or group thereof under the blanket bond or commercial insurance required by this section, or if the Risk Manager finds that the reasonable availability or cost of the blanket bond or commercial insurance required under this section is adversely affected by any of the following factors: The loss experience, types of risks to be bonded or insured, relationship of premium to risks involved, past and projected trends for premiums, or any other factors.

Surety bonds of collection agencies, as required by section 45-608, and detective agencies, as required by section 71-3207, shall be approved by the Secretary of State. The Attorney General shall approve all bond forms distributed by the Secretary of State.

Source: Laws 1945, c. 13, § 1, p. 112; Laws 1955, c. 17, § 1, p. 88; Laws 1967, c. 36, § 3, p. 162; Laws 1969, c. 54, § 1, p. 354; Laws 1978, LB 653, § 8; Laws 1981, LB 273, § 1; Laws 1994, LB 1210, § 1; Laws 1996, LB 1044, § 45; Laws 1998, LB 922, § 392; Laws 2000, LB 901, § 1; Laws 2003, LB 242, § 1; Laws 2004, LB 884, § 10; Laws 2007, LB334, § 2; Laws 2010, LB722, § 1; Laws 2019, LB301, § 82.

11-201.01 Bonds or insurance; officers and employees; benefits; inure to state; exception.

No bond or equivalent commercial insurance determined by the Risk Manager to be furnished by officers and employees pursuant to subdivision (1) of section 11-201 shall be considered an official bond or insurance policy of such officers or employees, and no bond or policy so required by the Risk Manager shall inure to the benefit of other than the State of Nebraska, unless otherwise provided by the provisions of such bond or policy.

Source: Laws 1967, c. 36, § 5, p. 162; Laws 1981, LB 273, § 2; Laws 2004, LB 884, § 11.

11-202 Bonds or insurance; officers and employees; premiums; payment.

The premiums written pursuant to section 11-201, shall be paid by the State of Nebraska out of such funds as may be appropriated therefor by the Legislature, upon the order of the Risk Manager. No officer, department, board, commission, or other agency of the state shall pay, or cause to be paid, the cost of or the premium of any officer or employee of the state out of public funds unless an order for such payment has been obtained from the Risk Manager.

Source: Laws 1945, c. 13, § 2, p. 113; Laws 1955, c. 17, § 2, p. 89; Laws 1967, c. 36, § 4, p. 162; Laws 1981, LB 273, § 3; Laws 2004, LB 884, § 12.

11-203 Bonds; state officers and employees; Risk Manager; file list with Clerk of the Legislature.

The Risk Manager shall, during each regular session of the Legislature, file electronically with the Clerk of the Legislature a complete list of the officers and employees who are bonded and the amount of each bond.

Source: Laws 1945, c. 13, § 3, p. 113; Laws 1955, c. 17, § 3, p. 89; Laws 1981, LB 273, § 4; Laws 2012, LB782, § 15.

11-204 Repealed. Laws 1959, c. 264, § 1.