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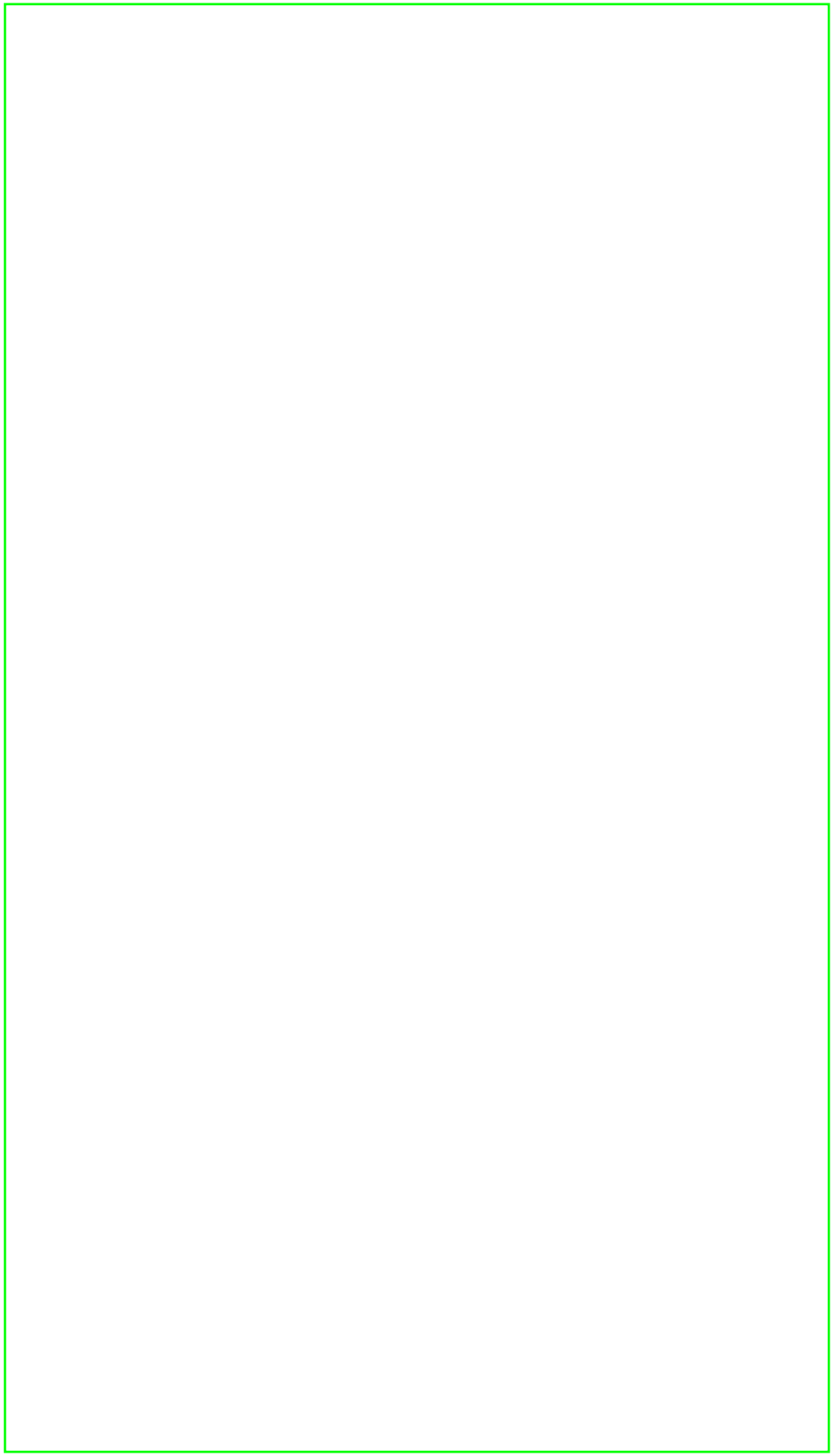

REVISED STATUTES
OF
NEBRASKA

2010 CUMULATIVE SUPPLEMENT

EDITED, ANNOTATED, AND PUBLISHED
BY THE
REVISOR OF STATUTES

VOLUME 1
CHAPTERS 1 TO 43, INCLUSIVE

CITE AS FOLLOWS

R.S.SUPP.,2010

Errata:

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

Reissue of Volumes 1 to 6

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

Volumes 1 and 1A	2007
Volumes 2 and 2A	2008
Volume 3	2008
Volumes 3A and 3B	2004
Volumes 4 and 4A	2009
Volume 5 and 5A	2008
Volume 6	2001
Cross Reference Tables	2000

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CERTIFICATE OF AUTHENTICATION

I, Joanne M. Pepperl, Revisor of Statutes, do hereby certify that the laws included in the 2010 Cumulative Supplement to the Revised Statutes of Nebraska are true and correct copies of the original acts enacted by the Ninety-seventh Legislature, First Special Session, 2001, through the One Hundred First Legislature, Second Session, 2010, of the Nebraska State Legislature as shown by the enrolled bills on file in the office of the Secretary of State, save and except such compilation changes and omissions as are specifically authorized by sections 49-705 and 49-769.

Joanne M. Pepperl
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Lincoln, Nebraska
July 1, 2010

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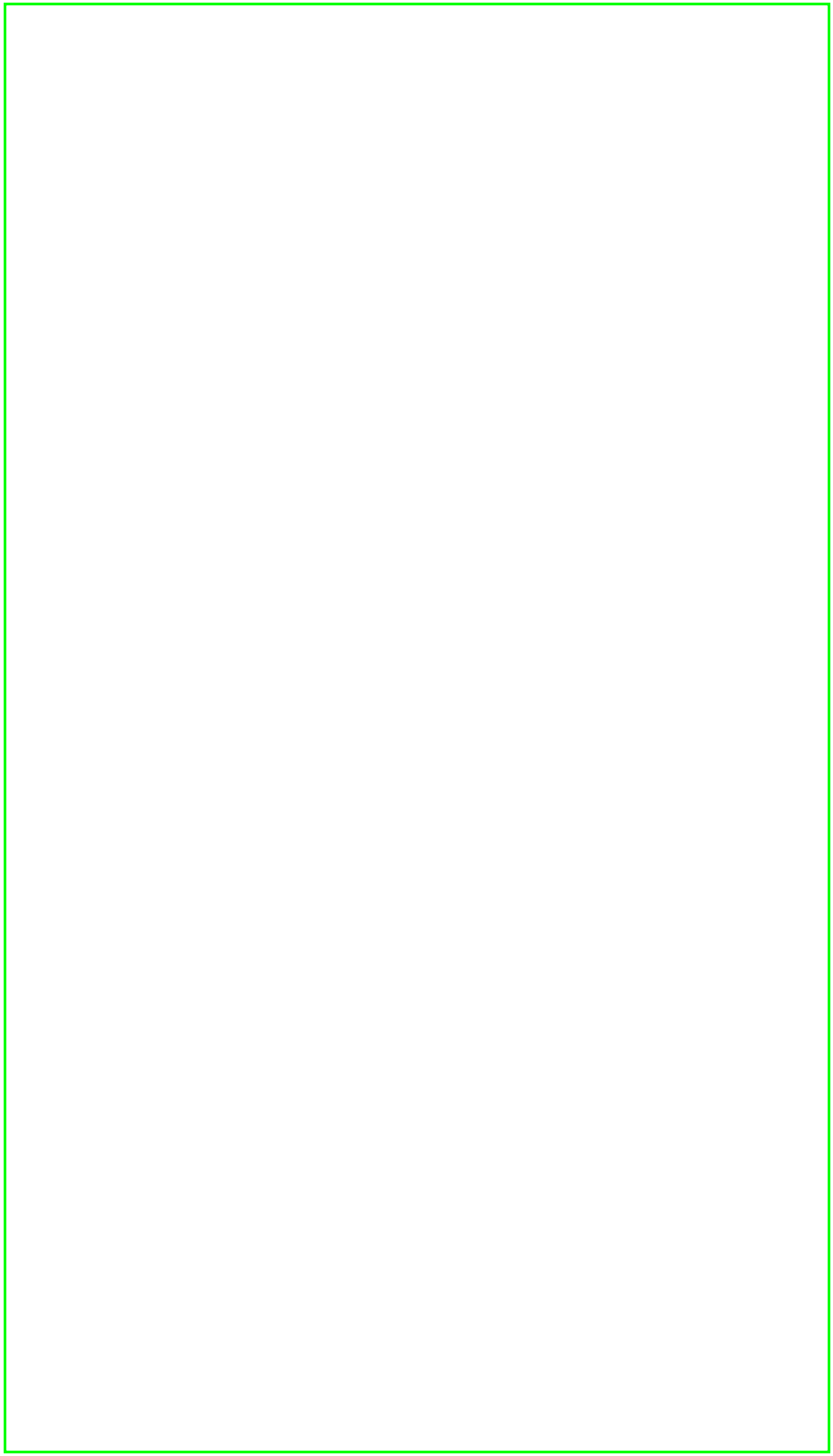

ANNOTATIONS

CONSTITUTION OF THE STATE OF NEBRASKA

Article I, sec. 3.

Besides guaranteeing fair process, the Nebraska due process clause provides heightened protection against government interference with certain fundamental rights and liberty interests. Citizens for Eq. Ed. v. Lyons-Decatur Sch. Dist., 274 Neb. 278, 739 N.W.2d 742 (2007).

The Nebraska due process clause forbids the government from infringing upon a fundamental liberty interest, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest. Citizens for Eq. Ed. v. Lyons-Decatur Sch. Dist., 274 Neb. 278, 739 N.W.2d 742 (2007).

Fundamental rights are those implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed. Citizens for Eq. Ed. v. Lyons-Decatur Sch. Dist., 274 Neb. 278, 739 N.W.2d 742 (2007).

A state constitutional provision is not elevated to a fundamental right solely because it mandates legislative action. Citizens for Eq. Ed. v. Lyons-Decatur Sch. Dist., 274 Neb. 278, 739 N.W.2d 742 (2007).

When a classification created by state action does not jeopardize the exercise of a fundamental right or categorize because of an inherently suspect characteristic, the Equal Protection Clause requires only that the classification rationally further a legitimate state interest. Citizens for Eq. Ed. v. Lyons-Decatur Sch. Dist., 274 Neb. 278, 739 N.W.2d 742 (2007).

Article I, sec. 4.

The plain language of the religious freedom clause textually commits to the Legislature the duty to encourage schools. Nebraska Coalition for Ed. Equity v. Heineman, 273 Neb. 531, 731 N.W.2d 164 (2007).

There are no qualitative, constitutional standards for public schools that the Nebraska Supreme Court could enforce, apart from the requirements that the education in public schools must be free and available to all children. Nebraska Coalition for Ed. Equity v. Heineman, 273 Neb. 531, 731 N.W.2d 164 (2007).

The Nebraska Supreme Court interprets the paucity of standards in the free instruction clause as the framers' intent to commit the determination of adequate school funding solely to the Legislature's discretion, greater resources, and expertise. Nebraska Coalition for Ed. Equity v. Heineman, 273 Neb. 531, 731 N.W.2d 164 (2007).

Article I, sec. 5.

The resubmission clause of Neb. Const. art. III, sec. 2, is a limitation on the initiative process itself, but does not restrict speech or expression because it does not regulate the process of advocacy by dictating who can speak or how they must go about speaking. State ex rel. Lemon v. Gale, 272 Neb. 295, 721 N.W.2d 347 (2006).

Because the question of whether an initiative measure should appear on the ballot is determined solely by a state's constitution, the resubmission clause does not restrict the right to political association. State ex rel. Lemon v. Gale, 272 Neb. 295, 721 N.W.2d 347 (2006).

The parameters of the constitutional right to freedom of speech are the same under both the federal and the state Constitutions. Pony Lake Sch. Dist. v. State Committee for Reorg., 271 Neb. 173, 710 N.W.2d 609 (2006).

State restrictions on initiative and referendum rights violate the guarantee of free speech when they significantly inhibit communication with voters about proposed political change and are not warranted by the state

interests (administrative efficiency, fraud detection, and informing voters) alleged to justify those restrictions. Pony Lake Sch. Dist. v. State Committee for Reorg., 271 Neb. 173, 710 N.W.2d 609 (2006).

A legislative act with an effective date prior to the date a referendum election on the act can be held does not violate the constitutional right to free speech, based on the fact that Nebraska's referendum provisions make it difficult for sponsors to repeal the act and even more difficult to suspend its operation. Pony Lake Sch. Dist. v. State Committee for Reorg., 271 Neb. 173, 710 N.W.2d 609 (2006).

Article I, sec. 7.

Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a seizure of persons within the meaning of this provision. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

An individual operating or traveling in an automobile does not lose all reasonable expectation of privacy simply because the automobile and its use are subject to government regulation. But in determining whether the government's intrusion into a motorist's Fourth Amendment interests was reasonable, the question is not whether the officer issued a citation for a traffic violation or whether the State ultimately proved the violation. An officer's stop of a vehicle is objectively reasonable when the officer has probable cause to believe that a traffic violation has occurred. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis. If an officer has probable cause to stop a violator, the stop is objectively reasonable and any ulterior motivation is irrelevant. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

To detain a motorist for further investigation past the time reasonably necessary to conduct a routine investigation incident to a traffic stop, an officer must have a reasonable, articulable suspicion that the motorist is involved in criminal activity unrelated to the traffic violation. Reasonable suspicion for further detention must exist after the point that an officer issues a citation. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

Whether a police officer has a reasonable suspicion to detain a motorist for further investigation past the time reasonably necessary to conduct a routine investigation incident to a traffic stop based on sufficient articulable facts depends on the totality of the circumstances. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

Reasonable suspicion to detain a motorist following a traffic stop entails some minimal level of objective justification for detention. Reasonable suspicion is something more than an inchoate and unparticularized hunch, but less than the level of suspicion required for probable cause. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

Factors that would independently be consistent with innocent activities may nonetheless amount to reasonable suspicion to detain a motorist following a traffic stop when considered collectively. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

Although of limited usefulness, a court, in determining whether an officer had reasonable, articulable suspicion justifying continued detention of vehicle occupants following a traffic stop, may consider, with other factors, evidence that the occupants exhibited nervousness. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

In determining whether an officer had reasonable, articulable suspicion justifying continued detention of a motorist following a traffic stop, a court can consider, as part of the totality of the circumstances, the officer's knowledge of the motorist's drug-related criminal history. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

Evidence that a motorist is returning to his or her home state in a vehicle rented from another state is not inherently indicative of drug trafficking when the officer has no reason to believe the motorist's explanation is untrue, but a court may nonetheless consider this factor when combined with other indicia that drug activity may

be occurring, particularly the occupants' contradictory answers regarding their travel purpose and plans or an occupant's previous drug-related convictions. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

Generally, the factors supporting an officer's reasonable suspicion of illegal drug activity when coupled with a well-trained dog's positive indication of drugs in a vehicle will give the officer probable cause to search the vehicle. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

Article I, sec. 9.

The death penalty, when properly imposed by a state, does not violate either the 8th or the 14th Amendments to the U.S. Constitution or the state Constitution's proscription against inflicting cruel and unusual punishment. State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008).

The prohibition against cruel and unusual punishment in the federal and state Constitutions is a restraint upon the exercise of legislative power. State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008).

The relevant legal standards in deciding whether electrocution is cruel and unusual punishment are whether the State's chosen method of execution (1) presents a substantial risk that a prisoner will suffer unnecessary and wanton pain in an execution, (2) violates the evolving standards of decency that mark a mature society, and (3) minimizes physical violence and mutilation of the prisoner's body. State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008).

Whether a method of inflicting the death penalty inherently imposes a significant risk of causing pain in an execution is a question of fact. State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008).

Whether a method of execution violates the constitutional prohibition against cruel and unusual punishment presents a question of law. State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008).

In a method of execution challenge, "wanton" means that the method itself is inherently cruel. State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008).

Whether the Legislature intended to cause pain in selecting a punishment is irrelevant to a constitutional challenge that a statutorily imposed method of punishment violates the prohibition against cruel and unusual punishment. State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008).

Electrocution as an execution method violates the constitutional prohibition against cruel and unusual punishment because it will inflict intolerable pain unnecessary to cause death in enough executions to present a substantial risk that any prisoner will suffer unnecessary and wanton pain in a judicial execution by electrocution. State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008).

Article I, sec. 11.

In order to waive the constitutional right to counsel, the waiver must be made voluntarily, knowingly, and intelligently. State v. Gunther, 271 Neb. 874, 716 N.W.2d 691 (2006).

The fact that a defendant has had the advice of counsel throughout his or her prosecution is an indication that the defendant's waiver of counsel and election to represent himself or herself was knowing and voluntary. State v. Gunther, 271 Neb. 874, 716 N.W.2d 691 (2006).

A knowing and intelligent waiver of the right to counsel can be inferred from a defendant's conduct. State v. Gunther, 271 Neb. 874, 716 N.W.2d 691 (2006).

A waiver of counsel need not be prudent, just knowing and intelligent. State v. Gunther, 271 Neb. 874, 716 N.W.2d 691 (2006).

A defendant does not have a constitutional right to receive personal instruction from the trial judge on courtroom procedure. State v. Gunther, 271 Neb. 874, 716 N.W.2d 691 (2006).

A criminal defendant who proceeds pro se is held to the same trial standard as if he or she were represented by counsel, and it is not up to the trial court to conduct the defense of a pro se defendant. State v. Gunther, 271 Neb. 874, 716 N.W.2d 691 (2006).

A defendant who elects to represent himself or herself cannot thereafter complain that the quality of his or her own defense amounted to a denial of effective assistance of counsel. State v. Gunther, 271 Neb. 874, 716 N.W.2d 691 (2006).

In order to determine whether a defendant's self-representation rights have been respected, the primary focus must be on whether the defendant had a fair chance to present his or her case in his or her own way. State v. Gunther, 271 Neb. 874, 716 N.W.2d 691 (2006).

Article I, sec. 12.

Double jeopardy protects a defendant against cumulative punishments for convictions on the same offense; however, it does not prohibit the State from prosecuting a defendant for multiple offenses in a single prosecution. State v. Humbert, 272 Neb. 428, 722 N.W.2d 71 (2006).

Article I, sec. 22.

The right to vote under this provision does not extend beyond issues involving the right to participate in representative government. Pony Lake Sch. Dist. v. State Committee for Reorg., 271 Neb. 173, 710 N.W.2d 609 (2006).

Because the right to participate in representative government is not implicated by a referendum proceeding, the constitutional right to vote is not violated by the Nebraska Constitution's limitations on the right to refer legislative enactments to the voters. Pony Lake Sch. Dist. v. State Committee for Reorg., 271 Neb. 173, 710 N.W.2d 609 (2006).

Article II, sec. 1.

Nebraska's separation of powers clause prohibits the three governmental branches from exercising the duties and prerogatives of another branch and prohibits a branch from improperly delegating its own duties and prerogatives, except as the constitution directs or permits. In re Petition of Nebraska Community Corr. Council, 274 Neb. 225, 738 N.W.2d 850 (2007).

The Legislature may not delegate its lawmaking function to the executive or judicial branches. In re Petition of Nebraska Community Corr. Council, 274 Neb. 225, 738 N.W.2d 850 (2007).

This provision of the Nebraska Constitution prohibits the Legislature from mandating that the Supreme Court adopt sentencing guidelines for felony drug offenses. In re Petition of Nebraska Community Corr. Council, 274 Neb. 225, 738 N.W.2d 850 (2007).

In Nebraska, the distribution of powers clause prohibits one branch of government from exercising the duties of another branch. Nebraska Coalition for Ed. Equity v. Heineman, 273 Neb. 531, 731 N.W.2d 164 (2007).

Article III, sec. 2.

The people of this state may amend their Constitution in any way they see fit, provided the amendments do not violate the federal Constitution or conflict with federal statutes or treaties. State ex rel. Johnson v. Gale, 273 Neb. 889, 734 N.W.2d 290 (2007).

An appellate court makes no attempt to judge the wisdom or the desirability of enacting initiative amendments. State ex rel. Johnson v. Gale, 273 Neb. 889, 734 N.W.2d 290 (2007).

Article III, sec. 3.

This provision specifically reserves to the people the power of referendum and clearly defines the scope of that right and its limitations. Pony Lake Sch. Dist. v. State Committee for Reorg., 271 Neb. 173, 710 N.W.2d 609 (2006).

Sponsors who obtain the signatures of more than 5 percent but less than 10 percent of Nebraska's registered voters on a referendum petition are not entitled to have the contested enactment suspended pending a referendum election. Pony Lake Sch. Dist. v. State Committee for Reorg., 271 Neb. 173, 710 N.W.2d 609 (2006).

Article III, sec. 4.

The rule under this provision that "legislation which hampers or renders ineffective the power reserved to the people is unconstitutional" has no application outside of regulating legislation intended to facilitate the initiative or referendum procedures. Pony Lake Sch. Dist. v. State Committee for Reorg., 271 Neb. 173, 710 N.W.2d 609 (2006).

Article III, sec. 12.

Subsection (3) of this provision operates only to determine whether an expired legislative term will count as a full term toward disqualification to seek a third consecutive term. State ex rel. Johnson v. Gale, 273 Neb. 889, 734 N.W.2d 290 (2007).

Article III, sec. 17.

The Nebraska Supreme Court's role as fact finder is limited to finding whether the Legislature has shown by clear and convincing evidence that an officer is guilty of one or more impeachable offenses. Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).

This provision limits the Nebraska Supreme Court's judgment to removal from office and disqualification to hold other state offices. This provision specifically provides that the party impeached, whether convicted or acquitted, shall nevertheless be liable to prosecution and punishment according to law. Thus, the Nebraska Constitution explicitly provides that a conviction of impeachment is not the same as a criminal conviction and that impeachment sanctions cannot rise to the level of criminal punishment. Because criminal conviction is not at stake in an impeachment proceeding, a "beyond a reasonable doubt" standard of proof is not required. Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).

An impeachment trial is conducted as a civil proceeding, and the standard of proof for a conviction of impeachment is clear and convincing evidence. Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).

Article III, sec. 19.

When the services for which compensation is granted are rendered prior to the date on which the terms of compensation are determined, the benefits awarded are not compensation but are a gratuity, and the payment of such benefits violates this provision. It follows that when the services for which compensation is paid are rendered after the date on which the terms of compensation are established, the benefits awarded are not a gratuity, and the payment of such benefits does not violate this provision. City of Omaha v. City of Elkhorn, 276 Neb. 70, 752 N.W.2d 137 (2008).

Article III, sec. 27.

This provision provides the only restriction on the Legislature's power to determine the effective date of its enactments. Pony Lake Sch. Dist. v. State Committee for Reorg., 271 Neb. 173, 710 N.W.2d 609 (2006).

Article IV, sec. 5.

The phrase "misdemeanor in office" is a term of art, and the word "misdemeanor" in this phrase is not used as it is in a criminal context. An officer's conduct need not rise to the level of an indictable offense to be considered an impeachable offense. Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).

Article V, sec. 2.

The Supreme Court has original jurisdiction to consider habeas corpus proceedings, but does not ordinarily entertain original actions, unless some good reason is shown why the application was not made to a county or district court. Smeal Fire Apparatus Co. v. Kreikemeier, 271 Neb. 616, 715 N.W.2d 134 (2006).

Article V, sec. 22.

This provision is not self-executing, but instead requires legislative action for waiver of the State's sovereign immunity. Livengood v. Nebraska State Patrol Ret. Sys., 273 Neb. 247, 729 N.W.2d 55 (2007).

Article V, sec. 27.

As a statutorily created court of limited and special jurisdiction, a juvenile court has only such authority as has been conferred on it by statute. In re Interest of Veronica H., 272 Neb. 370, 721 N.W.2d 651 (2006).

Article VII, sec. 1.

This provision of the constitution does not confer a fundamental right to equal and adequate funding of schools. Citizens for Eq. Ed. v. Lyons-Decatur Sch. Dist., 274 Neb. 278, 739 N.W.2d 742 (2007).

The appropriate level of scrutiny in constitutional challenges to school funding decisions is whether the state action is rationally related to a legitimate government purpose. Citizens for Eq. Ed. v. Lyons-Decatur Sch. Dist., 274 Neb. 278, 739 N.W.2d 742 (2007).

Article VII, sec. 5.

Restitution ordered in an amount not exceeding the actual damage sustained by the victim, pursuant to section 29-2280, is not a penalty within the meaning of this provision and is constitutional. State v. Moyer, 271 Neb. 776, 715 N.W.2d 565 (2006).

Article VIII, sec. 1.

Sections 77-132 and 77-1359 do not violate this provision. Agena v. Lancaster Cty. Bd. of Equal., 276 Neb. 851, 758 N.W.2d 363 (2008).

This provision and section 6 provide that the Legislature can empower a city to tax, but article XI authorizes a city with a limitation of powers home rule charter to exercise that power to tax without first waiting for express delegation. Home Builders Assn. v. City of Lincoln, 271 Neb. 353, 711 N.W.2d 871 (2006).

Article VIII, sec. 1A.

A property tax in furtherance of compliance with an interstate compact is, for purposes of analysis under this provision, a property tax levied by the State for state purposes. Garey v. Nebraska Dept. of Nat. Resources, 277 Neb. 149, 759 N.W.2d 919 (2009).

Section 2-3225(1)(d) violates the prohibition against levying a property tax for state purposes found in this provision and is therefore unconstitutional. Garey v. Nebraska Dept. of Nat. Resources, 277 Neb. 149, 759 N.W.2d 919 (2009).

Article VIII, sec. 6.

Section 1 and this provision provide that the Legislature can empower a city to tax, but article XI authorizes a city with a limitation of powers home rule charter to exercise that power to tax without first waiting for express delegation. Home Builders Assn. v. City of Lincoln, 271 Neb. 353, 711 N.W.2d 871 (2006).

Article VIII, sec. 9.

Section 81-8,305 does not violate this provision. Pavers, Inc. v. Board of Regents, 276 Neb. 559, 755 N.W.2d 400 (2008).

Article XIII, sec. 3.

This provision prevents the state or any of its governmental subdivisions from extending the state's credit to private enterprise; it is designed to prohibit the state from acting as a surety or guarantor of the debt of another. Japp v. Papio-Missouri River NRD, 273 Neb. 779, 733 N.W.2d 551 (2007).

STATUTES OF THE STATE OF NEBRASKA

1-105.01.

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).

1-137.

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).

1-148.

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).

2-3225.

Section (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).

2-3235.

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).

2-3255.

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).

7-101.

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).

7-108.

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).

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).

12-501.

Under Nebraska's cemetery association laws, it is apparent that there is a public nature to certain of the statutory authority given cemetery associations with regard to cemetery property. Sjuts v. Granville Cemetery Assn., 272 Neb. 103, 719 N.W.2d 236 (2006).

13-902.

Tort actions against political subdivisions of the State of Nebraska are governed exclusively by the Political Subdivisions Tort Claims Act. McKenna v. Julian, 277 Neb. 522, 763 N.W.2d 384 (2009).

13-906.

Because compliance with the statutory time limits set forth in this section can be determined with precision, the doctrine of substantial compliance has no application. Geddes v. York County, 273 Neb. 271, 729 N.W.2d 661 (2007).

The plain and ordinary meaning of the phrase "within six months" includes the last day of the 6-month time period. Geddes v. York County, 273 Neb. 271, 729 N.W.2d 661 (2007).

In conjunction with section 25-2221 and section 49-801(13), a political subdivision has until the end of the last day of the 6-month period after a claimant has filed a tort claim upon which to make a final disposition of such claim. Geddes v. York County, 273 Neb. 271, 729 N.W.2d 661 (2007).

The word "month" as used in this section means calendar month. Geddes v. York County, 273 Neb. 271, 729 N.W.2d 661 (2007).

13-910.

The Political Subdivisions Tort Claims Act provides a list of claims for which sovereign immunity is not waived. McKenna v. Julian, 277 Neb. 522, 763 N.W.2d 384 (2009).

Political subdivisions are not liable under subsection (4) of this section for actions based upon the revocation of a license or permit. Rohde v. City of Ogallala, 273 Neb. 689, 731 N.W.2d 898 (2007).

The intentional tort exception under subsection (7) of this section does not apply to bar negligence claims against a defendant alleging a breach of an independent duty, unrelated to any possible employment relationship between the assailant and the defendant, to take reasonable steps to prevent an intentional tort. Doe v. Omaha Pub. Sch. Dist., 273 Neb. 79, 727 N.W.2d 447 (2007).

In order for the discretionary function exception under subsection (2) of this section to apply, the evidence must show facts of the specific policy and conduct in accordance with that policy. Doe v. Omaha Pub. Sch. Dist., 273 Neb. 79, 727 N.W.2d 447 (2007).

In order for the due care exception under subsection (1) of this section to apply, an adequate factual record must exist. Doe v. Omaha Pub. Sch. Dist., 273 Neb. 79, 727 N.W.2d 447 (2007).

A claim alleging that an employee acting within the course and scope of his employment caused a motor vehicle accident by failing to stop on a rain-slicked street is a claim within and subject to the provisions of the Political Subdivisions Tort Claims Act. Wise v. Omaha Public Schools, 271 Neb. 635, 714 N.W.2d 19 (2006).

13-911.

A law enforcement officer's decision and action to terminate a vehicular pursuit do not instantaneously eliminate the danger to innocent third parties contemplated in this section. That danger continues until the motorist reasonably perceives that the pursuit has ended and has had an opportunity to discontinue the hazardous, evasive driving behaviors contemplated in this section. Staley v. City of Omaha, 271 Neb. 543, 713 N.W.2d 457 (2006).

Whether an injury to an innocent third party is "proximately caused by the action of a law enforcement officer . . . during vehicular pursuit" is a question of fact which must necessarily be determined on a case-by-case basis. Staley v. City of Omaha, 271 Neb. 543, 713 N.W.2d 457 (2006).

13-920.

A claim alleging that an employee acting within the course and scope of his employment caused a motor vehicle accident by failing to stop on a rain-slicked street is a claim within and subject to the provisions of the Political Subdivisions Tort Claims Act. Wise v. Omaha Public Schools, 271 Neb. 635, 714 N.W.2d 19 (2006).

13-926.

The damage cap embodied in this section applies to all political subdivisions of the State of Nebraska, which together create a single class of tort-feasors to which the Legislature has chosen to apply uniform rules and procedures governing tort liability. By limiting the tort liability exposure of all political subdivisions in exactly the

same manner, the Legislature has enacted a general law which does not contravene the constitutional prohibition of special legislation. Staley v. City of Omaha, 271 Neb. 543, 713 N.W.2d 457 (2006).

14-117.

The terms "contiguous" and "adjoining" in this section are synonymous. City of Elkhorn v. City of Omaha, 272 Neb. 867, 725 N.W.2d 792 (2007).

Under the "contiguous or adjacent" standard in annexation statutes, municipalities are not required to have common boundaries with the territory to be annexed, and they may annex territory nearby in proximity through the simultaneous annexation of a substantial link of connecting territory. City of Elkhorn v. City of Omaha, 272 Neb. 867, 725 N.W.2d 792 (2007).

The "contiguous or adjacent" standard for annexations also applies to "adjoining city." City of Elkhorn v. City of Omaha, 272 Neb. 867, 725 N.W.2d 792 (2007).

Under this section, the Legislature intended to permit a metropolitan city to extend its corporate limits so that it adjoins the corporate limits of a city to be annexed. City of Elkhorn v. City of Omaha, 272 Neb. 867, 725 N.W.2d 792 (2007).

14-366.

A community college's use of an entrance/exit drive qualified as a "specific public use" under this section. Metropolitan Comm. College Area v. City of Omaha, 277 Neb. 782, 765 N.W.2d 440 (2009).

14-410.

Regardless of whether a request for variances was termed an "appeal," a zoning board of appeals was exercising appellate jurisdiction when the board granted certain variances. Lamar Co. v. Omaha Zoning Bd. of Appeals, 271 Neb. 473, 713 N.W.2d 406 (2006).

14-411.

This section acts to stay, upon appeal, proceedings, not only in furtherance of the action appealed from, but also in related actions, if resolution of those related actions could alter the circumstances under which the original appeal was taken. Lamar Co. v. Omaha Zoning Bd. of Appeals, 271 Neb. 473, 713 N.W.2d 406 (2006).

14-557.

A "perpetual lien" is not intended to continue delinquent taxes in force against real estate after a statute has barred a right of action. Rather, the word "perpetual" means that the lien conferred by the statute is fixed upon the land itself and is primary, overriding all other liens, since a sale thereunder if duly made would extinguish all other claims. Real estate can still be discharged from a perpetual lien by payment, sale for taxes, or the neglect of the purchaser to foreclose the lien until after the statute of limitations has run. INA Group v. Young, 271 Neb. 956, 716 N.W.2d 733 (2006).

14-815.

The Metropolitan Utilities District has exclusive authority over the routine inspection of gas furnaces, and this authority is not shared with the City of Omaha. McNally v. City of Omaha, 273 Neb. 558, 731 N.W.2d 573 (2007).

16-117.

The valid part of an annexation ordinance may be carried into effect if what remains after the invalid part is eliminated contains the essential elements of a complete ordinance. County of Sarpy v. City of Papillion, 277 Neb. 829, 765 N.W.2d 456 (2009).

So long as a substantial part of the connecting boundary touches the corporate limits, an annexation will not be void simply because parts of the connecting side do not touch the city or because portions of the annexed territory are narrower than the rest. County of Sarpy v. City of Papillion, 277 Neb. 829, 765 N.W.2d 456 (2009).

A city of the first class must adopt a specified annexation resolution and plan for extending services before annexing land. City of Elkhorn v. City of Omaha, 272 Neb. 867, 725 N.W.2d 792 (2007).

16-726.

Noncompliance with the filing requirement of this section may be asserted as a defense in an action to recover on a claim against a city of the first class. Niemoller v. City of Papillion, 276 Neb. 40, 752 N.W.2d 132 (2008).

Where a claim is not filed with the city clerk – the person designated by statute as the authorized recipient – a substantial compliance analysis is not applicable. Niemoller v. City of Papillion, 276 Neb. 40, 752 N.W.2d 132 (2008).

17-201.

Incorporation as a village is not permissible if the area of the proposed village has previously been incorporated under any Nebraska statute. State ex rel. Lanman v. Board of Cty. Commissioners, 277 Neb. 492, 763 N.W.2d 392 (2009).

A sanitary and improvement district is a public corporate entity within the boundaries of which a village may not be incorporated pursuant to this section. State ex rel. Lanman v. Board of Cty. Commissioners, 277 Neb. 492, 763 N.W.2d 392 (2009).

17-405.01.

Neither the shape of the annexed tract nor the purpose for the annexation determines whether an annexation is lawful. County of Sarpy v. City of Gretna, 273 Neb. 92, 727 N.W.2d 690 (2007).

Contiguity or adjacency requires the connecting point between the land sought to be annexed and the corporate boundary to be substantially adjacent. County of Sarpy v. City of Gretna, 273 Neb. 92, 727 N.W.2d 690 (2007).

18-2142.01.

Subsection (2) of this section requires that a party wishing to challenge a contract that provides financing for an approved redevelopment project initiate any suit, action, or challenge within 30 days of the party's formally entering into the contract; after 30 days, the project shall be conclusively deemed to have complied with Nebraska's community development laws. Community Dev. Agency v. PRP Holdings, 277 Neb. 1015, 767 N.W.2d 68 (2009).

21-1949.

Notice to the Attorney General as an interested party is an essential prerequisite to proceeding in an action involving a public benefit corporation, but once the notice is given, failure to provide such notice within 10 days of the filing of the original complaint does not constitute a jurisdictional defect foreclosing further action. Gilbert & Martha Hitchcock Found. v. Kountze, 275 Neb. 978, 751 N.W.2d 129 (2008).

Effective notice to the Attorney General is an essential prerequisite to proceeding in any action involving a public benefit corporation for which such notice is required. Hitchcock Foundation v. Kountze, 272 Neb. 251, 720 N.W.2d 31 (2006).

21-1977.

Effective notice to the Attorney General is an essential prerequisite to proceeding in any action involving a public benefit corporation for which such notice is required. Hitchcock Foundation v. Kountze, 272 Neb. 251, 720 N.W.2d 31 (2006).

21-1987.

The term "transaction" generally connotes negotiations or a consensual bilateral arrangement between the corporation and another party or parties that concern their respective and differing economic rights or interests – not simply a unilateral action by the corporation, but, rather, a "deal." Glad Tidings v. Nebraska Dist. Council, 273 Neb. 960, 734 N.W.2d 731 (2007).

21-2086.

To succeed in an action brought under subsection (1) of this section, the prohibited conduct must be proved, and it must be shown that removal of a director is in the best interests of the corporation. More specifically, the district court may remove a director in an action brought by shareholders holding at least 10 percent of the outstanding shares if the court, after reviewing the evidence, finds that the director engaged in fraudulent or dishonest conduct or engaged in a gross abuse of authority or discretion with respect to the corporation and also finds that the removal of the director is in the corporation's best interests. Neiman v. Tri R Angus, 274 Neb. 252, 739 N.W.2d 182 (2007).

The language of this section leads to the conclusion that judicial removal of a director is an extraordinary remedy. Neiman v. Tri R Angus, 274 Neb. 252, 739 N.W.2d 182 (2007).

21-20,138.

The phrase "all, or substantially all," as used in subsection (1)(c) of this section, means a sale of corporate assets that, quantitatively or qualitatively, would result in a fundamental change in the nature of the corporation. State ex rel. Columbus Metal v. Aaron Ferer & Sons, 272 Neb. 758, 725 N.W.2d 158 (2006).

21-20,172.

Subsection (3) of this section was intended to preserve the judicially developed doctrine that internal corporate affairs are governed by the state of incorporation even when the corporation's business and assets are located primarily in other states. Johnson v. Johnson, 272 Neb. 263, 720 N.W.2d 20 (2006).

23-114.

If the mode or manner by which a certain action is to be taken is prescribed in a statute or charter, that method must generally be followed. State ex rel. Musil v. Woodman, 271 Neb. 692, 716 N.W.2d 32 (2006).

23-114.01.

Subsection (5) of this section provides for a right of appeal to the district court from a decision by the county planning commission or county board of commissioners or supervisors, without setting forth any procedure for prosecuting the appeal. Therefore, the appeal procedure in section 25-1937 is also implicated. In re Application of Olmer, 275 Neb. 852, 752 N.W.2d 124 (2008).

23-135.

An appeal from a final order of the county civil service commission is a petition in error, not an original breach of contract action against the county; an employee appealing the order is not required to file a claim with the county under this section. Pierce v. Douglas Cty. Civil Serv. Comm., 275 Neb. 722, 748 N.W.2d 660 (2008).

23-2515.

When the county civil service commission acts in a judicial manner, a party adversely affected by its decision is entitled to appeal to the district court through the petition in error statutes. Pierce v. Douglas Cty. Civil Serv. Comm., 275 Neb. 722, 748 N.W.2d 660 (2008).

An appeal from a final order of the county civil service commission is a petition in error, not an original breach of contract action against the county under section 23-135. Pierce v. Douglas Cty. Civil Serv. Comm., 275 Neb. 722, 748 N.W.2d 660 (2008).

The district court had jurisdiction over a former employee's petition in error claiming that the county public properties department breached grievance procedures under a collective bargaining agreement in terminating his employment. Pierce v. Douglas Cty. Civil Serv. Comm., 275 Neb. 722, 748 N.W.2d 660 (2008).

24-109.

Nebraska's impeachment statutes specifically provide that a state officer may be impeached notwithstanding the offense for which said officer is tried occurred during a term of office immediately preceding. Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).

24-517.

In common-law and equity actions relating to decedents' estates, the county courts have concurrent original jurisdiction with the district courts. When the jurisdiction of the county court and the district court is concurrent, the basic principles of judicial administration require that the court which first acquires jurisdiction should retain it to the exclusion of the other court. Washington v. Conley, 273 Neb. 908, 734 N.W.2d 306 (2007).

24-722.

A clear violation of the Nebraska Code of Judicial Conduct constitutes, at a minimum, a violation of subsection (6) of this section. In re Complaint Against Lindner, 271 Neb. 323, 710 N.W.2d 866 (2006).

24-1106.

Subsection (1) of this section does not require that all constitutional arguments, no matter how insubstantial, bypass review by the Court of Appeals. For the constitutionality of a statute to be genuinely "involved" in an appeal, the constitutional issue must be real and substantial; not merely colorable. For a constitutional claim to be real and substantial, the contention must disclose a contested matter of right, which presents a legitimate question involving some fair doubt and reasonable room for disagreement. State v. Nelson, 274 Neb. 304, 739 N.W.2d 199 (2007).

25-201.01.

The dismissal of a plaintiff's first action for failure to abide by the progression standards is a dismissal because of a lack of action under this section. Zitterkopf v. Maldonado, 273 Neb. 145, 727 N.W.2d 696 (2007).

This section includes a savings clause for actions filed in federal court that are dismissed because of the loss of diversity jurisdiction. Brodine v. Blue Cross Blue Shield, 272 Neb. 713, 724 N.W.2d 321 (2006).

25-205.

In a suit against the guarantors of a promissory note that contains an optional acceleration clause, the statute of limitations for an action on the whole indebtedness due begins to run from the time the creditor takes positive action indicating that the creditor has elected to exercise the option. City of Lincoln v. Hershberger, 272 Neb. 839, 725 N.W.2d 787 (2007).

In this case, the general 5-year statute of limitations must yield to the 3-year provision in a health insurance policy because such provision is authorized by the statutes regulating health insurance policies. Brodine v. Blue Cross Blue Shield, 272 Neb. 713, 724 N.W.2d 321 (2006).

A cause of action on an insurer's duty to defend does not run until the underlying action is resolved against the insured. Dutton-Lainson Co. v. Continental Ins. Co., 271 Neb. 810, 716 N.W.2d 87 (2006).

25-207.

A claim for damages caused by a continuing tort can be maintained for injuries caused by conduct occurring within the statutory limitations period. When there are continuing or repeated wrongs that are capable of being terminated, a claim accrues every day the wrong continues or each time it is repeated, the result being that a plaintiff is only barred from recovering damages that were ascertainable prior to the statutory period preceding the lawsuit. Alston v. Hormel Foods Corp., 273 Neb. 422, 730 N.W.2d 376 (2007).

25-213.

Under this section, a person is within the age of 20 years until he or she becomes 21 years old. Carruth v. State, 271 Neb. 433, 712 N.W.2d 575 (2006).

25-217.

The provisions of this section requiring service of process are not applicable to condemnation actions. Wooden v. County of Douglas, 275 Neb. 971, 751 N.W.2d 151 (2008).

Pursuant to this section, an action is dismissed by operation of law as to any defendant who is named and who is not served with process within 6 months after the complaint is filed. Reid v. Evans, 273 Neb. 714, 733 N.W.2d 186 (2007).

25-222.

In order for a continuous relationship to toll the statute of limitations regarding a claim for malpractice, there must be a continuity of the relationship and services for the same or related subject matter after the alleged professional negligence. Bellino v. McGrath North, 274 Neb. 130, 738 N.W.2d 434 (2007).

The discovery exception of this section is a tolling provision which permits the filing of an action after the 2-year statute of limitations only in those circumstances where the cause of action was not discovered and could not reasonably have been discovered within that period. Carruth v. State, 271 Neb. 433, 712 N.W.2d 575 (2006).

25-319.

An individual who cannot maintain his or her individual cause of action against a defendant is unqualified to represent a purported class in a class action. Lynch v. State Farm Mut. Auto. Ins. Co., 275 Neb. 136, 745 N.W.2d 291 (2008).

25-322.

An order reviving an action, whether the order was entered in proceedings under this section or under sections 25-1403 to 25-1420, is not a final order from which an appeal may immediately be taken. The order may be reviewed after final judgment in the case. Platte Valley Nat. Bank v. Lasen, 273 Neb. 602, 732 N.W.2d 347 (2007).

25-328.

The existence of a statutory right of intervention before trial does not prevent a court of equity from allowing intervention after judgment. Meister v. Meister, 274 Neb. 705, 742 N.W.2d 746 (2007).

The interest required as a prerequisite to intervention is a direct and legal interest in the controversy, which is an interest of such character that the intervenor will lose or gain by the direct operation and legal effect of the judgment which may be rendered in the action. Koch v. Aupperle, 274 Neb. 52, 737 N.W.2d 869 (2007).

In order to intervene under this section, the intervenor must have a direct and legal interest of such character that the intervenor will lose or gain by the direct operation and legal effect of the judgment which may be rendered in the action. Spear T Ranch v. Knaub, 271 Neb. 578, 713 N.W.2d 489 (2006).

Under equity principles, laches, or unreasonable delay, is a proper reason to deny intervention. Merz v. Seeba, 271 Neb. 117, 710 N.W.2d 91 (2006).

25-330.

Seeking leave to intervene by motion, and not by complaint, is not a procedural bar to intervention under this section. State ex rel. Lanman v. Board of Cty. Commissioners, 277 Neb. 492, 763 N.W.2d 392 (2009).

25-415.

The proper procedure in Nebraska courts for a party to enforce a forum selection clause naming another state as a forum is to file a motion to dismiss pursuant to this section. Polk Cty. Rec. Assn. v. Susquehanna Patriot Leasing, 273 Neb. 1026, 734 N.W.2d 750 (2007).

Aside from factual findings, a ruling on a motion to dismiss pursuant to this section is subject to de novo review. Where the trial court's decision is based upon the complaint and its own determination of disputed factual issues, an appellate court reviews the factual findings under the "clearly erroneous" standard. Polk Cty. Rec. Assn. v. Susquehanna Patriot Leasing, 273 Neb. 1026, 734 N.W.2d 750 (2007).

In the absence of one of the five listed exceptions, this section requires dismissal of an action only when the forum selection clause is mandatory. If the forum selection clause is permissive rather than mandatory, this section does not require dismissal of the Nebraska action. Polk Cty. Rec. Assn. v. Susquehanna Patriot Leasing, 273 Neb. 1026, 734 N.W.2d 750 (2007).

A party seeking to avoid a contractual forum selection clause bears a heavy burden of showing that the clause should not be enforced, and, accordingly, the party seeking to avoid the forum selection clause bears the burden of proving that one of the statutory exceptions applies. Polk Cty. Rec. Assn. v. Susquehanna Patriot Leasing, 273 Neb. 1026, 734 N.W.2d 750 (2007).

A forum is seriously inconvenient only if one party would be effectively deprived of a meaningful day in court. Polk Cty. Rec. Assn. v. Susquehanna Patriot Leasing, 273 Neb. 1026, 734 N.W.2d 750 (2007).

A forum selection clause can be avoided for fraud only when the fraud relates to procurement of the forum selection clause itself, standing independently from the remainder of the agreement. Polk Cty. Rec. Assn. v. Susquehanna Patriot Leasing, 273 Neb. 1026, 734 N.W.2d 750 (2007).

25-534.

This section did not apply when the defendant in a paternity action did not appear in the action. State v. Buckhalter, 273 Neb. 443, 730 N.W.2d 340 (2007).

25-536.

Nebraska's long-arm statute extends Nebraska's jurisdiction over nonresidents having any contact with or maintaining any relation to this state as far as the U.S. Constitution permits. S.L. v. Steven L., 274 Neb. 646, 742 N.W.2d 734 (2007).

Nebraska's long-arm statute confers jurisdiction over a noncustodial parent who removes a minor child from the child's Nebraska home under the guise of exercising visitation rights in another jurisdiction and then intentionally subjects the child to harm before returning her to this state. S.L. v. Steven L., 274 Neb. 646, 742 N.W.2d 734 (2007).

A parent company had sufficient minimum contacts with Nebraska for a Nebraska court to exercise personal jurisdiction where the parent company contracted with its Nebraska subsidiary, coordinated the exchange of equipment between the subsidiary and other centers, prepared all tax reports, provided all forms necessary for operations in Nebraska, and operated a toll-free telephone number and Web site accessible from Nebraska. Erickson v. U-Haul Internat., 274 Neb. 236, 738 N.W.2d 453 (2007).

25-901.

Read together, this section and section 44-359 prohibit an award of attorney fees to a plaintiff, in a suit against the plaintiff's insurer, who rejects an offer to allow judgment and later fails to recover more than the amount offered. Young v. Midwest Fam. Mut. Ins. Co., 272 Neb. 385, 722 N.W.2d 13 (2006).

This section applies to offers to allow judgment against a defendant, which, under the plain meaning of this section, are not equivalent to settlement offers. Young v. Midwest Fam. Mut. Ins. Co., 272 Neb. 385, 722 N.W.2d 13 (2006).

For an insurer to take advantage of the protection of this section, the insurer must expressly comply with the requirement that an offer to allow judgment be made. Young v. Midwest Fam. Mut. Ins. Co., 272 Neb. 385, 722 N.W.2d 13 (2006).

25-1026.

As a general rule, a garnishee owes a duty to act in good faith and answer fully and truthfully all proper interrogatories presented to him. Petersen v. Central Park Properties, 275 Neb. 220, 745 N.W.2d 884 (2008).

25-1028.

If the garnishee fails to answer interrogatories, it is presumed that the garnishee is indebted to the judgment debtor in the full amount of the judgment creditor's claim. This is a rebuttable presumption. Petersen v. Central Park Properties, 275 Neb. 220, 745 N.W.2d 884 (2008).

25-1079.

All reasonable damages may be recovered by an enjoined party if the injunction was granted in error. Reasonable attorney fees incurred in dissolving the bond may also be recovered. Koch v. Aupperle, 277 Neb. 560, 763 N.W.2d 415 (2009).

25-1116.

If it becomes necessary to give further instructions to the jury during deliberation, the proper practice is to call the jury into open court and to give any additional instructions in writing in the presence of the parties or their counsel. State v. Gutierrez, 272 Neb. 995, 726 N.W.2d 542 (2007).

25-1142.

In order to make a sufficient showing for a new trial on the ground of newly discovered evidence, the proof in support thereof must show that such evidence is now available which neither the litigant nor counsel could have discovered by the exercise of reasonable diligence and that the evidence is not merely cumulative, but competent, relevant, and material, and of such character as to reasonably justify a belief that its admission would bring about a different result if a new trial were granted. Betterman v. Department of Motor Vehicles, 273 Neb. 178, 728 N.W.2d 570 (2007).

25-1224.

A DNA sample is not documentary in nature and is not discoverable under this section. State v. McKinney, 273 Neb. 346, 730 N.W.2d 74 (2007).

25-1301.

This section sets forth two ministerial requirements for a final judgment: the rendition of the judgment and the entry thereof. Kilgore v. Nebraska Dept. of Health & Human Servs., 277 Neb. 456, 763 N.W.2d 77 (2009).

For a final judgment to exist, there must be an order that is both signed by the court and file stamped and dated by the clerk of the court. Kilgore v. Nebraska Dept. of Health & Human Servs., 277 Neb. 456, 763 N.W.2d 77 (2009).

25-1315.

A postconviction motion presents a single cause of action, and the various facts alleged as evidence that the defendant is entitled to postconviction relief are but multiple theories of recovery. State v. Poindexter, 277 Neb. 936, 766 N.W.2d 391 (2009).

The trial court's mere oral announcement of its judgment, without a written entry that is signed by the court, file stamped, and dated, is insufficient to render final judgment. Kilgore v. Nebraska Dept. of Health & Human Servs., 277 Neb. 456, 763 N.W.2d 77 (2009).

One may bring an appeal pursuant to this section only when (1) multiple causes of action or multiple parties are present, (2) the court enters a "final order" within the meaning of section 25-1902 as to one or more but fewer than all of the causes of action or parties, and (3) the trial court expressly directs the entry of such final order and expressly determines that there is no just reason for delay of an immediate appeal. Cerny v. Todco Barricade Co., 273 Neb. 800, 733 N.W.2d 877 (2007).

In deciding whether to grant certification under subsection (1) of this section, a trial court must address two distinct issues. A trial court must first determine that it is dealing with a "final judgment." It must be a "judgment" in the sense that it is a decision upon a cognizable claim for relief, and it must be "final" in the sense that it is an ultimate disposition of an individual claim entered in the course of a multiple claims action. Once having found finality, the trial court must go on to determine whether there is any just reason for delay. Cerny v. Todco Barricade Co., 273 Neb. 800, 733 N.W.2d 877 (2007).

Certification of a final judgment must be reserved for the unusual case in which the costs and risks of multiplying the number of proceedings and of overcrowding the appellate docket are outbalanced by pressing

needs of the litigants for an early and separate judgment as to some claims or parties. Cerny v. Todco Barricade Co., 273 Neb. 800, 733 N.W.2d 877 (2007).

The power this section confers upon the trial judge should only be used in the infrequent harsh case as an instrument for the improved administration of justice, based on the likelihood of injustice or hardship to the parties of a delay in entering a final judgment as to part of the case. Cerny v. Todco Barricade Co., 273 Neb. 800, 733 N.W.2d 877 (2007).

When a trial court concludes that entry of judgment under this section is appropriate, it should ordinarily make specific findings setting forth the reasons for its order. Cerny v. Todco Barricade Co., 273 Neb. 800, 733 N.W.2d 877 (2007).

A trial court considering certification of a final judgment under this section should weigh factors such as (1) the relationship between the adjudicated and unadjudicated claims; (2) the possibility that the need for review might or might not be mooted by future developments in the trial court; (3) the possibility that the reviewing court might be obliged to consider the same issue a second time; (4) the presence or absence of a claim or counterclaim which could result in setoff against the judgment sought to be made final; and (5) miscellaneous factors such as delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense, and the like. Cerny v. Todco Barricade Co., 273 Neb. 800, 733 N.W.2d 877 (2007).

25-1329.

A "judgment," for purposes of a motion to alter or amend a judgment pursuant to this section, is the final determination of the rights of the parties in an action, or a court's final consideration and determination of the respective rights and obligations of the parties to an action as those rights and obligations presently exist. Timmerman v. Neth, 276 Neb. 585, 755 N.W.2d 798 (2008).

A "judgment," for purposes of this section, does not include an appellate decision of a district court. Timmerman v. Neth, 276 Neb. 585, 755 N.W.2d 798 (2008).

If, and only if, an amendment to a final judgment or decree affects the rights or obligations of the parties or creates a right of appeal that did not exist, a motion to alter or amend the amended judgment or decree terminates the running of the time for appeal from the original judgment or decree. Law Offices of Ronald J. Palagi v. Howard, 275 Neb. 334, 747 N.W.2d 1 (2008).

A motion to alter or amend is not an appropriate motion to file after the decision of a district court where the district court is functioning as an intermediate court of appeals and the motion does not toll the time for filing a notice of appeal. Goodman v. City of Omaha, 274 Neb. 539, 742 N.W.2d 26 (2007).

25-1403.

An order reviving an action, whether the order was entered in proceedings under section 25-322 or under this section to section 25-1420, is not a final order from which an appeal may immediately be taken. The order may be reviewed after final judgment in the case. Platte Valley Nat. Bank v. Lasen, 273 Neb. 602, 732 N.W.2d 347 (2007).

25-1408.

An order reviving an action, whether the order was entered in proceedings under section 25-322 or under sections 25-1403 to 25-1420, is not a final order from which an appeal may immediately be taken. The order may be reviewed after final judgment in the case. Platte Valley Nat. Bank v. Lasen, 273 Neb. 602, 732 N.W.2d 347 (2007).

25-1901.

When an entity such as a city council is exercising its judicial functions, the petition in error statute is the proper method for challenging such actions. Johnson v. City of Kearney, 277 Neb. 481, 763 N.W.2d 103 (2009).

Where a city building board of review received evidence and considered statements by the applicant and city officials before making its determination of whether the facts supported the notice of violation, the board exercised "judicial functions." McNally v. City of Omaha, 273 Neb. 558, 731 N.W.2d 573 (2007).

25-1902.

An order granting an evidentiary hearing on some issues presented in a postconviction motion but denying a hearing on others is a final order. State v. Poindexter, 277 Neb. 936, 766 N.W.2d 391 (2009).

Under this section, the three types of final orders which may be reviewed on appeal are (1) an order which affects a substantial right in an action and which in effect determines the action and prevents a judgment, (2) an order affecting a substantial right made during a special proceeding, and (3) an order affecting a substantial right made on summary application in an action after a judgment is rendered. Kilgore v. Nebraska Dept. of Health & Human Servs., 277 Neb. 456, 763 N.W.2d 77 (2009).

Proceedings regarding modification of a marital dissolution, which are controlled by section 42-364, are special proceedings as defined by this section. Steven S. v. Mary S., 277 Neb. 124, 760 N.W.2d 28 (2009).

Under this section, custody determinations are considered special proceedings. Steven S. v. Mary S., 277 Neb. 124, 760 N.W.2d 28 (2009).

A proceeding under section 30-2454 to remove a personal representative for cause is a special proceeding within the meaning of this section. In re Estate of Nemetz, 273 Neb. 918, 735 N.W.2d 363 (2007).

An order reviving an action is not a final order from which an appeal may immediately be taken; the order may be reviewed after final judgment in the case. Platte Valley Nat. Bank v. Lasen, 273 Neb. 602, 732 N.W.2d 347 (2007).

The resolution of a motion to amend a postconviction motion to assert additional claims does not affect a substantial right and is not a final order under this section. State v. Hudson, 273 Neb. 42, 727 N.W.2d 219 (2007).

A proceeding to determine the competency of an accused to stand trial is a special proceeding within the meaning of this section. An order finding the accused competent to stand trial is not a final order from which an appeal may be taken under section 25-1911. If an accused is found guilty, he may raise the issue of his competency on appeal. State v. Lassek, 272 Neb. 523, 723 N.W.2d 320 (2006).

A substantial right can be affected by an order if the right is irrevocably lost by operation of the order, while a substantial right is not affected when that right can be effectively vindicated in an appeal from the final judgment. State v. Vela, 272 Neb. 287, 721 N.W.2d 631 (2006).

None of the many steps or proceedings necessary or permitted to be taken in an action to commence it, to join issues in it, and conduct it to a final hearing and judgment can be a special proceeding within the terms of this section. State v. Vela, 272 Neb. 287, 721 N.W.2d 631 (2006).

25-1905.

The timely filing of the praecipe for transcript with the clerk of the district court satisfies the jurisdictional filing requirement, even if the tribunal does not timely prepare and furnish the transcript for filing with the clerk of the district court. McNally v. City of Omaha, 273 Neb. 558, 731 N.W.2d 573 (2007).

25-1911.

A proceeding to determine the competency of an accused to stand trial is a special proceeding within the meaning of section 25-1902. An order finding the accused competent to stand trial is not a final order from which an appeal may be taken under this section. If an accused is found guilty, he may raise the issue of his competency on appeal. State v. Lassek, 272 Neb. 523, 723 N.W.2d 320 (2006).

25-1912.

The tolling motions listed in subsection (3) of this section are ineffective when a district court is acting as an intermediate court of appeals. Timmerman v. Neth, 276 Neb. 585, 755 N.W.2d 798 (2008).

25-1937.

Subsection (5) of section 23-114.01 provides for a right of appeal to the district court from a decision by the county planning commission or county board of commissioners or supervisors, without setting forth any procedure for prosecuting the appeal. Therefore, the appeal procedure in this section is also implicated. In re Application of Olmer, 275 Neb. 852, 752 N.W.2d 124 (2008).

25-2001.

A party seeking to set aside a judgment after term for fraud under subsection (4)(b) of this section must prove that he or she exercised due diligence at the former trial and was not at fault or negligent in the failure to secure a just decision. Nielsen v. Nielsen, 275 Neb. 810, 749 N.W.2d 485 (2008).

Pursuant to subsection (3) of this section, "pendency" refers to the period of time after notice of appeal has been filed but before the parties have submitted the case at argument. Eicher v. Mid America Fin. Invest. Corp., 275 Neb. 462, 748 N.W.2d 1 (2008).

"Submitted for decision" refers to the period after the case was submitted at oral argument but before appellate court's opinion has issued. Eicher v. Mid America Fin. Invest. Corp., 275 Neb. 462, 748 N.W.2d 1 (2008).

A district court may freely correct clerical errors after notice of appeal has been filed up until the time the parties submit the case at the conclusion of arguments. After that time, the district court must obtain leave of the appellate court to fix a clerical error in a prior order. Eicher v. Mid America Fin. Invest. Corp., 275 Neb. 462, 748 N.W.2d 1 (2008).

25-21,185.07.

The Legislature did not intend for the comparative negligence scheme to apply in actions based on strict liability after February 8, 1992. Shipler v. General Motors Corp., 271 Neb. 194, 710 N.W.2d 807 (2006).

25-21,185.09.

The language of this section allows a jury to compare a plaintiff's contributory negligence to the negligence of a defendant or defendants. It does not provide that the plaintiff's negligence may be applied in the plaintiff's cause of action based upon strict liability in tort. Shipler v. General Motors Corp., 271 Neb. 194, 710 N.W.2d 807 (2006).

25-21,185.10.

When, because of the settlement with one of the defendants, the action no longer involves multiple party defendants, then this section is no longer applicable. Tadros v. City of Omaha, 273 Neb. 935, 735 N.W.2d 377 (2007).

This section does not provide that one defendant's negligence may be compared to another in a cause of action for strict liability in tort. Shipler v. General Motors Corp., 271 Neb. 194, 710 N.W.2d 807 (2006).

25-21,185.11.

When a claimant settles with a joint tort-feasor, the claimant forfeits joint and several liability for economic damages and cannot recover from a nonsettling joint tort-feasor more than that tort-feasor's proportionate share of liability. Tadros v. City of Omaha, 273 Neb. 935, 735 N.W.2d 377 (2007).

25-21,206.

The waiver of immunity under this section is broad enough to encompass class action suits. Livengood v. Nebraska State Patrol Ret. Sys., 273 Neb. 247, 729 N.W.2d 55 (2007).

25-21,237.

Under the Restatement (Second) of Conflict of Laws section 146 (1971), the law of the site of an injury is usually applied to determine liability, except where another state has a more significant relationship on a particular issue. The fact that Nebraska has a guest statute provides this state with a more significant relationship to the parties when they are residents of Nebraska. Heinze v. Heinze, 274 Neb. 595, 742 N.W.2d 465 (2007).

Nebraska law applied to a tort action arising from an automobile accident that occurred in Colorado when both the driver and the injured party were residents of Nebraska at the time of the accident, the trip began and was intended to end in Nebraska, the parties lived and worked in Nebraska, and their relationship was centered in Nebraska. Heinze v. Heinze, 274 Neb. 595, 742 N.W.2d 465 (2007).

25-2221.

This section establishes a uniform rule applicable alike to the construction of statutes and to matters of practice, which the Nebraska Supreme Court has regularly applied in computing time periods specified in other statutes. Geddes v. York County, 273 Neb. 271, 729 N.W.2d 661 (2007).

In conjunction with this section and subsection (13) of section 49-801, a political subdivision has until the end of the last day of the 6-month period after a claimant has filed a tort claim upon which to make a final disposition of such claim. Geddes v. York County, 273 Neb. 271, 729 N.W.2d 661 (2007).

25-2602.02.

When a contract containing an arbitration clause is governed by federal law, the failure to include the statutory language of this section does not make the arbitration clause unenforceable. Aramark Uniform & Career Apparel v. Hunan, Inc., 276 Neb. 700, 757 N.W.2d 205 (2008).

25-2613.

A court may refuse to enforce an arbitration award that is contrary to a public policy that is explicit, well defined, and dominant. Such a public policy must be ascertained by reference to laws and legal precedents, not from general considerations of supposed public interests; but the arbitration award need not itself violate positive law to be unenforceable as against public policy. State v. Henderson, 277 Neb. 240, 762 N.W.2d 1 (2009).

25-2620.

In reviewing a trial court's decision to vacate, modify, or confirm an arbitration award under Nebraska's Uniform Arbitration Act, an appellate court is obligated to reach a conclusion independent of the trial court's ruling regarding questions of law; however, the trial court's factual findings will not be set aside on appeal unless clearly erroneous. Aramark Uniform & Career Apparel v. Hunan, Inc., 276 Neb. 700, 757 N.W.2d 205 (2008).

27-101.

In proceedings where the Nebraska Evidence Rules apply, the admissibility of evidence is controlled by the Nebraska Evidence Rules; judicial discretion is involved only when the rules make discretion a factor in determining admissibility. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

Where the Nebraska Evidence Rules commit the evidentiary question at issue to the discretion of the trial court, an appellate court reviews the admissibility of evidence for an abuse of discretion. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

When a state evidence rule is substantially similar to a corresponding federal rule of evidence, state courts may look to federal decisions interpreting the corresponding federal rule for guidance in construing the state rule. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

27-103.

In order to predicate error upon a ruling of the court refusing to permit a witness to testify, or to answer a specific question, the record must show an offer to prove the facts sought to be elicited. State v. Schreiner, 276 Neb. 393, 754 N.W.2d 742 (2008); Sturzenegger v. Father Flanagan's Boys' Home, 276 Neb. 327, 754 N.W.2d 406 (2008).

Subsection (1)(b) of this section allows an appellate court to find error in an exclusionary ruling when the substance of the evidence was apparent from the context even without an offer of proof. State v. Rodriguez, 272 Neb. 930, 726 N.W.2d 157 (2006).

27-104.

Unlike its counterpart in the Federal Rules of Evidence, subsection (1) of this section requires a court to first determine whether evidence is admissible under the hearsay rules before considering whether it is properly authenticated. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

27-201.

A court may judicially notice adjudicative facts, which are not subject to reasonable dispute, at any stage of the proceeding. Pennfield Oil Co. v. Winstrom, 276 Neb. 123, 752 N.W.2d 588 (2008).

In interwoven and interdependent cases, an appellate court may examine its own records and take judicial notice of the proceedings and judgment in a former action involving one of the parties. Pennfield Oil Co. v. Winstrom, 276 Neb. 123, 752 N.W.2d 588 (2008).

An appellate court may take judicial notice of a document, including briefs filed in an appeal, in a separate but related action concerning the same subject matter in the same court. Pennfield Oil Co. v. Winstrom, 276 Neb. 123, 752 N.W.2d 588 (2008).

27-401.

The term "pertinent" as used within the context of section 27-404(1)(b) is synonymous with the term "relevant" as used in this section. State v. Floyd, 277 Neb. 502, 763 N.W.2d 91 (2009).

The exercise of judicial discretion is implicit in determining the relevance of evidence, and a trial court's decision regarding relevance will not be reversed absent an abuse of discretion. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

Evidence is "relevant" if it tends in any degree to alter the probability of a material fact. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

Relevancy of evidence requires only that the degree of probativeness be something more than nothing. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

An airline ticket stub found in the defendant's pocket, which showed that the defendant had a seat on a flight from Los Angeles, California, to Las Vegas, Nevada, and from which it could be inferred that he lied to a state trooper about driving straight back to Michigan from Washington, was probative of the defendant's consciousness of guilt and, thus, relevant in the prosecution for possession of a controlled substance with intent to deliver. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

Evidence of a defendant's consciousness of guilt is relevant as a circumstance supporting an inference that the defendant is guilty of the crime charged. When the evidence is sufficient to justify an inference that the defendant acted with consciousness of guilt, the fact finder can consider such evidence even if the conduct could be explained in another way. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

Unlike general denials of guilt, a defendant's exculpatory statements of fact that are proved to be false at trial are probative of the defendant's consciousness of guilt. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

In a malpractice action involving professional negligence, the burden of proof is upon the plaintiff to demonstrate the generally recognized medical standard of care, that there was a deviation from that standard by the defendant, and that the deviation was the proximate cause of the plaintiff's alleged injuries. Karel v. Nebraska Health Sys., 274 Neb. 175, 738 N.W.2d 831 (2007).

27-403.

Under this section, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, but only evidence tending to suggest a decision on an improper basis is unfairly prejudicial. State v. Gutierrez, 272 Neb. 995, 726 N.W.2d 542 (2007).

The fact that evidence is prejudicial is not enough to require exclusion under this section, because most, if not all, of the evidence a party offers is calculated to be prejudicial to the opposing party; it is only evidence which has a tendency to suggest a decision on an improper basis that is unfairly prejudicial under this section. State v. Robinson, 272 Neb. 582, 724 N.W.2d 35 (2006).

27-404.

The term "pertinent" as used within the context of subsection (1)(b) of this section is synonymous with the term "relevant" as used in section 27-401. State v. Floyd, 277 Neb. 502, 763 N.W.2d 91 (2009).

Evidence of prior bad acts which is relevant for any purpose other than to show the actor's propensity is admissible under subsection (2) of this section. Evidence that is offered for a proper purpose is often referred to as having "special" or "independent relevance," which means its relevance does not depend on its tendency to show propensity. Sturzenegger v. Father Flanagan's Boys' Home, 276 Neb. 327, 754 N.W.2d 406 (2008).

Evidence of a plaintiff's prior bad acts may be admitted, pursuant to subsection (2) of this section, where it rebuts the plaintiff's evidence of damages. Sturzenegger v. Father Flanagan's Boys' Home, 276 Neb. 327, 754 N.W.2d 406 (2008).

Whether subsection (2) of this section or section 27-608(2) applies to the admissibility of other-acts evidence depends on the purpose for which the proponent introduced the other-acts evidence. Subsection (2) of this section applies when extrinsic evidence is offered as relevant to a material issue in the case. Section 27-608(2) applies when extrinsic evidence is offered to impeach a witness, to show the character of the witness for untruthfulness – in other words, where the only theory of relevance is impeachment by prior misconduct. So, because section

27-608(2) affects only evidence of prior instances of conduct when properly relevant solely for the purpose of attacking or supporting a witness' credibility, it in no way affects the admission of evidence of such prior acts for other purposes under subsection (2) of this section. Sturzenegger v. Father Flanagan's Boys' Home, 276 Neb. 327, 754 N.W.2d 406 (2008).

In a prosecution for child abuse, evidence of previous abuse of a child is admissible to show absence of accident only if the state shows by a preponderance of the evidence that there is a connection between the defendant and the child's injuries. State v. Kuehn, 273 Neb. 219, 728 N.W.2d 589 (2007).

Bad acts that form the factual setting of the crime in issue or that form an integral part of the crime charged are not covered under subsection (2) of this section. State v. Robinson, 271 Neb. 698, 715 N.W.2d 531 (2006).

Where evidence of other crimes is so blended or connected with the ones on trial so that proof of one incidentally involves the others, or explains the circumstances, or tends logically to prove any element of the crime charged, it is admissible as an integral part of the immediate context of the crime charged. When the other crimes evidence is so integrated, it is not extrinsic and therefore not governed by this section. State v. Robinson, 271 Neb. 698, 715 N.W.2d 531 (2006).

In a murder trial, evidence of the defendant's returning from a city and of a vehicle the defendant drove being burned in a field in that city was intrinsic to the crimes for which he was charged. Accordingly, the trial court did not err in admitting this evidence without first conducting a hearing pursuant to this section. State v. Robinson, 271 Neb. 698, 715 N.W.2d 531 (2006).

27-406.

Admissibility of habit evidence depends on the trial judge's evaluation of the particular facts and is thus reviewed for an abuse of discretion. Borley Storage & Transfer Co. v. Whitted, 271 Neb. 84, 710 N.W.2d 71 (2006).

27-606.

A juror's knowledge about the burden of proof is personal knowledge that is not directly related to the litigation at issue and is not extraneous information. Malchow v. Doyle, 275 Neb. 530, 748 N.W.2d 28 (2008).

27-608.

Whether section 27-404(2) or this section applies to the admissibility of other-acts evidence depends on the purpose for which the proponent introduced the other-acts evidence. Section 27-404(2) applies when extrinsic evidence is offered as relevant to a material issue in the case. This section applies when extrinsic evidence is offered to impeach a witness, to show the character of the witness for untruthfulness – in other words, where the only theory of relevance is impeachment by prior misconduct. So, because subsection (2) of this section affects only evidence of prior instances of conduct when properly relevant solely for the purpose of attacking or supporting a witness' credibility, it in no way affects the admission of evidence of such prior acts for other purposes under section 27-404(2). Sturzenegger v. Father Flanagan's Boys' Home, 276 Neb. 327, 754 N.W.2d 406 (2008).

The application of subsection (2) of this section to exclude extrinsic evidence of a witness' conduct is limited to instances where the evidence is introduced to show a witness' general character for truthfulness. Evidence relevant to a material issue is not rendered inadmissible because it happens to include references to specific bad acts of a witness, and such evidence should be admitted where it is introduced to disprove a specific fact material to the case. Subsection (2) of this section does not bar evidence introduced to contradict – and which the jury might find to disprove – a witness' testimony as to a material issue of the case. Sturzenegger v. Father Flanagan's Boys' Home, 276 Neb. 327, 754 N.W.2d 406 (2008).

27-611.

When the object of cross-examination is to collaterally ascertain the accuracy or credibility of the witness, some latitude should be permitted, and the scope of such latitude is ordinarily subject to the discretion of the trial judge. State v. Kuehn, 273 Neb. 219, 728 N.W.2d 589 (2007).

27-702.

Before admitting expert opinion testimony, a trial court must determine whether the expert's knowledge, skill, experience, training, and education qualify the witness as an expert. If the opinion involves scientific or specialized knowledge, trial courts must also determine whether the reasoning or methodology underlying the expert's opinion is scientifically valid. King v. Burlington Northern Santa Fe Ry. Co., 277 Neb. 203, 762 N.W.2d 24 (2009).

Under the framework set out in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), and *Schafersman v. Agland Coop*, 262 Neb. 215, 631 N.W.2d 862 (2001), the proponent of expert testimony must establish by a preponderance of the evidence that (1) the reasoning or methodology underlying an expert's testimony is scientifically valid and (2) the reasoning or methodology can be properly applied to the facts. King v. Burlington Northern Santa Fe Ry. Co., 277 Neb. 203, 762 N.W.2d 24 (2009).

In determining the admissibility of an expert's opinion, the court must focus on the validity of the underlying principles and methodology – not the conclusions that they generate. King v. Burlington Northern Santa Fe Ry. Co., 277 Neb. 203, 762 N.W.2d 24 (2009).

An expert's opinion must be based on good grounds, not mere subjective belief or unsupported speculation. "Good grounds" mean an inference or assertion derived by scientific method and supported by appropriate validation. King v. Burlington Northern Santa Fe Ry. Co., 277 Neb. 203, 762 N.W.2d 24 (2009).

A trial court should admit expert testimony if there are good grounds for the expert's conclusion notwithstanding the judge's belief that there are better grounds for some alternative conclusion. King v. Burlington Northern Santa Fe Ry. Co., 277 Neb. 203, 762 N.W.2d 24 (2009).

The relevant factors for assessing the reliability or scientific validity of an expert's opinion are whether (1) the theory or technique can be, or has been, tested; (2) the theory or technique has been subjected to peer review and publication; (3) there is a known or potential rate of error; (4) there are standards controlling the technique's operation; and (5) the theory or technique enjoys general acceptance within the relevant scientific community. King v. Burlington Northern Santa Fe Ry. Co., 277 Neb. 203, 762 N.W.2d 24 (2009).

Absent evidence that an expert's testimony grows out of the expert's own prelitigation research or that an expert's research has been subjected to peer review, experts must show that they reached their opinions by following an accepted scientific method or procedure as it is practiced by others in their field. King v. Burlington Northern Santa Fe Ry. Co., 277 Neb. 203, 762 N.W.2d 24 (2009).

If the data underlying an expert's opinion involving scientific or specialized knowledge are so lacking in probative force and reliability that no reasonable expert could base an opinion on them, an opinion which rests entirely upon them must be excluded. King v. Burlington Northern Santa Fe Ry. Co., 277 Neb. 203, 762 N.W.2d 24 (2009).

Trial courts are not required to delve into every possible error in the data underlying an expert's opinion involving scientific or specialized knowledge unless it is raised by the party opposing the admission of the expert's opinion. King v. Burlington Northern Santa Fe Ry. Co., 277 Neb. 203, 762 N.W.2d 24 (2009).

The first portion of analysis under *Daubert v. Merrell Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), and *Schafersman v. Agland Coop*, 262 Neb. 215, 631 N.W.2d 862 (2001), establishes the standard of reliability; the second portion assesses whether the scientific evidence will assist the trier of fact to

understand the evidence or determine a fact in issue by providing a valid scientific connection to the pertinent inquiry as a precondition to admissibility. McNeel v. Union Pacific RR. Co., 276 Neb. 143, 753 N.W.2d 321 (2008).

Under the analysis in *Daubert v. Merrell Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), and *Schafersman v. Agland Coop*, 262 Neb. 215, 631 N.W.2d 862 (2001), expert testimony lacks "fit" when a large analytical leap must be made between the facts and the opinion. McNeel v. Union Pacific RR. Co., 276 Neb. 143, 753 N.W.2d 321 (2008).

Expert witness' background and research provided sufficient foundation for her opinion despite her statement that her opinion was her "best guess." Orchard Hill Neighborhood v. Orchard Hill Mercantile, 274 Neb. 154, 738 N.W.2d 820 (2007).

Under this section, a witness can testify concerning scientific, technical, or other specialized knowledge only if the witness is qualified as an expert. Jackson v. Brotherhood's Relief & Comp. Fund, 273 Neb. 1013, 734 N.W.2d 739 (2007).

An expert's opinion is ordinarily admissible under this section if the witness (1) qualifies as an expert, (2) has an opinion that will assist the trier of fact, (3) states his or her opinion, and (4) is prepared to disclose the basis of that opinion on cross-examination. State v. Gutierrez, 272 Neb. 995, 726 N.W.2d 542 (2007); State v. Robinson, 272 Neb. 582, 724 N.W.2d 35 (2006).

27-801.

A party on appeal may not assert a different ground for an objection to the admission of evidence than was offered to the trial court. But an appellate court can consider whether the record clearly shows an exhibit was admissible for the truth of the matter asserted under a different rule from the one erroneously applied by the trial court when both parties had a fair opportunity to develop the record on the underlying facts. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

A written assertion offered to prove the truth of the matter asserted is a hearsay statement unless it falls within an exception or exclusion under the hearsay rules. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

A party's possession of a written statement can be an adoption of what its contents reveal under circumstances that tie the party to the document in a meaningful way. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

To be admissible, the statements of a coconspirator must have been made while the conspiracy was pending and in furtherance of its objects. If the statements took place after the conspiracy had ended, or if merely narrative of past events, they are not admissible. In other words, for an out-of-court statement to be admissible under subsection (4)(b)(v) of this section, there must be evidence that there was a conspiracy involving the declarant and the nonoffering party and that the statement was made during the course and in furtherance of the conspiracy. State v. Gutierrez, 272 Neb. 995, 726 N.W.2d 542 (2007).

Subsection (4)(b)(v) of this section governs only the admissibility of testimony about out-of-court statements made by a coconspirator – not the admissibility of all the other testimony offered by the same witness. It is irrelevant to the direct testimony of a coconspirator. There is no reason why a witness cannot testify to the existence of a conspiracy, and that the defendant was a participant, and then testify to out-of-court statements made by the alleged coconspirators. State v. Gutierrez, 272 Neb. 995, 726 N.W.2d 542 (2007).

The "in furtherance" language of this section is to be construed broadly. State v. Gutierrez, 272 Neb. 995, 726 N.W.2d 542 (2007).

Statements made by a coconspirator in furtherance of avoiding capture or punishment are made in furtherance of the conspiracy within the meaning of this section. State v. Gutierrez, 272 Neb. 995, 726 N.W.2d 542 (2007).

A coconspirator's idle chatter or casual conversation about past events is generally not considered to be in furtherance of the conspiracy purposes of this section. State v. Gutierrez, 272 Neb. 995, 726 N.W.2d 542 (2007).

Out-of-court statements of two unavailable witnesses who said they were at a restaurant at the time of the murder were offered for the purpose of proving that such statements were false, and thus, the trial court erred in excluding them as hearsay. State v. Robinson, 271 Neb. 698, 715 N.W.2d 531 (2006).

27-802.

A trial judge does not have discretion to admit inadmissible hearsay statements. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

Apart from rulings under the residual hearsay exception, an appellate court reviews for clear error the factual findings underpinning a trial court's hearsay ruling and reviews de novo the court's ultimate determination to admit evidence over a hearsay objection. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

27-803.

Computerized printouts that are merely the visual counterparts to routine electronic business records are usually hearsay, but they can be admissible under the business records exception. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

Under subsection (17) of this section, certain published treatises, periodicals, or pamphlets may be admissible, but the foundational requirements must still be met. Jackson v. Brotherhood's Relief & Comp. Fund, 273 Neb. 1013, 734 N.W.2d 739 (2007).

The party seeking to admit a business record under the business records exception to the hearsay rule bears the burden of establishing foundation under a three-part test. First, the proponent must establish that the activity recorded is of a type that regularly occurs in the course of the business' day-to-day activities. Second, the proponent must establish that the record was made as part of a regular business practice at or near the time of the event recorded. Third, the proponent must authenticate the record by a custodian or other qualified witness. State v. Robinson, 272 Neb. 582, 724 N.W.2d 35 (2006).

When computer-stored records satisfy the business records exception to the hearsay rule, preparing printouts for evidentiary purposes does not deprive the printouts of their character as business records. State v. Robinson, 272 Neb. 582, 724 N.W.2d 35 (2006).

The reason for excluding business records from the hearsay rule is their circumstantial guarantees of trustworthiness. The business records exception contemplates that certain events are regularly recorded as routine reflections of the day-to-day operations of a business so that the character of the records and their earmarks of reliability import trustworthiness. Thus, the recordation becomes a reliable recitation of the fact. State v. Robinson, 272 Neb. 582, 724 N.W.2d 35 (2006).

27-804.

Hearsay rulings under the residual hearsay exception are reviewed on appeal for an abuse of discretion. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

An adverse party's knowledge of a statement is not enough to satisfy the notice requirement of subsection (2)(e) of this section. The proponent of the evidence must provide notice before trial to the adverse party of his or her intentions to use the statement to take advantage of the residual hearsay exception under subsection (2)(e) of this section. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

The burden to establish a declarant's unavailability is on the party seeking to introduce the declarant's deposition testimony under the hearsay exception for deposition testimony of an unavailable witness. Worth v. Kolbeck, 273 Neb. 163, 728 N.W.2d 282 (2007).

The determination whether a witness is unavailable to appear at trial and give testimony, for purposes of the hearsay exception for deposition testimony of an unavailable witness, is within the discretion of the trial court. Worth v. Kolbeck, 273 Neb. 163, 728 N.W.2d 282 (2007).

Where the appellant submitted an insufficient record for the appellate court to review the trial court's alleged error in admitting deposition testimony under the unavailable witness exception, the trial court's ruling was affirmed because the appellate court had no way of knowing whether an expert's deposition testimony was cumulative or whether other evidence sustained the judgment. Worth v. Kolbeck, 273 Neb. 163, 728 N.W.2d 282 (2007).

In determining whether a statement is admissible under subsection (2)(e) of this section, the residual exception to the hearsay rule, a court considers five factors: a statement's trustworthiness, materiality of the statement, probative importance of the statement, interests of justice, and whether notice of the statement's prospective use as evidence was given to an opponent. State v. Robinson, 271 Neb. 698, 715 N.W.2d 531 (2006).

In determining admissibility under subsection (2)(e) of this section, a court must examine the circumstances surrounding the declaration in issue and may consider a variety of factors affecting trustworthiness of a statement. State v. Robinson, 271 Neb. 698, 715 N.W.2d 531 (2006).

The trial court did not abuse its discretion in concluding that out-of-court statements were not sufficiently trustworthy to fall within the residual exception to the hearsay rule where the declarant was in police custody when the statements were made. State v. Robinson, 271 Neb. 698, 715 N.W.2d 531 (2006).

It is not enough that the adverse party is aware of the unavailable declarant's statement; the proponent of the evidence must provide notice to the adverse party of his or her intentions to use the statement in order to take advantage of the hearsay exception in subsection (2)(e) of this section. State v. Robinson, 271 Neb. 698, 715 N.W.2d 531 (2006).

27-806.

Under this section, if a hearsay statement is admitted in evidence, a party may discredit the out-of-court declarant by utilizing recognized methods of impeachment. State v. Morrow, 273 Neb. 592, 731 N.W.2d 558 (2007).

Under this section, the declarant of a hearsay statement may be impeached by the introduction of a prior or subsequent statement made by the declarant that is inconsistent with the hearsay statement already admitted at trial. State v. Morrow, 273 Neb. 592, 731 N.W.2d 558 (2007).

27-901.

Unlike its counterpart in the Federal Rules of Evidence, section 27-104 requires a court to first determine whether evidence is admissible under the hearsay rules before considering whether it is properly authenticated. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

This section does not impose a high hurdle for authentication or identification. A proponent of evidence is not required to conclusively prove the genuineness of the evidence or to rule out all possibilities inconsistent with authenticity. If the proponent's showing is sufficient to support a finding that the evidence is what it purports to be, the proponent has satisfied the requirement of subsection (1) of this section. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

A court must determine whether there is sufficient foundation evidence for the admission of physical evidence on a case-by-case basis. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

Because authentication rulings are necessarily fact specific, a trial court has discretion to determine whether evidence has been properly authenticated. We review a trial court's ruling on authentication for abuse of discretion. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

A proponent may authenticate a document under subsection (2)(a) of this section by the testimony of someone with personal knowledge that it is what it is claimed to be, such as a person familiar with its contents. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

Under subsection (2)(d) of this section, a proponent may authenticate a document by circumstantial evidence, or its "[a]ppearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances." State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

A document is properly authenticated by evidence sufficient to support a finding that the matter in question is what its proponent claims. State v. Jacobson, 273 Neb. 289, 728 N.W.2d 613 (2007).

A document may be authenticated under subsection (2)(a) of this section by testimony by one with personal knowledge that it is what it is claimed to be, such as a person familiar with its contents. State v. Jacobson, 273 Neb. 289, 728 N.W.2d 613 (2007).

A showing of specific authorship is not always necessary to authenticate a document. State v. Jacobson, 273 Neb. 289, 728 N.W.2d 613 (2007).

Proper authentication may be attained by evidence of appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances, sufficient to support a finding that the matter in question is what it is claimed to be. State v. Jacobson, 273 Neb. 289, 728 N.W.2d 613 (2007).

The authentication requirement does not demand that the proponent of a piece of evidence conclusively demonstrate the genuineness of his or her article, but only that he or she make a showing sufficient to support a finding that the matter in question is what its proponent claims. State v. Jacobson, 273 Neb. 289, 728 N.W.2d 613 (2007).

27-902.

Under subsection (7) of this section, distinctive labels and brands are prima facie evidence of ownership or origin. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

Under subsection (4) of this section, an out-of-state record of trial proceedings is self-authenticating if the document is authorized by law to be filed in court and its accuracy has been certified by court reporting personnel in compliance with a rule of the state's highest court which is harmonious with the Nebraska Supreme Court's corresponding rule of practice and procedure. State v. King, 272 Neb. 638, 724 N.W.2d 80 (2006).

27-1002.

This section is a rule of preference for the production of the original of a writing, recording, or photograph when the contents of the item are sought to be proved. Richter v. City of Omaha, 273 Neb. 281, 729 N.W.2d 67 (2007).

28-105.01.

This section is based on the determination that mentally retarded persons who meet the law's requirements for criminal responsibility should be tried and punished when they commit crimes, but because of their disabilities in areas of reasoning, judgment, and control of their impulses, they do not act with the level of moral culpability that characterizes the most serious adult criminal conduct. This section prohibits the execution of mentally retarded persons because of a widespread judgment about the relative culpability of mentally retarded offenders, and the relationship between mental retardation and the penological purposes served by the death penalty. State v. Vela, 272 Neb. 287, 721 N.W.2d 631 (2006).

28-206.

An aider and abettor is accountable for that which is proximately caused by the principal's conduct regardless of whether the crime would have occurred without the aider and abettor's participation. State v. Barfield, 272 Neb. 502, 723 N.W.2d 303 (2006).

28-303.

Deliberate means not suddenly, not rashly, and requires that the defendant considered the probable consequences of his or her act before doing the act. State v. Robinson, 272 Neb. 582, 724 N.W.2d 35 (2006).

The term "premeditated" means to have formed a design to commit an act before it is done. One kills with premeditated malice if, before the act causing the death occurs, one has formed the intent or determined to kill the victim without legal justification. State v. Robinson, 272 Neb. 582, 724 N.W.2d 35 (2006).

No particular length of time for premeditation is required, provided that the intent to kill is formed before the act is committed and not simultaneously with the act that caused the death. The time required to establish premeditation may be of the shortest possible duration and may be so short that it is instantaneous, and the design or purpose to kill may be formed upon premeditation and deliberation at any moment before the homicide is committed. State v. Robinson, 272 Neb. 582, 724 N.W.2d 35 (2006).

28-304.

Malice is not a necessary element of second degree murder; however, a finding of malice is not necessarily prejudicial to the defendant because it places a greater burden on the State regarding intent. State v. Davis, 276 Neb. 755, 757 N.W.2d 367 (2008).

Evidence was held to be sufficient to support a conviction for murder in the second degree when an unprovoked defendant shot the victim in the back of the head as the victim was leaving the confrontation. State v. Davis, 276 Neb. 755, 757 N.W.2d 367 (2008).

A sentence of life imprisonment on a second degree murder conviction and 10 years' imprisonment for a conviction of use of a weapon to commit a felony, with the sentences to run consecutively, were not excessive. State v. Davis, 276 Neb. 755, 757 N.W.2d 367 (2008).

The trial court did not abuse its discretion in sentencing the defendant to two consecutive life sentences on two counts of second degree murder, which sentences were within the statutory limits, when the record showed that despite being 17 years old at the time of the murders, the defendant admitted to shooting one victim in the head while he was struggling with her codefendant over a shotgun and was callous about her role 5 days after the murders. State v. Reid, 274 Neb. 780, 743 N.W.2d 370 (2008).

Multiple convictions for second degree murder and child abuse resulting in death do not violate the Double Jeopardy Clauses of the state or federal Constitution. State v. Molina, 271 Neb. 488, 713 N.W.2d 412 (2006).

28-311.01.

The words "terror" and "terrorize," as used in this section, are not unconstitutionally vague. State v. Nelson, 274 Neb. 304, 739 N.W.2d 199 (2007).

28-311.02.

Nebraska's stalking statutes focus both on the behavior of the perpetrator and on the experience of the victim. In re Interest of Jeffrey K., 273 Neb. 239, 728 N.W.2d 606 (2007).

Given the language of Nebraska's stalking statutes and the purpose announced by the Legislature for enacting the statutes, an objective construction of the statute is appropriate, and the victim's experience resulting from the perpetrator's conduct should be assessed on an objective basis. In re Interest of Jeffrey K., 273 Neb. 239, 728 N.W.2d 606 (2007).

28-311.03.

Nebraska's stalking statutes focus both on the behavior of the perpetrator and on the experience of the victim. In re Interest of Jeffrey K., 273 Neb. 239, 728 N.W.2d 606 (2007).

28-318.

The slightest intrusion into the genital opening is sufficient to constitute penetration, and such element may be proved by either direct or circumstantial evidence. State v. Archie, 273 Neb. 612, 733 N.W.2d 513 (2007).

28-324.

Whether a person intends to destroy, abandon, or gift property to another, there is an "intent to steal" under this section if such property was taken with the intention of permanently depriving the owner of it. State v. Barfield, 272 Neb. 502, 723 N.W.2d 303 (2006).

28-349.

A public policy exception to the employment-at-will doctrine applies to allow a cause of action for retaliatory discharge when an employee is fired for making a report of abuse as mandated by the Adult Protective Services Act. Wendeln v. Beatrice Manor, 271 Neb. 373, 712 N.W.2d 226 (2006).

28-372.

In order for a retaliatory discharge action to lie against an employer for discharging an employee in retaliation for the mandatory filing of a report of patient abuse pursuant to this section, such report must be based upon reasonable cause. Wendeln v. Beatrice Manor, 271 Neb. 373, 712 N.W.2d 226 (2006).

28-401.

The "personal use exception" in subsection (14) of this section applies to only "preparation" and "compounding" of a controlled substance, but does not apply to the "production" of a controlled substance. State v. Bossow, 274 Neb. 836, 744 N.W.2d 43 (2008).

28-416.

Constructive possession of an illegal substance may be proved by direct or circumstantial evidence. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

A passenger's mere presence in a vehicle with contraband is insufficient to support a finding of joint possession. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

Possession of an illegal substance can be inferred from a vehicle passenger's proximity to the substance or other circumstantial evidence that affirmatively links the passenger to the substance. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

Generally, a passenger's joint possession of a controlled substance found in a vehicle can be established by evidence that (1) supports an inference that the driver was involved in drug trafficking, as distinguished from

possessing illegal drugs for personal use; (2) shows the passenger acted suspiciously during a traffic stop; and (3) shows the passenger was not a casual occupant but someone who had been traveling a considerable distance with the driver. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

A juror may reasonably infer that a driver with a possessory interest in a vehicle who is transporting a large quantity of illegal drugs would not invite someone into his or her vehicle who had no knowledge of the driver's drug activities. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

Circumstantial evidence may support a finding that a defendant intended to distribute, deliver, or dispense a controlled substance. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

Circumstantial evidence to establish possession of a controlled substance with intent to distribute or deliver may consist of several factors: the quantity of the substance, the equipment and supplies found with it, the place it was found, the manner of packaging, and the testimony of witnesses experienced and knowledgeable in the field. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

Evidence of the quantity of a controlled substance possessed combined with expert testimony that such quantity indicates an intent to deliver can be sufficient for a jury to infer an intent to deliver. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

Possession of a controlled substance is a lesser-included offense of distribution of the controlled substance. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

When a defendant did not dispute the State's evidence on the separate element of intent to deliver, he was not entitled to an instruction on the lesser-included offense of simple possession. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

28-431.

Subsection (4) of this section sets forth two avenues by which a purported owner or claimant may prevent forfeiture and recover his or her property. First, the forfeiture statute allows the owner of record of such property, at any time after seizure and prior to court disposition, to petition the district court of the county in which seizure was made to release such property. Second, subsection (4) provides that any person having an interest in the property proceeded against or any person against whom civil or criminal liability would exist if such property is in violation of the Uniform Controlled Substances Act may, within 30 days after seizure, appear and file an answer or demurrer to the petition. Obad v. State, 277 Neb. 866, 766 N.W.2d 89 (2009).

The alleged owner of cash cannot be an owner of record under subsection (4) of this section. Obad v. State, 277 Neb. 866, 766 N.W.2d 89 (2009).

28-510.

Read in conjunction with this section, theft by unlawful taking under section 28-511 is the same offense as theft by receiving stolen property under section 28-517. State v. Miner, 273 Neb. 837, 733 N.W.2d 891 (2007).

28-511.

Read in conjunction with section 28-510, theft by unlawful taking under this section is the same offense as theft by receiving stolen property under section 28-517. State v. Miner, 273 Neb. 837, 733 N.W.2d 891 (2007).

The Nebraska Legislature has unambiguously defined theft as a single offense which can be committed in several different ways. State v. Miner, 273 Neb. 837, 733 N.W.2d 891 (2007).

28-517.

Read in conjunction with section 28-510, theft by receiving stolen property under this section is the same offense as theft by unlawful taking under section 28-511. State v. Miner, 273 Neb. 837, 733 N.W.2d 891 (2007).

The Nebraska Legislature has unambiguously defined theft as a single offense which can be committed in several different ways. State v. Miner, 273 Neb. 837, 733 N.W.2d 891 (2007).

28-518.

Subsection (7) of this section permits the value of all items of property taken pursuant to one scheme or course of conduct from one person to be aggregated in order to determine the classification of the theft offense, but specifically prohibits aggregation of individual values into more than one offense. State v. Miner, 273 Neb. 837, 733 N.W.2d 891 (2007).

28-707.

Involuntary manslaughter is a lesser-included offense of child abuse resulting in death, and the jury should be so instructed if there is a rational basis upon which it could conclude that the defendant committed child abuse negligently, but not knowingly and intentionally. State v. Sinica, 277 Neb. 629, 764 N.W.2d 111 (2009).

Multiple convictions for second degree murder and child abuse resulting in death do not violate the Double Jeopardy Clauses of the state or federal Constitution. State v. Molina, 271 Neb. 488, 713 N.W.2d 412 (2006).

Negligent child abuse and intentional child abuse are lesser-included offenses of child abuse resulting in serious bodily injury and child abuse resulting in death. State v. Molina, 271 Neb. 488, 713 N.W.2d 412 (2006).

28-901.

This section proscribes three separate means of committing obstruction of government operations; the physical act component must consist of some physical interference, force, violence, or obstacle. State v. Stolen, 276 Neb. 548, 755 N.W.2d 596 (2008).

The physical act component of this section consists of disjunctive, or independent, elements; force or violence is not required in all circumstances involving obstruction of government operations by physical act, partially overruling State v. Fahlk, 246 Neb. 834, 524 N.W.2d 39 (1994). State v. Stolen, 276 Neb. 548, 755 N.W.2d 596 (2008).

A defendant may not be convicted of obstructing government operations by a physical act unless the public servant was engaged in a specific authorized act at the time of the physical interference. State v. Stolen, 276 Neb. 548, 755 N.W.2d 596 (2008).

28-905.

An attempt to arrest is an essential element of the offense of fleeing in a motor vehicle to avoid arrest, but proof that the defendant actually committed the law violation for which the arrest was attempted is not required. State v. Claussen, 276 Neb. 630, 756 N.W.2d 163 (2008).

28-907.

The purpose of subsection (1)(a) of this section is to prevent the public from willfully furnishing erroneous information to law enforcement officers and thus interfering with the performance of their duties. Interference with an officer's duties includes false statements that impede an officer's gathering of information. Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).

Subsection (1)(a) of this section includes other officials besides police officers who have the authority to investigate actual criminal matters. Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).

Subsection (1)(a) of this section prohibits a person from furnishing material information he or she knows to be false to any peace officer or other official with the intent to impede the investigation of an actual criminal matter. Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).

28-912.

A juvenile is being held in detention pursuant to official proceedings when he flees from a transportation employee that is escorting him to a medical appointment. In re Interest of Matthew P., 275 Neb. 189, 745 N.W.2d 574 (2008).

28-1205.

This statutory language expressly provides that the Legislature intended the crime of using a deadly weapon to commit a felony to remain an independent offense from the underlying felony. There can be no question that the Legislature intended that one using a deadly weapon be subjected to cumulative punishments for committing the underlying felony and for the use of the weapon to commit it. State v. Mata, 273 Neb. 474, 730 N.W.2d 396 (2007).

28-1206.

Use of a prior conviction to establish status as a felon and then enhance a sentence does not constitute impermissible double enhancement. State v. Ramirez, 274 Neb. 873, 745 N.W.2d 214 (2008).

Possession of a knife by a convicted felon is not unlawful under the plain language of this section. State v. Gozzola, 273 Neb. 309, 729 N.W.2d 87 (2007).

29-110.

In order for the tolling provision under subsection (1) of this section to apply, a subsequent indictment, information, or suit must charge the "same offense" as the prior indictment, information, or suit. State v. Loyd, 275 Neb. 205, 745 N.W.2d 338 (2008).

A complaint charging the defendant with second-offense driving under the influence was "pending" for statute of limitations purposes during the time period in which the State appealed to the district court and to the Supreme Court the county court's order granting the defendant's motion to quash. State v. Loyd, 275 Neb. 205, 745 N.W.2d 338 (2008).

29-215.

Subsection (2)(c)(ii)(C) of this section does not require that a officer requesting assistance tell the responding officer that he or she fears evidence will be lost; it asks whether the suspect may destroy or conceal evidence of the commission of a crime and whether an officer needs assistance in making an arrest. State v. Voichahoske, 271 Neb. 64, 709 N.W.2d 659 (2006).

29-814.04.

An affidavit in support of a search warrant need not contain a separate statement of facts showing why the public interest requires that the warrant be served at night, in order for the nighttime search to be valid. If the affidavit, read in a commonsense manner and as a whole, reasonably supports the inference that the interests of

justice are best served by the authorization of nighttime service of a search warrant, provision for such service in the warrant is proper. State v. Ramirez, 274 Neb. 873, 745 N.W.2d 214 (2008).

29-818.

Property seized and held as evidence is to be safely kept by the officer seizing it unless otherwise directed by the court, and the officer is to exercise reasonable care and diligence for the safekeeping of the property. The property shall be kept so long as necessary for the purpose of being produced as evidence at trial. State v. Agee, 274 Neb. 445, 741 N.W.2d 161 (2007).

The court in which a criminal charge was filed has exclusive jurisdiction to determine the rights to seized property and the property's disposition. State v. Agee, 274 Neb. 445, 741 N.W.2d 161 (2007).

29-820.

When criminal proceedings have terminated, the person from whom property was seized is presumed to have a right to its return, and the burden is on the government to show that it has a legitimate reason to retain the property. State v. Agee, 274 Neb. 445, 741 N.W.2d 161 (2007).

29-1205.

Subsection (1) of this section does not demand that all previously scheduled civil trials accommodate the rescheduling of a criminal trial as a result of a defense motion to continue. State v. Sims, 272 Neb. 811, 725 N.W.2d 175 (2006).

29-1207.

The delay caused by a continuance granted for the defendant is excluded from the 6-month period during which the defendant must be brought to trial, pursuant to subsection (4)(b) of this section. State v. Wells, 277 Neb. 476, 763 N.W.2d 380 (2009).

To determine the last day on which a defendant may be tried for speedy trial purposes, a court must exclude the day the information was filed, count forward 6 months, back up 1 day, and then add any time excluded under subsection (4) of this section. State v. Williams, 277 Neb. 133, 761 N.W.2d 514 (2009).

Subsection (4)(a) of this section excludes all time between the time of the filing of a defendant's pretrial motions and their final disposition, regardless of the promptness or reasonableness of the delay. The excludable period commences on the day immediately after the filing of a defendant's pretrial motion. Final disposition under subsection (4)(a) of this section occurs on the date the motion is granted or denied. State v. Williams, 277 Neb. 133, 761 N.W.2d 514 (2009).

It is presumed that a delay in hearing defense pretrial motions is attributable to the defendant unless the record affirmatively indicates otherwise. State v. Williams, 277 Neb. 133, 761 N.W.2d 514 (2009).

An interlocutory appeal taken by the defendant is a period of delay resulting from other proceedings concerning the defendant within the meaning of subsection (4)(a) of this section. State v. Williams, 277 Neb. 133, 761 N.W.2d 514 (2009).

In calculating the number of excludable days resulting from an interlocutory appeal, for speedy trial purposes, the period to be excluded due to the appeal commences on and includes the date on which the defendant filed his or her notice of appeal. Where further proceedings are to be had following an interlocutory appeal, for speedy trial purposes, the period of time excludable due to the appeal concludes when the district court first reacquires jurisdiction over the case by taking action on the mandate of the appellate court. State v. Williams, 277 Neb. 133, 761 N.W.2d 514 (2009).

For speedy trial purposes, the calculation for a continuance begins the day after the continuance is granted and includes the day on which the continuance ends. In the case of an indefinite continuance, the calculation runs from the day immediately following the grant of the continuance and ends when the defendant takes some affirmative action, such as requesting a trial date, to show his or her desire for the indefinite continuance to end or, absent such a showing, on the rescheduled trial date. State v. Williams, 277 Neb. 133, 761 N.W.2d 514 (2009).

The burden of proof is upon the State to show that one or more of the excluded time periods under subsection (4) of this section are applicable when the defendant is not tried within 6 months. State v. Williams, 277 Neb. 133, 761 N.W.2d 514 (2009).

Effective March 9, 2009, when ruling on a motion for absolute discharge pursuant to section 29-1208, the trial court shall make specific findings of each period of delay excludable under subsections (4)(a) to (e) of this section, in addition to the findings under subsection (4)(f) of this section. Such findings shall include the date and nature of the proceedings, circumstances, or rulings which initiated and concluded each excludable period; the number of days composing each excludable period; and the number of days remaining in which the defendant may be brought to trial after taking into consideration all excludable periods. State v. Williams, 277 Neb. 133, 761 N.W.2d 514 (2009).

Once a mistrial is granted, the speedy trial clock is restarted. State v. Dockery, 273 Neb. 330, 729 N.W.2d 320 (2007).

The period of delay resulting from an attempt to have a defendant examined to determine his mental and physical competency to stand trial is not included in calculating the speedy trial period. State v. Dockery, 273 Neb. 330, 729 N.W.2d 320 (2007).

In determining whether a period of delay is attributable to defense counsel's motion to continue, an appellate court need not inquire as to what extent there was "good cause" for the delay. State v. Sims, 272 Neb. 811, 725 N.W.2d 175 (2006).

29-1208.

Effective March 9, 2009, when ruling on a motion for absolute discharge pursuant to this section, the trial court shall make specific findings of each period of delay excludable under section 29-1207(4)(a) to (e), in addition to the findings under section 29-1207(4)(f). Such findings shall include the date and nature of the proceedings, circumstances, or rulings which initiated and concluded each excludable period; the number of days composing each excludable period; and the number of days remaining in which the defendant may be brought to trial after taking into consideration all excludable periods. State v. Williams, 277 Neb. 133, 761 N.W.2d 514 (2009).

29-1209.

A defendant waives any objection on the basis of a violation of the right to a speedy trial when he or she does not file a motion to discharge before trial begins. State v. Dockery, 273 Neb. 330, 729 N.W.2d 320 (2007).

29-1301.

A court must evaluate several factors in determining whether a defendant has met the burden of showing that pretrial publicity has made it impossible to secure a fair trial and impartial jury. These factors include (1) the nature of the publicity, (2) the degree to which the publicity has circulated throughout the community, (3) the degree to which the venue could be changed, (4) the length of time between the dissemination of the publicity complained of and the date of the trial, (5) the care exercised and ease encountered in the selection of the jury, (6) the number of challenges exercised during voir dire, (7) the severity of the offenses charged, and (8) the size of the area from which the venire was drawn. State v. Rodriguez, 272 Neb. 930, 726 N.W.2d 157 (2007).

29-1407.01.

Where the State violated this section by providing witnesses copies of their grand jury testimony without a court order, violation was subject to harmless error review, because it was a trial error instead of a structural error. State v. McKinney, 273 Neb. 346, 730 N.W.2d 74 (2007).

29-1602.

The requirement that the names of the witnesses for the State must be endorsed upon the information has no application to rebuttal witnesses. State v. Molina, 271 Neb. 488, 713 N.W.2d 412 (2006).

29-1812.

Under this section, once a defendant has entered a plea, or a plea is entered for the defendant by the court, the defendant waives all facial constitutional challenges to a statute unless that defendant asks leave of the court to withdraw the plea and thereafter files a motion to quash, even if the defendant entered his plea through a written arraignment under section 29-4206. State v. Liston, 271 Neb. 468, 712 N.W.2d 264 (2006).

29-1817.

A plea in bar is not a proper procedure after a defendant's conviction has been affirmed on appeal, and the cause is remanded only for resentencing. State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008).

29-1819.02.

This section gives a court discretion to vacate a judgment or withdraw a plea where a court has failed to provide the advisement required for pleas made on or after July 20, 2002, but it does not confer the power to vacate a judgment after the defendant has already completed his or her sentence. State v. Rodriquez-Torres, 275 Neb. 363, 746 N.W.2d 686 (2008).

29-1823.

The means to be employed to determine competency or the substantial probability of competency within the foreseeable future are discretionary with the district court, and the court may cause such medical, psychiatric, or psychological examination of the accused to be made as the court deems necessary in order to make such a determination. State v. Lassek, 272 Neb. 523, 723 N.W.2d 320 (2006).

29-1904.

This section does not provide for the taking of depositions at county expense in advance of the trial. State v. Kuehn, 273 Neb. 219, 728 N.W.2d 589 (2007).

29-1912.

Pursuant to this section, upon a defendant's proper request through discovery procedure, the State must disclose information which is material to the preparation of a defense to the charge against the defendant. In order that the defendant receive a fair trial, requested and material information must be disclosed to the defendant. State v. Gutierrez, 272 Neb. 995, 726 N.W.2d 542 (2007).

29-1926.

In a jury trial, a large opaque screen in the courtroom, separating the child witness from the defendant, was a violation of the defendant's due process right to a fair trial. State v. Parker, 276 Neb. 661, 757 N.W.2d 7 (2008).

29-2002.

A motion to revoke probation is not a criminal proceeding, and this section is not applicable. State v. Schreiner, 276 Neb. 393, 754 N.W.2d 742 (2008).

29-2006.

The district court did not err in retaining jurors who expressed opinions of guilt, which were not founded on witness testimony, and who testified they could render an impartial verdict. State v. Rodriguez, 272 Neb. 930, 726 N.W.2d 157 (2007).

29-2011.02.

Trial courts in Nebraska do not have inherent authority to confer immunity. In a criminal proceeding, a court's authority to grant immunity to a witness who refuses to testify on the basis of the privilege against self-incrimination comes from this section. State v. Robinson, 271 Neb. 698, 715 N.W.2d 531 (2006).

29-2022.

Although this section states that the bailiff, as the officer having the jury in his or her charge, shall not make "any communication" to jurors except to ask whether they have agreed upon a verdict, some incidental communication between the bailiff and jurors beyond that specified under this section will unavoidably occur. When such communication is limited to simple, practical matters of logistics, such as the location of the facilities used for deliberations, such communication is not likely to be prejudicial to the defendant or deny the defendant a fair trial. But while communications concerning administrative matters may not be prejudicial, when communications involve matters of law, the risk of prejudice is present and communication by the bailiff to jurors on such matters is improper. State v. Floyd, 272 Neb. 898, 725 N.W.2d 817 (2007).

29-2101.

Ineffective assistance of counsel is not a ground upon which a defendant may move for a new trial under this section. State v. Pieper, 274 Neb. 768, 743 N.W.2d 360 (2008).

29-2204.

A life to life sentence for second degree murder is permissible under this section. State v. Moore, 277 Neb. 111, 759 N.W.2d 698 (2009).

There is no statutory requirement that the affirmatively stated minimum term for a Class IB felony sentence be less than the maximum term. State v. Marrs, 272 Neb. 573, 723 N.W.2d 499 (2006).

29-2221.

The use of a prior conviction to establish status as a felon and then enhance a sentence does not constitute impermissible double enhancement. State v. Ramirez, 274 Neb. 873, 745 N.W.2d 214 (2008).

A Nebraska court may use a prior conviction from another state for sentence enhancement under this section even though the conviction may not be used for enhancement in that other state. State v. Wabashaw, 274 Neb. 394, 740 N.W.2d 583 (2007).

To prove a prior conviction for enhancement purposes, the State's evidence must establish with requisite trustworthiness, based upon a preponderance of the evidence, that (1) the defendant has been twice convicted of a crime, for which he or she was sentenced and committed to prison for not less than 1 year; (2) the trial court

rendered a judgment of conviction for each crime; and (3) at the time of the prior conviction and sentencing, the defendant was represented by counsel or had knowingly and voluntarily waived representation for those proceedings. State v. King, 272 Neb. 638, 724 N.W.2d 80 (2006); State v. Robinson, 272 Neb. 582, 724 N.W.2d 35 (2006).

The existence of a prior conviction and the identity of the accused as the person convicted may be shown by any competent evidence, including the oral testimony of the accused and duly authenticated records maintained by the courts or penal and custodial authorities. Specifically, in a proceeding for an enhanced penalty, the State has the burden to show that the records of a defendant's prior felony convictions, based on pleas of guilty, affirmatively demonstrate that the defendant was represented by counsel or that the defendant, having been informed of the right to counsel, voluntarily, intelligently, and knowingly waived that right. State v. Robinson, 272 Neb. 582, 724 N.W.2d 35 (2006).

29-2261.

Under the first sentence of subsection (6) of this section, a prosecutor is included in the category of "others entitled by law to receive" the information in the presentence investigation report, and therefore, the sentencing court is not required to make a determination of the defendant's best interests before allowing the prosecutor to review the presentence investigation report. State v. Albers, 276 Neb. 942, 758 N.W.2d 411 (2008).

29-2264.

Amendments to this section that allow a set-aside conviction to be used for purposes of determining risk under the Sex Offender Registration Act do not apply retroactively to a sex offender whose prior convictions for non-sex-offenses were set aside prior to the amendments, and thus, the offender's set-aside convictions could not be used for risk assessment under the act. Orders setting aside the offender's convictions vested him with the right to have the set-aside convictions used only for those purposes listed in this section at the time the orders were entered. McCray v. Nebraska State Patrol, 271 Neb. 1, 710 N.W.2d 300 (2006).

The fact that use of a conviction that has been set aside under this section is logically consistent with other uses enumerated in this section does not permit a court to read such language into this section. McCray v. Nebraska State Patrol, 271 Neb. 1, 710 N.W.2d 300 (2006).

An order setting aside a conviction is a final judgment which nullifies the conviction and removes all civil disabilities which were not exempted from restoration by this section as it existed on the date of the order. McCray v. Nebraska State Patrol, 271 Neb. 1, 710 N.W.2d 300 (2006).

While the Legislature is free to expand the statutory list of civil disabilities which are not restored by a judgment setting aside and nullifying a conviction pursuant to this section, such amendments cannot impair rights vested by judgments entered under prior versions of this section. McCray v. Nebraska State Patrol, 271 Neb. 1, 710 N.W.2d 300 (2006).

29-2267.

If a court is to revoke probation for a violation occurring within the probationary period, it is sufficient if procedure to that end was instituted within the probationary period or within a reasonable time thereafter. State v. Hernandez, 273 Neb. 456, 730 N.W.2d 96 (2007).

In evaluating the reasonableness of a delay in probation revocation proceedings, a court should consider such factors as the length of the delay, the reasons for the delay, and the prejudice to the defendant resulting from the delay. State v. Hernandez, 273 Neb. 456, 730 N.W.2d 96 (2007).

If a defendant is incarcerated in another jurisdiction and the State wishes to charge the defendant with violating probation, it provides the defendant with reasonably "prompt consideration" of the charge if the State invokes the detainer process and notifies the defendant of the pending revocation proceedings. Absent unusual circumstances,

the State is not required to extradite the defendant to revoke probation and sentence the defendant before the term of the defendant's foreign incarceration expires. State v. Hernandez, 273 Neb. 456, 730 N.W.2d 96 (2007).

29-2280.

When a court orders restitution to a crime victim under this section, restitution is a criminal penalty imposed as punishment and is part of the criminal sentence imposed by the sentencing court. State v. Clapper, 273 Neb. 750, 732 N.W.2d 657 (2007).

A sentencing court's factfinding in determining restitution does not expose the defendant to any greater punishment than this section authorizes, which is for the full amount of the victim's damages. State v. Clapper, 273 Neb. 750, 732 N.W.2d 657 (2007).

The requirements of this section are inapplicable in juvenile proceedings. In re Interest of Brandon M., 273 Neb. 47, 727 N.W.2d 230 (2007).

Restitution, ordered in an amount not exceeding the actual damage sustained by the victim, is not a penalty within the meaning of Neb. Const. art. VII, sec. 5, and is constitutional. State v. Moyer, 271 Neb. 776, 715 N.W.2d 565 (2006).

29-2315.01.

The purpose of a prosecutorial appeal brought under this section is to provide an authoritative exposition of the law to serve as precedent in future cases. Thus, under this section, an appellate court determines whether authoritative exposition of the law is needed based upon the prosecuting attorney's application for leave to docket an appeal. And the scope of an appellate court's review under this section is limited to providing such an exposition. It is not the proper function of this section to have an appellate court render an advisory opinion on narrow factual issues regardless of whether the opinion may, or may not, have some marginal precedential value in the future. State v. Larkins, 276 Neb. 603, 755 N.W.2d 813 (2008).

A defendant cannot file a cross-appeal to an exception proceeding unless the general appeal provisions are complied with. State v. Vasquez, 271 Neb. 906, 716 N.W.2d 443 (2006).

This section grants to the State the right to seek appellate review of adverse criminal rulings and specifies the special procedure by which to obtain such review. State v. Dunlap, 271 Neb. 314, 710 N.W.2d 873 (2006).

The State's right to appeal in criminal cases is limited by this section, which provides that the State may appeal only after a final order has been filed in the case. State v. Dunlap, 271 Neb. 314, 710 N.W.2d 873 (2006).

An order to disqualify the county attorney's office was not a final, appealable order, and the exception in Richardson v. Griffiths, 251 Neb. 825, 560 N.W.2d 430 (1997), to the final order rule did not apply because the State's interest in prosecuting the defendant was protected by the appointment of a special counsel to prosecute the defendant on behalf of the State. State v. Dunlap, 271 Neb. 314, 710 N.W.2d 873 (2006).

29-2316.

Even though modifying a sentence on review does not violate constitutional principles of double jeopardy, because of the language of this section, a Nebraska appellate court does not have authority to modify a sentence in an error proceeding when the defendant has been "placed legally in jeopardy." State v. Hense, 276 Neb. 313, 753 N.W.2d 832 (2008).

The application of this section turns on whether the defendant has been placed in jeopardy by the trial court, not by whether the Double Jeopardy Clause bars further action. State v. Vasquez, 271 Neb. 906, 716 N.W.2d 443 (2006).

29-2317.

Separate juvenile courts are treated as county courts under this section and sections 29-2318 and 29-2319 for the purpose of exception proceedings under subsection (2)(d) of section 43-2,106.01. In re Interest of Sean H., 271 Neb. 395, 711 N.W.2d 879 (2006).

29-2318.

Separate juvenile courts are treated as county courts under this section and sections 29-2317 and 29-2319 for the purpose of exception proceedings under subsection (2)(d) of section 43-2,106.01. In re Interest of Sean H., 271 Neb. 395, 711 N.W.2d 879 (2006).

29-2319.

Separate juvenile courts are treated as county courts under this section and sections 29-2317 and 29-2318 for the purpose of exception proceedings under subsection (2)(d) of section 43-2,106.01. In re Interest of Sean H., 271 Neb. 395, 711 N.W.2d 879 (2006).

29-2320.

A sentence imposed in a revocation of probation proceeding is considered a sentence under this section and is subject to an appeal by the prosecutor challenging its leniency. State v. Caniglia, 272 Neb. 662, 724 N.W.2d 316 (2006).

29-2519.

The U.S. Supreme Court's decision in Ring v. Arizona, 536 U.S. 584, 122 S. Ct. 2428, 153 L. Ed. 2d 556 (2002), which requires juries to find whether aggravating circumstances exist in death penalty cases, is not a substantive change in Sixth Amendment requirements that applies retroactively and did not make aggravating circumstances essential elements of capital murder. State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008).

29-2520.

Resentencing necessitated by a new rule of procedure requiring the jury to find the existence of aggravating circumstances in death penalty cases did not expose the defendant to greater punishment and/or violate the prohibition against ex post facto legislation. State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008).

The Eighth Amendment does not require jury sentencing in death penalty cases; Nebraska's capital sentencing scheme is not constitutionally defective, because it requires a jury, unless waived, to determine only the existence of aggravating circumstances and a three-judge panel to determine the existence of mitigating circumstances, weigh aggravating and mitigating circumstances, and determine the sentence. State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008).

29-2521.

The Eighth Amendment does not require jury sentencing in death penalty cases; Nebraska's capital sentencing scheme is not constitutionally defective, because it requires a jury, unless waived, to determine only the existence of aggravating circumstances and a three-judge panel to determine the existence of mitigating circumstances, weigh aggravating and mitigating circumstances, and determine the sentence. State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008).

Because the defendant could not avoid the risk of death by waiving his right to a jury, this section did not unconstitutionally burden the exercise of that right by providing that if the defendant waives the right to a jury, then members of a three-judge panel must make unanimous and written findings of fact regarding the existence of

aggravating circumstances, as distinguished from jurors, who are not required to unanimously agree on the State's alternate theories supporting an aggravating circumstance. State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008).

29-2521.03.

A death sentence imposed for the first degree premeditated murder of a 3-year-old boy whose body was dismembered and disposed of in pieces was proportional to that imposed in cases involving gratuitous violence inflicted upon young children. State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008).

29-2523.

Jurors are not required to unanimously agree on the means by which a capital defendant manifests exceptional depravity under subsection (1)(d) of this section. State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008).

In death penalty cases, an eligibility or selection factor is not unconstitutional if it has some commonsense core of meaning that a juror can understand. State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008).

A jury instruction in a death penalty case that allowed the State to satisfy the "exceptional depravity" aggravator by proving that the defendant "apparently relished" the murder was not unconstitutionally vague; a juror would have clearly understood that the term "apparently relished" referred to his or her own perception of the defendant's conduct. State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008).

The use of a prior offense to prove an aggravating circumstance under subsection (1)(a) of this section does not increase the penalty for the prior offense and does not expose the defendant to new jeopardy for such offense. Because the use of evidence of a prior offense to prove an aggravating circumstance under subsection (1)(a) of this section does not expose the defendant to new jeopardy for the prior offense, such use does not violate the Double Jeopardy Clause. State v. Hessler, 274 Neb. 478, 741 N.W.2d 406 (2007).

29-2801.

This section discusses the extent of a district or county court's subject matter jurisdiction over writs of habeas corpus; venue in habeas corpus actions is determined by *Gillard v. Clark*, 105 Neb. 84, 179 N.W. 396 (1920). Anderson v. Houston, 274 Neb. 916, 744 N.W.2d 410 (2008).

29-2823.

It is implicit in this section that a prisoner released by a trial court's writ of habeas corpus may be directed to return to custody if the writ is reversed on appeal. Tyler v. Houston, 273 Neb. 100, 728 N.W.2d 549 (2007).

The doctrine of credit for time erroneously at liberty, which holds that a prisoner is entitled to credit against his or her sentence for time spent erroneously at liberty due to the State's negligence, is not applicable to a release on bail pursuant to this section. Tyler v. Houston, 273 Neb. 100, 728 N.W.2d 549 (2007).

This section is intended to balance the interests of the State and the prisoner in a habeas action by allowing the prisoner to ask for immediate release, yet permitting the State to effectively seek appellate review of a trial court's decision to grant the writ. Tyler v. Houston, 273 Neb. 100, 728 N.W.2d 549 (2007).

29-3001.

In a postconviction proceeding, an appellate court reviews for an abuse of discretion the procedures a district court uses to determine whether the prisoner's allegations sufficiently establish a basis for relief and whether the files and records of the case affirmatively show that the prisoner is entitled to no relief. State v. Glover, 276 Neb. 622, 756 N.W.2d 157 (2008).

A trial court abuses its discretion in postconviction proceedings when its decision incorrectly applies or fails to comply with specific procedural rules governing the action. State v. Glover, 276 Neb. 622, 756 N.W.2d 157 (2008).

A district court need not conduct an evidentiary hearing in postconviction proceedings in the following circumstances: (1) When the prisoner alleges only conclusions of law or facts and (2) when the files and records of the case affirmatively show that the prisoner is entitled to no relief. State v. Glover, 276 Neb. 622, 756 N.W.2d 157 (2008).

The trial court erred in denying a postconviction petition without an evidentiary hearing based on the trial counsel's deposition, because the deposition was not part of the case records and files; the phrase "files and records of the case" in this section refers to existing files and records of the case before the prisoner filed a postconviction proceeding, not to testimony taken for the postconviction proceeding. State v. Glover, 276 Neb. 622, 756 N.W.2d 157 (2008).

If the district court grants an evidentiary hearing in a postconviction proceeding, it is obligated to determine the issues and make findings of fact and conclusions of law with respect thereto. State v. Epting, 276 Neb. 37, 751 N.W.2d 166 (2008).

It is reversible error for a district court to grant postconviction relief without first conducting an evidentiary hearing and making findings of fact and conclusions of law. State v. Jim, 275 Neb. 481, 747 N.W.2d 410 (2008).

If the court grants an evidentiary hearing in a postconviction proceeding, it is obligated to determine the issues and make findings of fact and conclusions of law with respect thereto. State v. Jim, 275 Neb. 481, 747 N.W.2d 410 (2008).

The trial court did not abuse its discretion under the Nebraska Postconviction Act when it required the State to file a written response to the appellant's motion for postconviction relief. State v. McLeod, 274 Neb. 566, 741 N.W.2d 664 (2007).

The trial court did not err in declining to appoint the appellant counsel for the purpose of conducting further discovery on a postconviction motion, because under the Nebraska Postconviction Act, it is within the discretion of the trial court as to whether counsel shall be appointed. State v. McLeod, 274 Neb. 566, 741 N.W.2d 664 (2007).

An appellate court will not entertain a successive motion for postconviction relief unless the motion affirmatively shows on its face that the basis relied upon for relief was not available at the time the movant filed the prior motion. State v. Marshall, 272 Neb. 924, 725 N.W.2d 834 (2007).

A movant's subsequent postconviction claims are barred by his or her failure to raise available claims in a previous postconviction motion, even if the movant acted pro se in the first proceeding. State v. Marshall, 272 Neb. 924, 725 N.W.2d 834 (2007).

In an action under Nebraska's postconviction statute, an issue of constitutional dimension involving a sentence does not constitute grounds for postconviction relief unless it also constitutes grounds for finding the sentence void or voidable. State v. Moore, 272 Neb. 71, 718 N.W.2d 537 (2006).

29-3002.

An order denying an evidentiary hearing on a postconviction claim is a final judgment as to such claim under this section. State v. Poindexter, 277 Neb. 936, 766 N.W.2d 391 (2009).

An order ruling on a motion filed in a pending postconviction case seeking to amend the postconviction motion to assert additional claims is not a final judgment and is not appealable under this section. State v. Hudson, 273 Neb. 42, 727 N.W.2d 219 (2007).

29-3003.

The phrase "any other remedy" encompasses a direct appeal when the issue raised in the postconviction proceeding can be raised in the direct appeal. Thus, a motion for postconviction relief cannot be used as a substitute for an appeal or to secure a further review of issues already litigated on direct appeal or which were known to the defendant and counsel at the time of the trial and which were capable of being raised, but were not raised, in the defendant's direct appeal. State v. Molina, 271 Neb. 488, 713 N.W.2d 412 (2006).

29-3304.

Under this section, law enforcement personnel must have probable cause to believe that the person whose DNA is sought committed the crime for which the DNA is sought. State v. McKinney, 273 Neb. 346, 730 N.W.2d 74 (2007).

29-3401.

A prisoner who was transferred to Nebraska pursuant to the Interstate Corrections Compact is subject to the jurisdiction of the sending state. Leach v. Dahm, 277 Neb. 452, 763 N.W.2d 83 (2009).

Pursuant to the Interstate Corrections Compact, the receiving state acts solely as an agent for the sending state. Leach v. Dahm, 277 Neb. 452, 763 N.W.2d 83 (2009).

Where a prisoner is sentenced in Florida and transferred to Nebraska pursuant to the Interstate Corrections Compact, hearings in Nebraska considering whether the sentence was unconstitutional may be held only if authorized by Florida and are governed by the laws of Florida. Leach v. Dahm, 277 Neb. 452, 763 N.W.2d 83 (2009).

29-3703.

Under subsections (2) and (3) of this section, following the annual status review of a person committed to treatment in a regional center, the court may either order the person released unconditionally, order the person to remain committed to the regional center, or order the person discharged from the regional center and placed in a less restrictive treatment program. State v. Schinzel, 271 Neb. 281, 710 N.W.2d 634 (2006).

Under this section, a person cannot be placed in the "joint legal custody" of two separate agencies or treatment programs. State v. Schinzel, 271 Neb. 281, 710 N.W.2d 634 (2006).

29-4005.

A sentencing judge may determine whether an aggravated offense as formerly defined in subsection (4)(a) of this section has been committed based upon information contained in the record, including the factual basis for a plea-based conviction and information contained in the presentence report. State v. Hamilton, 277 Neb. 593, 763 N.W.2d 731 (2009).

29-4013.

The fact that orders setting aside a convicted sex offender's prior convictions for nonsexual offenses were issued after the offender's risk assessment instrument was scored did not preclude the hearing officer from considering those orders when resolving the offender's administrative challenge to his sex offender classification under the Sex Offender Registration Act; regulations existing at the time of the administrative review process indicated that the hearing officer could consider events occurring after the initial scoring of the risk assessment instrument. McCray v. Nebraska State Patrol, 271 Neb. 1, 710 N.W.2d 300 (2006).

Amendments to the set-aside statute that allow a set-aside conviction to be used for purposes of determining risk under the Sex Offender Registration Act did not apply retroactively to a sex offender whose prior convictions for non-sex-offenses were set aside prior to the amendments, and thus the offender's set-aside convictions could not be used for risk assessment under the act. Orders setting aside the offender's convictions vested him with the right to have the set-aside convictions used only for those purposes listed in this section at the time the orders were entered. McCray v. Nebraska State Patrol, 271 Neb. 1, 710 N.W.2d 300 (2006).

For purposes of classifying a convicted sex offender under the Sex Offender Registration Act, unsworn victim statements obtained by police were not competent evidence to support scoring under the section of the risk assessment instrument concerning the nature of the offender's sexual assault behavior. Where the statements were not correlated to any offense for which the offender was charged or convicted, statements bore no other indicia of probative value, and nothing in the record established the truth of the statements. McCray v. Nebraska State Patrol, 271 Neb. 1, 710 N.W.2d 300 (2006).

29-4116.

An action under the DNA Testing Act is a collateral attack on a conviction and is therefore similar to a postconviction action and is not part of the criminal proceeding itself. State v. Pratt, 273 Neb. 817, 733 N.W.2d 868 (2007).

29-4120.

The DNA Testing Act does not exclude persons who were convicted and sentenced pursuant to pleas. State v. Winslow, 274 Neb. 427, 740 N.W.2d 794 (2007).

29-4122.

Decisions regarding appointment of counsel under the DNA Testing Act are reviewed for an abuse of discretion. State v. Poe, 271 Neb. 858, 717 N.W.2d 463 (2006).

There is not a constitutional right to appointment of counsel in an action under the DNA Testing Act. State v. Poe, 271 Neb. 858, 717 N.W.2d 463 (2006).

Under this section, the court has discretion to appoint counsel based on its determination of whether the person bringing the action has shown that DNA testing may be relevant to his or her claim of wrongful conviction. State v. Poe, 271 Neb. 858, 717 N.W.2d 463 (2006).

29-4123.

A motion to dismiss an action under the DNA Testing Act after testing has been completed is addressed to the discretion of the trial court, and unless an abuse of discretion is shown, the court's determination will not be disturbed. State v. Poe, 271 Neb. 858, 717 N.W.2d 463 (2006).

In order to bring an action under the DNA Testing Act to a conclusion, when the State receives DNA testing results that do not exonerate or exculpate the person, the State should file a motion to dismiss the action, the granting of which is an appealable order. State v. Poe, 271 Neb. 858, 717 N.W.2d 463 (2006).

29-4201.

This section demonstrates that the Legislature did not intend to allow written arraignments filed under section 29-4206 to supersede Nebraska's criminal procedure statutes. State v. Liston, 271 Neb. 468, 712 N.W.2d 264 (2006).

29-4206.

This section does not authorize district courts to accept pleas of not guilty on a conditional basis or alter the requirement under section 29-1812 that a defendant must withdraw his or her plea to the general issue before filing a motion to quash. State v. Liston, 271 Neb. 468, 712 N.W.2d 264 (2006).

30-2209.

"Any person interested in the welfare" of a protected person has standing to intervene and is not limited to those persons more narrowly defined as "interested persons" in subsection (21) of this section. In re Guardianship & Conservatorship of Cordel, 274 Neb. 545, 741 N.W.2d 675 (2007).

30-2211.

In common-law and equity actions relating to decedents' estates, the county courts have concurrent original jurisdiction with the district courts. When the jurisdiction of the county court and district court is concurrent, the basic principles of judicial administration require that the court which first acquires jurisdiction should retain it to the exclusion of the other court. Washington v. Conley, 273 Neb. 908, 734 N.W.2d 306 (2007).

30-2314.

Whether premarital trust assets are part of the augmented estate for determining a surviving spouse's elective share is governed by this section, not section 30-3850 of the Nebraska Uniform Trust Code. In re Estate of Chrisp, 276 Neb. 966, 759 N.W.2d 87 (2009).

Under this section, the probate estate is augmented by first reducing the estate by specified obligations and liabilities and then increasing the estate by the value of specified properties and transfers. In re Estate of Chrisp, 276 Neb. 966, 759 N.W.2d 87 (2009).

Under this section, only a decedent's transfers to others during his or her marriage to the surviving spouse are included in the augmented estate for calculating a surviving spouse's elective share. In re Estate of Chrisp, 276 Neb. 966, 759 N.W.2d 87 (2009).

The exclusion of premarital trusts from the augmented estate was intended to permit a person to provide for children by a prior marriage, as by a revocable living trust, without concern that such provisions will be upset by later marriage. In re Estate of Chrisp, 276 Neb. 966, 759 N.W.2d 87 (2009).

30-2408.

This section permits an informal appointment proceeding to be commenced more than 3 years after the decedent's death if no formal or informal proceeding for probate or proceeding concerning the succession or administration has occurred within the 3-year period. In re Estate of Nemetz, 273 Neb. 918, 735 N.W.2d 363 (2007).

30-2454.

Under this section, once the personal representative receives notice of a petition seeking his or her removal, he or she "shall not act," except in limited circumstances. Thus, notice to the personal representative under this section effectively suspends the personal representative. In re Estate of Cooper, 275 Neb. 322, 746 N.W.2d 663 (2008).

Taken together, this section and section 30-2457 set forth a procedure by which to suspend and remove a personal representative and appoint a special administrator. In re Estate of Cooper, 275 Neb. 322, 746 N.W.2d 663 (2008).

Once a personal representative is prohibited from acting under this section, an interested party may thereafter move under section 30-2457 for the appointment of a special administrator, based on the facts that the personal representative has received notice under this section and cannot act and that the appointment of a special administrator would be appropriate to preserve the estate or to secure its proper administration. In re Estate of Cooper, 275 Neb. 322, 746 N.W.2d 663 (2008).

A proceeding under this section to remove a personal representative for cause is a special proceeding within the meaning of section 25-1902. In re Estate of Nemetz, 273 Neb. 918, 735 N.W.2d 363 (2007).

30-2457.

Taken together, section 30-2454 and this section set forth a procedure by which to suspend and remove a personal representative and appoint a special administrator. In re Estate of Cooper, 275 Neb. 322, 746 N.W.2d 663 (2008).

Once a personal representative is prohibited from acting under section 30-2454, an interested party may thereafter move under this section for the appointment of a special administrator, based on the facts that the personal representative has received notice under section 30-2454 and cannot act and that the appointment of a special administrator would be appropriate to preserve the estate or to secure its proper administration. In re Estate of Cooper, 275 Neb. 322, 746 N.W.2d 663 (2008).

This section permits a special administrator to be appointed after notice when a personal representative cannot or should not act and also permits the appointment of a special administrator without notice when an emergency exists. In re Estate of Cooper, 275 Neb. 322, 746 N.W.2d 663 (2008).

In the absence of evidence, no emergency basis under this section can be established upon which a county court could base its suspension of a personal representative and the appointment of a temporary special administrator. In re Estate of Cooper, 275 Neb. 322, 746 N.W.2d 663 (2008).

30-2464.

A trust beneficiary's estate can seek to enforce the beneficiary's interests in the trust to the same extent that the beneficiary could have enforced his or her interests immediately before death, consistent with the standard provided in the Restatement (Third) of Trusts section 50, comment *d(5)*. (2003). In re Trust Created by Hansen, 274 Neb. 199, 739 N.W.2d 170 (2007).

30-2481.

The Nebraska Probate Code does not authorize attorney fees for a surviving spouse. A surviving spouse also acting as the personal representative is not entitled to attorney fees for legal actions that she took while she was not the personal representative and that were directed at obtaining assets that did not benefit the estate or come under its administration. In re Estate of Chrisp, 276 Neb. 966, 759 N.W.2d 87 (2009).

30-2486.

Mere notice to a representative of an estate regarding a possible claim against the estate does not constitute presenting or filing a claim under this section. J.R. Simplot Co. v. Jelinek, 275 Neb. 548, 748 N.W.2d 17 (2008).

Giving the language in this section a consistent, harmonious, and sensible construction, it is apparent that the filing of a claim is a separate and distinct act from the initiation of a legal proceeding to pursue payment of the claim. Therefore, the filing of a claim does not commence an action and does not in and of itself require the services of an attorney. In re Estate of Cooper, 275 Neb. 297, 746 N.W.2d 653 (2008).

The filing of a statement of claim is an administrative step by which the personal representative is advised, in accordance with the probate statutes, of the identities of the creditors and the amounts of their claims. In re Estate of Cooper, 275 Neb. 297, 746 N.W.2d 653 (2008).

30-2620.

Pursuant to this section, a full guardianship may be established if the probate court finds by clear and convincing evidence that a full guardianship is necessary for the care of the incapacitated person. In re Guardianship & Conservatorship of Karin P., 271 Neb. 917, 716 N.W.2d 681 (2006).

30-2627.

When two persons have equal priority, the Nebraska Probate Code directs the court to appoint the person "best qualified to serve" as guardian. In re Guardianship & Conservatorship of Karin P., 271 Neb. 917, 716 N.W.2d 681 (2006).

30-2628.

Placing the establishment of a visitation schedule in the guardian is anticipated by the statutory duties assigned to a guardian with full powers. In re Guardianship & Conservatorship of Karin P., 271 Neb. 917, 716 N.W.2d 681 (2006).

30-2645.

"Any person interested in the welfare" of a protected person has standing to intervene and is not limited to those persons more narrowly defined as "interested persons" in subsection (21) of section 30-2209. In re Guardianship & Conservatorship of Cordel, 274 Neb. 545, 741 N.W.2d 675 (2007).

30-2648.

There is no final adjudication of an intermediate account without an evidentiary hearing. In re Guardianship & Conservatorship of Cordel, 274 Neb. 545, 741 N.W.2d 675 (2007).

30-2715.

If an instrument executed by the parties is intended by them as security for a debt, whatever may be its form or name, it is in equity a mortgage. Clark v. Clark, 275 Neb. 276, 746 N.W.2d 132 (2008).

30-2719.

This section provides that extrinsic evidence of the depositor's intent as to what type of account was created is relevant only when the contract of deposit in not in substantially the form provided in subsection (a) of this section. When the contract of deposit for an account is substantially in such form, the account will be treated as being the type of account designated on the form; if the contract of deposit is not in such form, then the depositor's intent is relevant to determine the type of account pursuant to subsection (b) of this section. Eggleston v. Kovacich, 274 Neb. 579, 742 N.W.2d 471 (2007).

30-2722.

A gift by the owner from a payable-on-death account does not create a right of reimbursement in the payable-on-death beneficiary. In re Trust of Rosenberg, 273 Neb. 59, 727 N.W.2d 430 (2007).

30-2723.

Under subsection (b)(2) of this section, a payable-on-death beneficiary may be named in either an individual or a representative capacity. In re Trust of Rosenberg, 273 Neb. 59, 727 N.W.2d 430 (2007).

30-3802.

It is clear from the plain language of this section that resulting and constructive trusts are not governed by the Nebraska Uniform Trust Code. Washington v. Conley, 273 Neb. 908, 734 N.W.2d 306 (2007).

30-3803.

When the parties do not claim that the terms are unclear or contrary to the settlor's actual intent pursuant to subsection (19) of this section, the interpretation of a trust's terms is a question of law. In re Trust Created by Hansen, 274 Neb. 199, 739 N.W.2d 170 (2007).

30-3812.

This section does not limit to trustees the right to seek instructions from the court. In re Trust Created by Hansen, 274 Neb. 199, 739 N.W.2d 170 (2007).

The remainder beneficiaries' motion for a declaration of rights was construed as a request for the court to instruct the trustee on its duties and powers when they asked the county court to decide whether the trustee could pay the billings for the beneficiary's last-illness expenses and, if so, what standards should be applied. In re Trust Created by Hansen, 274 Neb. 199, 739 N.W.2d 170 (2007).

A trust beneficiary's estate can seek to enforce the beneficiary's interests in the trust to the same extent that the beneficiary could have enforced his or her interests immediately before death, consistent with the standard provided in the Restatement (Third) of Trusts section 50, comment *d(5)*. (2003). In re Trust Created by Hansen, 274 Neb. 199, 739 N.W.2d 170 (2007).

30-3819.

The act of registering a trust gives the county court jurisdiction over the interests of all notified beneficiaries to decide issues related to any matter involving the trust's administration, including a request for instructions or an action to declare rights. In re Trust Created by Hansen, 274 Neb. 199, 739 N.W.2d 170 (2007).

30-3827.

Under subsection (1) of this section, a trust may be created in life insurance death benefits. In re Trust of Rosenberg, 273 Neb. 59, 727 N.W.2d 430 (2007).

30-3841.

A document by which a settlor purports to revoke a revocable trust is a term of that trust. In re Trust Created by Isvik, 274 Neb. 525, 741 N.W.2d 638 (2007).

Absent clear and convincing evidence that a settlor's stated intent to revoke her trust was a product of mistake, the trust was revoked and ceased to exist. In re Trust Created by Isvik, 274 Neb. 525, 741 N.W.2d 638 (2007).

30-3850.

Whether premarital trust assets are part of the augmented estate for determining a surviving spouse's elective share is governed by section 30-2314 of the Nebraska Probate Code, not this section. In re Estate of Chrisp, 276 Neb. 966, 759 N.W.2d 87 (2009).

Under subsection (a)(3) of this section, a surviving spouse's elective share is neither a statutory allowance nor a claim against the estate. In re Estate of Chrisp, 276 Neb. 966, 759 N.W.2d 87 (2009).

Under this section, a personal representative has no interest in the decedent's validly created nontestamentary trust except to assert the trust's liability for this section's specified claims against the estate and statutory allowances that the decedent's estate is inadequate to satisfy. In re Estate of Chrisp, 276 Neb. 966, 759 N.W.2d 87 (2009).

30-3868.

In conjunction with this section and section 8-2207, a trustee has a statutory duty of impartiality. In re Trust of Rosenberg, 273 Neb. 59, 727 N.W.2d 430 (2007).

30-3893.

Whether attorney fees and expenses are awarded is addressed to the discretion of the trial court. In re Trust of Rosenberg, 273 Neb. 59, 727 N.W.2d 430 (2007).

30-38,110.

Because a statutory duty of impartiality existed under either section 8-2207 or section 30-3868, application of the Nebraska Uniform Trust Code would not substantially prejudice the rights of the parties in determining trustee impartiality. In re Trust of Rosenberg, 273 Neb. 59, 727 N.W.2d 430 (2007).

31-766.

Pursuant to this section, where there is evidence that a partially annexed fire district has assets, those assets should be considered in determining a proper adjustment of those matters growing out of the annexation. Papillion Rural Fire Prot. Dist. v. City of Bellevue, 274 Neb. 214, 739 N.W.2d 162 (2007).

32-1409.

Pursuant to subsection (3) of this section, the Secretary of State is required to determine if constitutional requirements have been met before placing a measure on the ballot. State ex rel. Lemon v. Gale, 272 Neb. 295, 721 N.W.2d 347 (2006).

32-1412.

Pursuant to subsection (2) of this section, the issue of whether a measure complies with the requirements of Neb. Const. art. III, sec. 2, is a question of legal sufficiency and is justiciable by a court before the measure is submitted to the voters. State ex rel. Lemon v. Gale, 272 Neb. 295, 721 N.W.2d 347 (2006).

32-1604.

Candidates for certain elective state offices, including the office of university regent, are required to file an affidavit stating whether they intend to abide by the voluntary campaign spending limits for the office under the Campaign Finance Limitation Act. Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).

Abiding candidates agree to spend no more than 50 percent of the total campaign spending limit during the primary. For the office of university regent, the total campaign spending limit, excluding specified unrestricted spending, is $50,000. Therefore, the spending limit for the primary is $25,000. Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).

If a candidate for a covered office files an affidavit stating an intent not to abide by the voluntary spending limit, then the candidate must include in the affidavit a reasonable estimate of his or her maximum expenditures for the primary election, which estimate may be amended up to 30 days before the primary election. The nonabiding candidate must also file an estimate for the general election by the 40th day following the primary election, which estimate may be amended up to 60 days before the general election. A candidate is free to estimate expenditures at an amount greatly above or below the voluntary spending limit. Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).

For both the primary and general election periods, when the nonabiding candidate expends 40 percent of his or her estimated maximum expenditures, he or she must notify the Nebraska Accountability and Disclosure Commission via the 40-percent affidavit "no later than five days after the forty percent has been expended." Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).

34-301.

When neighboring landowners recognized for 10 years a boundary which they believed corresponded to the metes and bounds legal descriptions of their properties, the doctrine of mutual recognition and acquiescence will apply even though an accurate survey, had they obtained one, could have accurately established a division line corresponding to the legal description. Sila v. Saunders, 274 Neb. 809, 743 N.W.2d 641 (2008).

Even though the neighboring landowners recognized their boundary line by markers which were an approximation of the real boundary, a boundary by mutual recognition and acquiescence may be established if the approximation was recognized by the acquiescing parties as their actual boundary and the location of this boundary can be proved by the parties. Sila v. Saunders, 274 Neb. 809, 743 N.W.2d 641 (2008).

The filial relationship rule has no bearing on a mutual recognition and acquiescence analysis. Sila v. Saunders, 274 Neb. 809, 743 N.W.2d 641 (2008).

35-302.

This section provides firefighters with statutory rights and permits firefighters to waive those rights by voluntary agreement, but does not alter the well-established principle that such a waiver must be clearly and expressly established. Hogelin v. City of Columbus, 274 Neb. 453, 741 N.W.2d 617 (2007).

36-701.

A person seeking to set aside a transfer under the Uniform Fraudulent Transfer Act must first prove that he or she is a "creditor" and that the party against whom relief is sought is a "debtor." Reed v. Reed, 275 Neb. 418, 747 N.W.2d 18 (2008).

36-702.

Pursuant to subsection (3) of this section, a spouse's right to an equitable distribution of the marital estate is not a "right to payment" under the Uniform Fraudulent Transfer Act. Reed v. Reed, 275 Neb. 418, 747 N.W.2d 18 (2008).

36-706.

A debtor-creditor relationship is created not by a judgment, but by the wrong which produces the injury; and it is the date of the wrongful act, not the date of the filing of the suit or of the judgment, which fixes the status and rights of the parties. Dominguez v. Eppley Transp. Servs., 277 Neb. 531, 763 N.W.2d 696 (2009).

36-708.

Pursuant to subsection (a)(1) of this section, the Uniform Fraudulent Transfer Act requires some nexus between the claim upon which an individual's creditor status depends and the purpose for which that individual seeks to set aside a fraudulent transfer. Reed v. Reed, 275 Neb. 418, 747 N.W.2d 18 (2008).

36-709.

In all actions brought by creditors to subject property which it is claimed was fraudulently transferred, the person to whom the property has been transferred is a necessary party. Reed v. Reed, 277 Neb. 391, 763 N.W.2d 686 (2009).

37-706.

This section neither includes nor excludes man-made waterways from the "banks of the river." Instead, the Department of Natural Resources has the responsibility to determine whether any particular waterway should be considered part of the banks of the river. Scofield v. State, 276 Neb. 215, 753 N.W.2d 345 (2008).

38-179.

Under the former law, the general definition in the introductory paragraph of this section does not include as unprofessional conduct a single act of ordinary negligence. Mahnke v. State, 276 Neb. 57, 751 N.W.2d 635 (2008).

42-349.

The inference that residency in Nebraska has been with the intent to make it one's permanent home is negated where he or she is a nonimmigrant alien residing in Nebraska on a visitor's visa. Rozsnyai v. Svacek, 272 Neb. 567, 723 N.W.2d 329 (2006).

42-351.

Pursuant to subsection (1) of this section, jurisdiction over a child custody proceeding is governed exclusively by the Uniform Child Custody Jurisdiction and Enforcement Act. Carter v. Carter, 276 Neb. 840, 758 N.W.2d 1 (2008).

42-364.

Proceedings regarding modification of a marital dissolution, which are controlled by this section, are special proceedings as defined by section 25-1902. Steven S. v. Mary S., 277 Neb. 124, 760 N.W.2d 28 (2009).

A court is required to devise a parenting plan and to consider joint legal and physical custody, but the court is not required to grant equal parenting time to the parents if such is not in the child's best interests. Kamal v. Imroz, 277 Neb. 116, 759 N.W.2d 914 (2009).

A trial court's authority under subsection (5) of this section to order joint physical custody when the parties have not requested it must be exercised in a manner consistent with due process requirements. Zahl v. Zahl, 273 Neb. 1043, 736 N.W.2d 365 (2007).

The factual inquiry necessary to impose joint physical custody is substantially different from that required for making a sole custody determination. Zahl v. Zahl, 273 Neb. 1043, 736 N.W.2d 365 (2007).

When a trial court determines at a general custody hearing that joint physical custody is, or may be, in a child's best interests, but neither party has requested this custody arrangement, the court must give the parties an opportunity to present evidence on the issue before imposing joint custody. Zahl v. Zahl, 273 Neb. 1043, 736 N.W.2d 365 (2007).

A district court abuses its discretion to order joint custody when it fails to specifically find that joint physical custody is in the child's best interests as required by this section. Zahl v. Zahl, 273 Neb. 1043, 736 N.W.2d 365 (2007).

42-365.

An alimony award which drives an obligor's net income below the basic subsistence limitation of Neb. Ct. R. section 4-218 of the Nebraska Child Support Guidelines is presumptively an abuse of judicial discretion unless the court specifically finds that conformity with section 4-218 would work an "unjust or inappropriate" result in that particular case. Gress v. Gress, 274 Neb. 686, 743 N.W.2d 67 (2007).

In an action to modify a decree of dissolution, it is the decree that was affirmed as modified, from the time it was originally entered, that provides the appropriate frame of reference for the subsequent application to modify. Finney v. Finney, 273 Neb. 436, 730 N.W.2d 351 (2007).

To determine whether there has been a material and substantial change in circumstances warranting modification of a divorce decree, a trial court should compare the financial circumstances of the parties at the time of the divorce decree, or last modification of the decree, with their circumstances at the time the modification at issue was sought, and an intervening appellate decision has no bearing on the analysis. Finney v. Finney, 273 Neb. 436, 730 N.W.2d 351 (2007).

No matter which party has the larger pension, the value acquired during the marriage should be divided relatively equally, and it would be incongruous to reduce one party's equitable share simply because one has elected to retire early, while the other continues to work. Webster v. Webster, 271 Neb. 788, 716 N.W.2d 47 (2006).

The antiassignment clause of the Social Security Act and the Supremacy Clause of the U.S. Constitution prohibit a direct offset to adjust for disproportionate Social Security benefits in the property division of a dissolution decree. Webster v. Webster, 271 Neb. 788, 716 N.W.2d 47 (2006).

42-366.

The parties to a marriage may enter into a written settlement agreement to settle disputes attendant upon separation of their marriage, including a dispute over modification of a previous decree. Marcovitz v. Rogers, 276 Neb. 199, 752 N.W.2d 605 (2008).

Pursuant to this section, the court has an independent duty to evaluate the terms of an agreement and ensure that they are not unconscionable before incorporating them into a decree. Marcovitz v. Rogers, 276 Neb. 199, 752 N.W.2d 605 (2008).

Pursuant to subsection (8) of this section, retirement plans earned during the marriage are to be included in the division of the marital estate. Sitz v. Sitz, 275 Neb. 832, 749 N.W.2d 470 (2008).

42-371.

Under subsection (6) of this section, a court has discretion to require reasonable security for an obligor's current or delinquent support obligations when compelling circumstances require it. Davis v. Davis, 275 Neb. 944, 750 N.W.2d 696 (2008).

43-104.

The putative father provisions of this section do not apply to a previously adjudicated father. In re Adoption of Jaden M., 272 Neb. 789, 725 N.W.2d 410 (2006).

43-104.02.

This section requires "a person claiming to be the father of the child" to file notice of his intent to claim paternity and obtain custody with the biological father registry within 5 business days of the child's birth or published notification. In re Adoption of Jaden M., 272 Neb. 789, 725 N.W.2d 410 (2006).

This section does not apply to a biological father opposing the adoption of his child who is no longer a newborn when the father had acknowledged and supported his child and established strong familial ties. In re Adoption of Jaden M., 272 Neb. 789, 725 N.W.2d 410 (2006).

This section, by its very terms, has no application in a dispute between the biological father and mother of a child born out of wedlock. In re Adoption of Jaden M., 272 Neb. 789, 725 N.W.2d 410 (2006).

A putative father who intends to claim paternity and obtain custody of a child born out of wedlock must file notice with the biological father registry and adjudicate his claim within 30 days. In re Adoption of Jaden M., 272 Neb. 789, 725 N.W.2d 410 (2006).

This section and section 43-104.05 do not apply to a putative father who has been previously determined to be the biological father. In re Adoption of Jaden M., 272 Neb. 789, 725 N.W.2d 410 (2006).

Section 43-102.05 requires a "claimant-father" to petition the county court where the child was born to adjudicate his claim of paternity and right to custody within 30 days of filing notice under this section. In re Adoption of Jaden M., 272 Neb. 789, 725 N.W.2d 410 (2006).

43-104.05.

A putative father who intends to claim paternity and obtain custody of a child born out of wedlock must file notice with the biological father registry and adjudicate his claim within 30 days. In re Adoption of Jaden M., 272 Neb. 789, 725 N.W.2d 410 (2006).

Section 43-104.02 and this section do not apply to a putative father who has been previously determined to be the biological father. In re Adoption of Jaden M., 272 Neb. 789, 725 N.W.2d 410 (2006).

This section requires a "claimant-father" to petition the county court where the child was born to adjudicate his claim of paternity and right to custody within 30 days of filing notice under section 43-104.02. In re Adoption of Jaden M., 272 Neb. 789, 725 N.W.2d 410 (2006).

Although under this section a father who fails to petition for an adjudication of paternity in county court within 30 days after filing his notice of intent to claim paternity would be precluded from claiming paternity in an adoption proceeding, such father would not be precluded from seeking to establish paternity under the paternity statutes in district court where there is no consent or relinquishment by the mother and no adoption proceeding is pending. Bohaboj v. Rausch, 272 Neb. 394, 721 N.W.2d 655 (2006).

43-104.11.

Other than the exceptions to the notification requirements, unless the biological father has executed "a valid relinquishment and consent . . . or . . . a denial of paternity and waiver of rights," the court may not enter a decree of adoption without determining that proper notification of parental rights has been provided. In re Adoption of Jaden M., 272 Neb. 789, 725 N.W.2d 410 (2006).

43-104.18.

The county is not obligated to pay the fee of a guardian ad litem appointed for a biological parent in a private adoption proceeding to which the county is not a party. In re Adoption of Kailynn D., 273 Neb. 849, 733 N.W.2d 856 (2007).

The fact that the Legislature expressly obligated counties to pay guardian ad litem fees in some statutes, but not in this section, reflects a legislative intent that the county cannot be ordered to pay the fees of a guardian ad litem appointed for a biological father in a private adoption case. In re Adoption of Kailynn D., 273 Neb. 849, 733 N.W.2d 856 (2007).

43-104.22.

Subsection (7) of this section does not apply to a father who has been adjudicated the child's father in a paternity action. In re Adoption of Jaden M., 272 Neb. 789, 725 N.W.2d 410 (2006).

43-247.

To obtain jurisdiction over a juvenile, the court's only concern is whether the conditions in which the juvenile presently finds himself or herself fit within the asserted subsection of this section. In re Interest of Angelica L. & Daniel L., 277 Neb. 984, 767 N.W.2d 74 (2009).

Where a juvenile is adjudicated solely on the basis of habitual truancy from school under subsection (3)(b) of this section and the status of truancy is subsequently terminated by the lawful execution of a parental release authorizing discontinuation of school pursuant to subsection (3)(d) of section 79-201, a juvenile court may terminate its jurisdiction without a finding that such termination is in the best interests of the juvenile. In re Interest of Kevin K., 274 Neb. 678, 742 N.W.2d 767 (2007).

43-279.

Whether a juvenile has knowingly, voluntarily, and intelligently waived the right to counsel is to be determined by the totality of the circumstances, including the age, intelligence, and education of the juvenile; the juvenile's background and experience; the presence of the juvenile's parents; the language used by the court in describing the juvenile's rights; the juvenile's conduct; the juvenile's emotional stability; and the intricacy of the offense. In re Interest of Dalton S., 273 Neb. 504, 730 N.W.2d 816 (2007).

Where a juvenile waives his or her right to counsel, the burden lies with the State, by a preponderance of the evidence, to show that the waiver was knowingly, intelligently, and voluntarily made. In re Interest of Dalton S., 273 Neb. 504, 730 N.W.2d 816 (2007).

Courts should take special care in scrutinizing a purported confession or waiver by a child. In re Interest of Dalton S., 273 Neb. 504, 730 N.W.2d 816 (2007).

43-281.

The juvenile court cannot order a specific placement of a juvenile for the purposes of the evaluation authorized by this section. In re Interest of Taylor W., 276 Neb. 679, 757 N.W.2d 1 (2008).

43-285.

Pursuant to this section, the juvenile court has the authority to order the Department of Health and Human Services to remove a case manager if the facts and circumstances require a change for the best interests of the juvenile. In re Interest of Veronica H., 272 Neb. 370, 721 N.W.2d 651 (2006).

The phrase, "by and with the assent of the court," implicitly gives the juvenile court the authority to dissent from a determination made by the Department of Health and Human Services. In re Interest of Veronica H., 272 Neb. 370, 721 N.W.2d 651 (2006).

43-286.

This section does not authorize the juvenile court to impose confinement as a part of an order of probation. In re Interest of Dustin S., 276 Neb. 635, 756 N.W.2d 277 (2008).

Juvenile court may not place a juvenile on probation or exercise any of its other options for disposition and at the same time continue the dispositional hearing. In re Interest of Markice M., 275 Neb. 908, 750 N.W.2d 345 (2008).

When a juvenile court enters an order of restitution under subsection (1)(a) of this section, the court should consider, among other factors, the juvenile's earning ability, employment status, financial resources, and other obligations. In re Interest of Laurance S., 274 Neb. 620, 742 N.W.2d 484 (2007).

A juvenile court may use any rational method of fixing the amount of restitution, so long as the amount is rationally related to the proofs offered at the dispositional hearing, and the amount is consistent with the purposes of education, treatment, rehabilitation, and the juvenile's ability to pay. In re Interest of Laurance S., 274 Neb. 620, 742 N.W.2d 484 (2007).

43-287.01.

This section and sections 43-287.02 to 43-287.06 provide the sole method of reviewing juvenile court dispositional orders falling within the ambit of the expedited appeal process specified therein. In re Interest of Markice M., 275 Neb. 908, 750 N.W.2d 345 (2008).

A two-part test must be applied to determine whether an expedited review is required under this section and sections 43-287.02 to 43-287.06. First, the order must implement a different plan than that proposed by the Department of Health and Human Services. Second, there must exist a belief that the court-ordered plan is not in the best interests of the juvenile. In re Interest of Markice M., 275 Neb. 908, 750 N.W.2d 345 (2008).

43-287.02.

This section, section 43-287.01, and sections 43-287.03 to 43-287.06 provide the sole method of reviewing juvenile court dispositional orders falling within the ambit of the expedited appeal process specified therein. In re Interest of Markice M., 275 Neb. 908, 750 N.W.2d 345 (2008).

A two-part test must be applied to determine whether an expedited review is required under this section, section 43-287.01, and sections 43-287.03 to 43-287.06. First, the order must implement a different plan than that proposed by the Department of Health and Human Services. Second, there must exist a belief that the court-ordered plan is not in the best interests of the juvenile. In re Interest of Markice M., 275 Neb. 908, 750 N.W.2d 345 (2008).

43-287.03.

This section, sections 43-287.01 and 43-287.02, and sections 43-287.04 to 43-287.06 provide the sole method of reviewing juvenile court dispositional orders falling within the ambit of the expedited appeal process specified therein. In re Interest of Markice M., 275 Neb. 908, 750 N.W.2d 345 (2008).

A two-part test must be applied to determine whether an expedited review is required under this section, sections 43-287.01 and 43-287.02, and sections 43-287.04 to 43-287.06. First, the order must implement a different plan than that proposed by the Department of Health and Human Services. Second, there must exist a belief that the court-ordered plan is not in the best interests of the juvenile. In re Interest of Markice M., 275 Neb. 908, 750 N.W.2d 345 (2008).

43-287.04.

This section, sections 43-287.01 to 43-287.03, and sections 43-287.05 and 43-287.06 provide the sole method of reviewing juvenile court dispositional orders falling within the ambit of the expedited appeal process specified therein. In re Interest of Markice M., 275 Neb. 908, 750 N.W.2d 345 (2008).

A two-part test must be applied to determine whether an expedited review is required under this section, sections 43-287.01 to 43-287.03, and sections 43-287.05 and 43-287.06. First, the order must implement a different plan than that proposed by the Department of Health and Human Services. Second, there must exist a belief that the court-ordered plan is not in the best interests of the juvenile. In re Interest of Markice M., 275 Neb. 908, 750 N.W.2d 345 (2008).

43-287.05.

This section, sections 43-287.01 to 43-287.04, and 43-287.06 provide the sole method of reviewing juvenile court dispositional orders falling within the ambit of the expedited appeal process specified therein. In re Interest of Markice M., 275 Neb. 908, 750 N.W.2d 345 (2008).

A two-part test must be applied to determine whether an expedited review is required under this section, sections 43-287.01 to 43-287.04, and 43-287.06. First, the order must implement a different plan than that proposed by the Department of Health and Human Services. Second, there must exist a belief that the court-ordered plan is not in the best interests of the juvenile. In re Interest of Markice M., 275 Neb. 908, 750 N.W.2d 345 (2008).

43-287.06.

This section and sections 43-287.01 to 43-287.05 provide the sole method of reviewing juvenile court dispositional orders falling within the ambit of the expedited appeal process specified therein. In re Interest of Markice M., 275 Neb. 908, 750 N.W.2d 345 (2008).

A two-part test must be applied to determine whether an expedited review is required under this section and sections 43-287.01 to 43-287.05. First, the order must implement a different plan than that proposed by the Department of Health and Human Services. Second, there must exist a belief that the court-ordered plan is not in the best interests of the juvenile. In re Interest of Markice M., 275 Neb. 908, 750 N.W.2d 345 (2008).

43-292.

Under this section, in order to terminate parental rights, the State must prove, by clear and convincing evidence, that one or more of the statutory grounds listed in this section have been satisfied and that termination is in the child's best interests. In re Interest of Angelica L. & Daniel L., 277 Neb. 984, 767 N.W.2d 74 (2009).

The interest of the parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized by the U.S. Supreme Court. In re Interest of Angelica L. & Daniel L., 277 Neb. 984, 767 N.W.2d 74 (2009).

Before the State attempts to force a breakup of a natural family, over the objections of the parents and their children, the State must prove parental unfitness. In re Interest of Angelica L. & Daniel L., 277 Neb. 984, 767 N.W.2d 74 (2009).

The fact that a child has been placed outside the home for 15 or more of the most recent 22 months does not demonstrate parental unfitness. The placement of a child outside the home for 15 or more of the most recent 22 months under subsection (7) of this section merely provides a guideline for what would be a reasonable time for parents to rehabilitate themselves to a minimum level of fitness. In re Interest of Angelica L. & Daniel L., 277 Neb. 984, 767 N.W.2d 74 (2009).

Regardless of the length of time a child is placed outside the home, it is always the State's burden to prove by clear and convincing evidence that the parent is unfit and that the child's best interests are served by his or her continued removal from parental custody. In re Interest of Angelica L. & Daniel L., 277 Neb. 984, 767 N.W.2d 74 (2009).

The "beyond a reasonable doubt" standard in subsection (6) of section 43-1505 does not extend to this section's best interests element. Instead, the State must prove by clear and convincing evidence that terminating parental rights is in the child's best interests; this need not include testimony of a qualified expert witness. In re Interest of Walter W., 274 Neb. 859, 744 N.W.2d 55 (2008).

The fact that a child has been placed outside the home for 15 or more of the most recent 22 months under subsection (7) of this section does not demonstrate parental unfitness for the purpose of a termination of parental rights. In re Interest of Xavier H., 274 Neb. 331, 740 N.W.2d 13 (2007).

For the purpose of a petition to terminate parental rights, the placement of a child outside the home for 15 or more of the most recent 22 months under subsection (7) of this section merely provides a guideline for what would be a reasonable time for parents to rehabilitate themselves to a minimum level of fitness. In re Interest of Xavier H., 274 Neb. 331, 740 N.W.2d 13 (2007).

The presumption that the best interests of a child are served by reuniting the child with his or her parent is overcome only when the parent has been proved unfit. In re Interest of Xavier H., 274 Neb. 331, 740 N.W.2d 13 (2007).

Whether termination of parental rights is in a child's best interests is subject to the overriding recognition that the relationship between parent and child is constitutionally protected. In re Interest of Xavier H., 274 Neb. 331, 740 N.W.2d 13 (2007).

43-292.02.

Pursuant to the second sentence in subsection (2) of this section, a juvenile court, when deciding whether to terminate parental rights, should not consider that an adoptive family has been identified. In re Interest of Destiny A. et al., 274 Neb. 713, 742 N.W.2d 758 (2007).

43-2,106.01.

Separate juvenile courts are treated as county courts under sections 29-2317 to 29-2319 for the purpose of exception proceedings under subsection (2)(d) of this section. In re Interest of Sean H., 271 Neb. 395, 711 N.W.2d 879 (2006).

43-413.

The juvenile court cannot order a specific placement of a juvenile for the purposes of the evaluation authorized by this section. In re Interest of Taylor W., 276 Neb. 679, 757 N.W.2d 1 (2008).

43-1227.

The clause contained in subsection (7) of this section was meant to provide a home state for a child when a custody proceeding is commenced at a time when the child has not lived in a state for the requisite 6-month period – because the child has not been alive for that period of time. It is not meant to say that a child's state of birth is that child's home state. Carter v. Carter, 276 Neb. 840, 758 N.W.2d 1 (2008).

Regardless of where a child was born, if the child and his or her parents have been living in another state for the 6 months immediately preceding the commencement of a custody proceeding, then the state in which the child was born is not the child's home state. Carter v. Carter, 276 Neb. 840, 758 N.W.2d 1 (2008).

The Uniform Child Custody Jurisdiction and Enforcement Act does not specifically address the meaning of "temporary absence" as used in this section. But it is clear that time spent living in another state or country due to a permanent military duty assignment is not considered a "temporary absence" simply because it was motivated by such assignment. Carter v. Carter, 276 Neb. 840, 758 N.W.2d 1 (2008).

A child custody proceeding for purposes of the Uniform Child Custody Jurisdiction and Enforcement Act is a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. Watson v. Watson, 272 Neb. 647, 724 N.W.2d 24 (2006).

43-1238.

In order for a state to exercise jurisdiction over a child custody dispute, that state must be the home state as defined by the Uniform Child Custody Jurisdiction and Enforcement Act or fall under limited exceptions to the home state requirement specified by the act. Carter v. Carter, 276 Neb. 840, 758 N.W.2d 1 (2008).

43-1239.

Subsection (a) of this section provides the rules for continuing jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act. Watson v. Watson, 272 Neb. 647, 724 N.W.2d 24 (2006).

Under subsection (a)(1) of this section, whether a court's exclusive and continuing jurisdiction has been lost is a determination to be made by a court of this state. Watson v. Watson, 272 Neb. 647, 724 N.W.2d 24 (2006).

43-1303.

The Foster Care Review Act permits but does not require the State Foster Care Review Board to promulgate regulations. OMNI v. Nebraska Foster Care Review Bd., 277 Neb. 641, 764 N.W.2d 398 (2009).

43-1312.

Because subsection (3) of this section requires a permanency hearing for every child in foster care, the court is required to have a permanency hearing even if the child is in foster care because of his or her delinquent behavior, instead of parental abuse or neglect. In re Interest of Spencer O., 277 Neb. 776, 765 N.W.2d 443 (2009).

43-1503.

The provisions of the Nebraska Indian Child Welfare Act apply prospectively from the date Indian child status is established on the record. In re Adoption of Kenten H., 272 Neb. 846, 725 N.W.2d 548 (2007).

43-1505.

The "active efforts" standard in subsection (4) of this section requires proof by clear and convincing evidence in parental rights termination cases. In re Interest of Walter W., 274 Neb. 859, 744 N.W.2d 55 (2008).

The "active efforts" standard in subsection (4) of this section requires more than the "reasonable efforts" standard that applies in cases not involving the Indian Child Welfare Act. In re Interest of Walter W., 274 Neb. 859, 744 N.W.2d 55 (2008).

There is no precise formula for the "active efforts" standard in subsection (4) of this section; instead, the standard requires a case-by-case analysis. In re Interest of Walter W., 274 Neb. 859, 744 N.W.2d 55 (2008).

The "beyond a reasonable doubt" standard in subsection (6) of this section does not extend to the best interests element in section 43-292. Instead, the State must prove by clear and convincing evidence that terminating parental rights is in the child's best interests; this need not include testimony of a qualified expert witness. In re Interest of Walter W., 274 Neb. 859, 744 N.W.2d 55 (2008).

43-1506.

The 2-year time limitation in this section is a statute of limitations; an action to invalidate an adoption must be filed within 2 years of the date of the adoption decree. In re Adoption of Kenten H., 272 Neb. 846, 725 N.W.2d 548 (2007).

43-1801.

Although the Nebraska grandparent visitation statutes recognize the interests of the child in the continuation of the grandparent relationship, under Nebraska's grandparent visitation statutes as a whole, the best interests of the child consideration does not deprive the parent of sufficient protection, because visitation will not be awarded where such visitation would adversely interfere with the parent-child relationship. Hamit v. Hamit, 271 Neb. 659, 715 N.W.2d 512 (2006).

Nebraska's grandparent visitation statutes are not unconstitutional on their face. Hamit v. Hamit, 271 Neb. 659, 715 N.W.2d 512 (2006).

43-1802.

Nebraska's grandparent visitation statutes are narrowly drawn and explicitly protect parental rights while taking the child's best interests into consideration. Hamit v. Hamit, 271 Neb. 659, 715 N.W.2d 512 (2006).

Under the Nebraska grandparent visitation statutes, a court is without authority to order grandparent visitation unless a petitioning grandparent can prove by clear and convincing evidence that (1) there is, or has been, a significant beneficial relationship between the grandparent and the child; (2) it is in the best interests of the child that such relationship continue; and (3) such visitation will not adversely interfere with the parent-child relationship. Hamit v. Hamit, 271 Neb. 659, 715 N.W.2d 512 (2006).

43-2923.

A court is required to devise a parenting plan and to consider joint legal and physical custody, but the court is not required to grant equal parenting time to the parents if such is not in the child's best interests. Kamal v. Imroz, 277 Neb. 116, 759 N.W.2d 914 (2009).

43-3804.

This section does not create a jurisdictional prerequisite to a juvenile court's exercise of jurisdiction. In re Interest of Angelica L. & Daniel L., 277 Neb. 984, 767 N.W.2d 74 (2009).

44-359.

A successful pro se litigant in an action on an insurance policy is not entitled to recover an attorney fee, even if the pro se litigant is a licensed attorney. Young v. Midwest Fam. Mut. Ins. Co., 276 Neb. 206, 753 N.W.2d 778 (2008).

To determine proper and reasonable attorney fees, it is necessary for the court to consider the nature of the litigation, the time and labor required, the novelty and difficulty of the questions raised, the skill required to properly conduct the case, the responsibility assumed, the care and diligence exhibited, the result of the suit, the character and standing of the attorney, and the customary charges of the bar for similar services. Young v. Midwest Fam. Mut. Ins. Co., 276 Neb. 206, 753 N.W.2d 778 (2008).

An attorney fee awarded under the provisions of this section must be solely and only for services actually rendered in the preparation and trial of the litigation on the policy in question. Young v. Midwest Fam. Mut. Ins. Co., 276 Neb. 206, 753 N.W.2d 778 (2008).

Expert witness fees are not taxable as court costs and are not recoverable under this section. Young v. Midwest Fam. Mut. Ins. Co., 276 Neb. 206, 753 N.W.2d 778 (2008).

Read together, this section and section 25-901 prohibit an award of attorney fees to a plaintiff, in a suit against the plaintiff's insurer, who rejects an offer to allow judgment and later fails to recover more than the amount offered. Young v. Midwest Fam. Mut. Ins. Co., 272 Neb. 385, 722 N.W.2d 13 (2006).

A plaintiff in an action on an insurance policy is entitled to recover under this section when he or she obtains a judgment against any company doing business in this state, whether or not the company is an insurance company. Webb v. American Employers Group, 268 Neb. 473, 684 N.W.2d 33 (2004).

44-375.

A claimant under an insurance contract must show an interest in the contract that would be recognized and protected by the courts. Sayah v. Metropolitan Prop. & Cas. Ins. Co., 273 Neb. 744, 733 N.W.2d 192 (2007).

To have an insurable interest, the claimant must have some legally enforceable right that would be recognized and enforced in the property at issue. Sayah v. Metropolitan Prop. & Cas. Ins. Co., 273 Neb. 744, 733 N.W.2d 192 (2007).

Neither family use of property nor the family relationship alone gives automatic rise to an insurable property interest. Sayah v. Metropolitan Prop. & Cas. Ins. Co., 273 Neb. 744, 733 N.W.2d 192 (2007).

When no legally enforceable interest exists, no insurable interest exists. Sayah v. Metropolitan Prop. & Cas. Ins. Co., 273 Neb. 744, 733 N.W.2d 192 (2007).

44-516.

Failure of an insurer to send notice of cancellation for nonpayment of premiums to other individuals with an interest in an insured vehicle does not make cancellation ineffective as to the named insured who does receive notice in conformity with subsection (1) of this section. City of Columbus v. Swanson, 270 Neb. 713, 708 N.W.2d 225 (2005).

44-704.

Even assuming that an ex-wife had an insurable interest in the life of her ex-husband, an insurable interest did not give her the right to own a life insurance policy on his life without his consent. Davis v. Davis, 275 Neb. 944, 750 N.W.2d 696 (2008).

Allowing courts to compel an obligor's consent to a former spouse's ownership of a policy on the obligor's life would violate the Legislature's express policy preference in this section. Davis v. Davis, 275 Neb. 944, 750 N.W.2d 696 (2008).

44-710.03.

In accordance with section 44-767, a group health insurance policy may contain contractual limitations periods so long as they are not "less favorable to the insured than would be permitted" under this section. Brodine v. Blue Cross Blue Shield, 272 Neb. 713, 724 N.W.2d 321 (2006).

44-767.

In accordance with this section, a group health insurance policy may contain contractual limitations periods so long as they are not "less favorable to the insured than would be permitted" under section 44-710.03. Brodine v. Blue Cross Blue Shield, 272 Neb. 713, 724 N.W.2d 321 (2006).

44-2403.

A claim need not be a "covered claim" as defined in subsection (4)(a) of this section to be barred by subsection (4)(b) of this section. Alsobrook v. Jim Earp Chrysler-Plymouth, 274 Neb. 374, 740 N.W.2d 785 (2007).

44-2701.

Resident employees, and not a nonresident trustee, are entitled to protection under this section. Unisys Corp. v. Nebraska Life & Health Ins. Guar. Assn., 267 Neb. 158, 673 N.W.2d 15 (2004).

44-2702.

A broker of viatical settlements was never a "member insurer" as defined in subsection (8) of this section under the Nebraska Life and Health Insurance Guaranty Association Act, and therefore, the Life and Health Insurance Guaranty Association was not obligated to guarantee agreements between the broker and investors under which the investors had agreed to purchase death benefits of life insurance policies after the broker breached the agreements. Harvey v. Nebraska Life & Health Ins. Guar. Assn., 277 Neb. 757, 765 N.W.2d 206 (2009).

Resident employees, and not a nonresident trustee, are entitled to protection under this section. Unisys Corp. v. Nebraska Life & Health Ins. Guar. Assn., 267 Neb. 158, 673 N.W.2d 15 (2004).

44-2816.

Disclosure of a doctor's disciplinary history is necessary only when mandated by the standard of care. Curran v. Buser, 271 Neb. 332, 711 N.W.2d 562 (2006).

To be "properly informed" under section 44-2820, a patient must be informed under the standard articulated in this section. Curran v. Buser, 271 Neb. 332, 711 N.W.2d 562 (2006).

This section has been construed as a legislative enactment of the "professional theory" of a physician's duty to disclose the risks of a treatment or procedure. Cerny v. Longley, 270 Neb. 706, 708 N.W.2d 219 (2005).

A physician's duty to obtain informed consent is measured by what information would ordinarily be provided to the patient under like circumstances by health care providers engaged in a similar practice in the locality or in similar localities. Hamilton v. Bares, 267 Neb. 816, 678 N.W.2d 74 (2004).

There are two parts to the definition of informed consent. The first part refers to the information that is provided to the patient regarding the procedure that is to be performed. The second part refers to the obligation of the health care provider to obtain the patient's express or implied consent to perform any operation, treatment, or procedure. Walls v. Shreck, 265 Neb. 683, 658 N.W.2d 686 (2003).

44-2820.

To be "properly informed" under this section, a patient must be informed under the standard articulated in section 44-2816. Curran v. Buser, 271 Neb. 332, 711 N.W.2d 562 (2006).

44-2825.

The cap on damages in subsection (1) of this section does not violate principles of special legislation, equal protection, the open courts provision, the right to a remedy, the right to a jury trial, the taking of property, and the separation of powers. Gourley v. Nebraska Methodist Health Sys., 265 Neb. 918, 663 N.W.2d 43 (2003).

44-4801.

Proceedings under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act are equitable in nature, and therefore, the liquidation court's determinations of claims disputes are reviewed de novo on the record. State ex rel. Wagner v. Amwest Sur. Ins. Co., 274 Neb. 121, 738 N.W.2d 813 (2007).

44-4822.

When notice is not properly given in accordance with this section, a claimant should not be penalized for failing to timely file a claim in the liquidation proceeding of which the claimant was unaware. State ex rel. Wagner v. Amwest Sur. Ins. Co., 274 Neb. 121, 738 N.W.2d 813 (2007).

If the liquidator's file reflects the potential claimant's direct address, the mailing of a notice to attorneys listed in correspondence between the claimant and the insurance company from several years previous does not satisfy the notice requirements of this section. State ex rel. Wagner v. Amwest Sur. Ins. Co., 274 Neb. 121, 738 N.W.2d 813 (2007).

44-4828.

Payments made in the ordinary course of business constitute voidable preferences under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act, which contains no exception for such payments. State ex rel. Wagner v. Gilbane Bldg. Co., 276 Neb. 686, 757 N.W.2d 194 (2008).

Without expert evidence properly in the record, an appellate court cannot conclude as a matter of law that a debtor was insolvent at the time of a transfer which occurred prior to the statutory 4-month period during which a liquidator may avoid transfers without proving insolvency at the time of the transfer. State ex rel. Wagner v. Gilbane Bldg. Co., 276 Neb. 686, 757 N.W.2d 194 (2008).

44-6408.

This section does not prevent insurers from entering into agreements with insureds providing more underinsured motorist coverage limits than those required by subsection (2) of this section. Kline v. Farmers Ins. Exch., 277 Neb. 874, 766 N.W.2d 118 (2009).

An insurer that provides higher underinsured motorist coverage limits than are required by subsection (2) of this section does not thereby escape the minimum requirements of the Uninsured and Underinsured Motorist Insurance Coverage Act. Likewise, an insured who pays for higher coverage does not forfeit the protections of the act. Kline v. Farmers Ins. Exch., 277 Neb. 874, 766 N.W.2d 118 (2009).

The minimum limit of uninsured benefits for non-named insureds is $25,000. Jones v. Shelter Mut. Ins. Cos., 274 Neb. 186, 738 N.W.2d 840 (2007).

An insurance company's decision to limit both its liability and uninsured coverage for a person "using" a vehicle with the consent of the insured to those circumstances in which the use involves the operation and maintenance of the vehicle does not violate public policy. Jones v. Shelter Mut. Ins. Cos., 274 Neb. 186, 738 N.W.2d 840 (2007).

Under this section, when an insurer delivers, issues for delivery, or renews an automobile liability policy, the policy must provide underinsured motorist coverage if Nebraska is the state where the insured intends to keep the vehicle most often compared to any other state during the policy period. Blair v. State Farm Ins. Co., 269 Neb. 874, 697 N.W.2d 266 (2005).

44-6411.

Priority-of-payment provisions are not applicable in a case where the passenger in a motor vehicle collision was not an insured under the insurance policy of the vehicle in which he was an occupant at the time of his injury. Accordingly, the passenger is not entitled to benefits under more than one policy. Jones v. Shelter Mut. Ins. Cos., 274 Neb. 186, 738 N.W.2d 840 (2007).

44-6412.

An insured must, within the statute of limitations and utilizing the procedures set forth in this section, file suit against or settle with all underinsured or uninsured tort-feasors involved in an automobile accident. Steffen v. Progressive Northern Ins. Co., 276 Neb. 378, 754 N.W.2d 730 (2008).

44-6413.

Unless one of the exclusions set forth in this section applies, an insured is entitled to recover for injuries sustained in any accident, so long as the injuries were caused by an uninsured or underinsured motor vehicle. In other words, the exclusions provided by the Uninsured and Underinsured Motorist Insurance Coverage Act in this section are the only exceptions permitted to the coverage mandated by the act. Kline v. Farmers Ins. Exch., 277 Neb. 874, 766 N.W.2d 118 (2009).

An uninsured or underinsured motorist policy that excluded coverage for vehicles owned by the insured, but not covered under "this policy" did not violate this section or public policy. Van Ert v. State Farm Mut. Auto. Ins. Co., 276 Neb. 908, 758 N.W.2d 36 (2008).

Unless one of the exclusions set forth in this section applies, an insured is entitled to recover for injuries sustained in any accident, so long as the injuries were caused by an "underinsured motor vehicle" or an "uninsured motor vehicle." Steffen v. Progressive Northern Ins. Co., 276 Neb. 378, 754 N.W.2d 730 (2008).

If the insured is injured in a "motor vehicle" that the insured or a family member residing with the insured could have insured, but did not, then uninsured/underinsured motorist coverage will not be mandated for injuries arising out of that accident. Steffen v. Progressive Northern Ins. Co., 276 Neb. 378, 754 N.W.2d 730 (2008).

An insured must, within the statute of limitations and utilizing the procedures set forth in section 44-6412, file suit against or settle with all underinsured or uninsured tort-feasors involved in an automobile accident. Steffen v. Progressive Northern Ins. Co., 276 Neb. 378, 754 N.W.2d 730 (2008).

ANNOTATIONS

Subsection (1)(e) of this section does not require that the insured file an action against or settle with all motorists tangentially involved in an accident, and uninsured or underinsured motorist coverage is not barred where the person alleged to have been "the uninsured or underinsured motorist" was not, in fact a tort-feasor against whom the motorist had any "claim." Steffen v. Progressive Northern Ins. Co., 276 Neb. 378, 754 N.W.2d 730 (2008).

The purpose of subsection (1)(e) of this section is the protection of the insurer when it may have to pay uninsured or underinsured motorist benefits. This section makes it the responsibility of the insured to preserve the claim against the tort-feasor in order to protect the insurer's rights against the tort-feasor. Reimers-Hild v. State, 274 Neb. 438, 741 N.W.2d 155 (2007).

Subsection (1)(e) of this section does not apply if an insured timely files a claim against an uninsured or underinsured motorist, because the statute of limitations on the insured's claim against the uninsured or underinsured motorist never expired. Reimers-Hild v. State, 274 Neb. 438, 741 N.W.2d 155 (2007).

Subsection (1)(e) of this section does not apply when an insured has settled his or her claim against an uninsured or underinsured motorist before the statute of limitations applicable to that claim would have expired. Reimers-Hild v. State, 274 Neb. 438, 741 N.W.2d 155 (2007).

This section is irrelevant when the party seeking coverage under an uninsured motorist policy provision is not a named insured of that policy. Hillabrand v. American Fam. Mut. Ins. Co., 271 Neb. 585, 713 N.W.2d 494 (2006).

An insured fails to comply with subdivision (1)(e) when the statute of limitations on her claim against the uninsured or underinsured motorist expires prior to the filing of the suit against her insurer. Dworak v. Farmers Ins. Exch., 269 Neb. 386, 693 N.W.2d 522 (2005).

Subdivision (1)(e) of this section applies in the situation where the insured's suit against the uninsured or underinsured motorist is dismissed without prejudice and the suit against the insurer is not filed within the applicable 4-year statute of limitations for actions in tort. Dworak v. Farmers Ins. Exch., 269 Neb. 386, 693 N.W.2d 522 (2005).

Subdivision (1)(e) of this section does not apply in situations where the insured files suit against the tort-feasor within the applicable 4-year statute of limitations for actions in tort. In such a situation, the insured's suit for uninsured or underinsured motorist benefits is analyzed under the auspices of the 5-year statute of limitations for actions upon written contracts. Dworak v. Farmers Ins. Exch., 269 Neb. 386, 693 N.W.2d 522 (2005).

Subdivision (1)(e) of this section serves to bar certain claims for uninsured and underinsured motorist coverage. Dworak v. Farmers Ins. Exch., 269 Neb. 386, 693 N.W.2d 522 (2005).

Subdivision (1)(e) serves as a prerequisite to an insured's suit against the insurer for uninsured or underinsured motorist coverage. Dworak v. Farmers Ins. Exch., 269 Neb. 386, 693 N.W.2d 522 (2005).

The dismissal of the insured's suit against the uninsured or underinsured motorist without prejudice does not toll the underlying 4-year statute of limitations for the purposes of subdivision (1)(e) of this section. Dworak v. Farmers Ins. Exch., 269 Neb. 386, 693 N.W.2d 522 (2005).

The purpose of subdivision (1)(e) is to protect the insurer under circumstances where it may have to pay uninsured or underinsured motorist benefits by making it the responsibility of the insured to preserve the cause of action against the tort-feasor in order to protect the insurer's rights against the tort-feasor. Dworak v. Farmers Ins. Exch., 269 Neb. 386, 693 N.W.2d 522 (2005).

45-103.02.

Prejudgment interest under this section is recoverable only when the claim is liquidated, that is, when there is no reasonable controversy as to either the plaintiff's right to recover or the amount of such recovery. A

two-pronged inquiry is required. There must be no dispute either as to the amount due or as to the plaintiff's right to recover, or both. Ferer v. Aaron Ferer & Sons, 272 Neb. 770, 725 N.W.2d 168 (2006).

46-176.

A determination that land cannot from any natural cause be irrigated requires an examination of the intrinsic characteristics of the land and cannot be based on external factors. Crouse v. Pioneer Irr. Dist., 272 Neb. 276, 719 N.W.2d 722 (2006).

46-226.

The Department of Natural Resources regulates the appropriation of surface water and has statutory authority to determine the priority and amount of surface water appropriated. Koch v. Aupperle, 274 Neb. 52, 737 N.W.2d 869 (2007).

The Department of Natural Resources has no common-law or statutory duty to regulate the use of ground water in order to protect a party's surface water appropriations. In the absence of independent authority to regulate the use of ground water, the department has no legal duty to resolve conflicts between surface water appropriators and ground water users. Spear T Ranch v. Nebraska Dept. of Nat. Resources, 270 Neb. 130, 699 N.W.2d 379 (2005).

The Department of Natural Resources has no independent authority to regulate ground water users or administer ground water rights for the benefit of surface water appropriators. In re Complaint of Central Neb. Pub. Power, 270 Neb. 108, 699 N.W.2d 372 (2005).

46-229.02.

Under former law, a notice of hearing on the adjudication of a water right that states the place and time of the hearing, names and describes the appropriation that is the subject of the hearing, states that the Department of Natural Resources' records indicate that the land approved for irrigation under the appropriation has not been irrigated for more than 3 consecutive years, states that the hearing will be held pursuant to sections 46-229 to 46-229.05, as amended, states that all interested persons shall appear at the hearing and show cause why the appropriation or part of the appropriation should not be canceled or annulled, states that the appropriation may be canceled if no one appears at the hearing, includes the address, post office box number, telephone number, and fax number of the Department of Natural Resources, and attaches copies of sections 46-229 to 46-229.05 provides adequate notice of the issues to be taken up at the hearing and contains the information required under this section. In re Water Appropriation A-4924, 267 Neb. 430, 674 N.W.2d 788 (2004).

46-229.04.

Under former law, at a hearing pursuant to subsection (1) of this section, the presentation of prima facie evidence for the forfeiture and annulment of a water appropriation in the form of the verified field investigation report of an employee of the Department of Natural Resources shifts the burden to an interested party to present evidence that the water appropriation has been put to a beneficial use during the prior 3 consecutive years. In re Water Appropriation A-4924, 267 Neb. 430, 674 N.W.2d 788 (2004).

Under former law, evidence of beneficial use of a water appropriation more than 3 years prior to the hearing on the adjudication of the water right does not sustain the burden of an interested party after presentation of prima facie evidence for the forfeiture and annulment of the water appropriation. In re Water Appropriation A-4924, 267 Neb. 430, 674 N.W.2d 788 (2004).

Under former law, once it has been established that a water appropriation has not been used for more than 3 consecutive years, it is the burden of the interested party to present evidence that there was sufficient cause for nonuse. In re Water Appropriation A-4924, 267 Neb. 430, 674 N.W.2d 788 (2004).

Under former law, use of a water appropriation only when another water source is inadequate and 3 years prior to the hearing on the adjudication of the water appropriation does not establish sufficient cause for nonuse pursuant to subdivision (3)(c) of this section. In re Water Appropriation A-4924, 267 Neb. 430, 674 N.W.2d 788 (2004).

46-241.

There is no statutory or regulatory requirement that the design of a dam exempt from the permit requirement of subsection (1) of this section by virtue of its impoundment capacity must include a passthrough device. Koch v. Aupperle, 274 Neb. 52, 737 N.W.2d 869 (2007).

46-703.

The Department of Natural Resources has no independent authority to regulate ground water users or administer ground water rights for the benefit of surface water appropriators. In re Complaint of Central Neb. Pub. Power, 270 Neb. 108, 699 N.W.2d 372 (2005).

47-630.

The Legislature's mandate in subsection (1) of this section that the Nebraska Supreme Court adopt sentencing guidelines violates Neb. Const. art. II, sec. 1. In re Petition of Nebraska Community Corr. Council, 274 Neb. 225, 738 N.W.2d 850 (2007).

48-101.

Under Nebraska's workers' compensation statutes, the law compensates a worker only for injuries resulting from an accident or occupational disease. Risor v. Nebraska Boiler, 277 Neb. 679, 765 N.W.2d 170 (2009).

To recover under the Nebraska Workers' Compensation Act, a claimant must prove by a preponderance of the evidence that an accident or occupational disease arising out of and occurring in the course of employment proximately caused an injury which resulted in disability compensable under the act. Risor v. Nebraska Boiler, 277 Neb. 679, 765 N.W.2d 170 (2009).

An employee leaving the premises of his or her employer in the usual and customary way after his or her work is ended is within the course of his or her employment within the meaning of this section. Zoucha v. Touch of Class Lounge, 269 Neb. 89, 690 N.W.2d 610 (2005).

An off-premises injury during a "coffee" or "rest" break may be found to have arisen in the course of employment under this section if the employer, in all the circumstances, including duration, shortness of the off-premises distance, and limitations on off-premises activity during the interval, can be deemed to have retained authority over the employee. Misek v. CNG Financial, 265 Neb. 837, 660 N.W.2d 495 (2003).

The claimant's physical therapy related to his employment in the sense that the claimant's therapy was a necessary or reasonable activity that the claimant would not have undertaken but for his work-related back and elbow injuries, and therefore, the claimant's knee injury during physical therapy arose out of and was in the course of his employment. Smith v. Goodyear Tire & Rubber Co., 10 Neb. App. 666, 636 N.W.2d 884 (2001).

48-102.

This section eliminates from workers' compensation proceedings the three common-law defenses of contributory negligence, the fellow-servant rule, and assumption of the risk, preserving only the employee's willful negligence and intoxication as defenses which the employer may raise. Estate of Coe v. Willmes Trucking, 268 Neb. 880, 689 N.W.2d 318 (2004).

48-103.

Under this section, when an employer fails to carry workers' compensation insurance or an acceptable alternative and an injured employee elects to seek damages in a common-law action, the employer "loses the right to interpose" contributory negligence (unless the employee was intoxicated or willfully negligent), the fellow-servant rule, and assumption of the risk as defenses in the action. Estate of Coe v. Willmes Trucking, 268 Neb. 880, 689 N.W.2d 318 (2004).

48-108.

The Workers' Compensation Court has jurisdiction to determine a fee dispute arising out of an attorney's lien perfected pursuant to this section, regardless of whether the attorney seeking enforcement had previously been discharged. Foster v. BryanLGH Med. Ctr. East, 272 Neb. 918, 725 N.W.2d 839 (2007).

48-111.

A public utility employee cannot maintain a separate suit against a city for an injury incurred on the job, because the Nebraska Workers' Compensation Act is the exclusive remedy of the injured public utility employee against the city where the public utility is an agency or department of the city. Hofferber v. City of Hastings, 275 Neb. 503, 747 N.W.2d 389 (2008).

This section and section 48-148 are routinely referred to by the Nebraska Supreme Court as the "exclusivity" provisions of the Nebraska Workers' Compensation Act. Bennett v. Saint Elizabeth Health Sys., 273 Neb. 300, 729 N.W.2d 80 (2007).

48-112.

A public utility employee cannot maintain a separate suit against a city for an injury incurred on the job, because the Nebraska Workers' Compensation Act is the exclusive remedy of the injured public utility employee against the city where the public utility is an agency or department of the city. Hofferber v. City of Hastings, 275 Neb. 503, 747 N.W.2d 389 (2008).

48-118.

This section grants an employer who has paid workers' compensation benefits to an employee injured as a result of the actions of a third party a subrogation interest against payments made by the third party. Burns v. Nielsen, 273 Neb. 724, 732 N.W.2d 640 (2007).

48-118.04.

The purpose of this section is to prevent a fair and reasonable settlement between an employee and third-party tort-feasor from being delayed because the parties cannot agree on how the proposed settlement should be distributed. Burns v. Nielsen, 273 Neb. 724, 732 N.W.2d 640 (2007).

The phrase "fair and equitable distribution," as used in this section, was not intended to permit the subrogation interest of an employer or workers' compensation insurer to be subject to equitable defenses. Burns v. Nielsen, 273 Neb. 724, 732 N.W.2d 640 (2007).

This section does not authorize the district court to punish an employer beyond the penalties expressly prescribed by the workers' compensation statutes. Burns v. Nielsen, 273 Neb. 724, 732 N.W.2d 640 (2007).

This section does not adopt a "made whole" doctrine, nor does it adopt any other specific rule for making a fair and equitable distribution, but instead leaves the distribution to the court's discretion. Turco v. Schuning, 271 Neb. 770, 716 N.W.2d 415 (2006).

48-119.

For scheduled disabilities caused by repetitive trauma, the date disability begins is the same as the date of injury for whole body impairments caused by repetitive trauma. That date is when the employee discontinues work and seeks medical treatment, despite being paid wages while he continued to work. Risor v. Nebraska Boiler, 277 Neb. 679, 765 N.W.2d 170 (2009).

48-120.

This section, while not affording the Workers' Compensation Court with jurisdiction to resolve every disagreement that may arise with respect to the rights and obligations of a third-party insurer, clearly provides that the Workers' Compensation Court shall order an employer to directly reimburse medical care providers and medical insurers for the reasonable medical, surgical, and hospital services supplied to a workers' compensation claimant pursuant to this section. Kimminau v. Uribe Refuse Serv., 270 Neb. 682, 707 N.W.2d 229 (2005).

Under certain circumstances, an injured worker should be reimbursed for the relocation costs when the relocation is undertaken upon a doctor's recommendation due to a work injury. Relocation expenses, pursuant to a doctor's recommendations, in order to lessen necessary medical treatment, additional injury, and pain, are within a liberal definition of "medical services" under this section. Hoffart v. Fleming Cos., 10 Neb. App. 524, 634 N.W.2d 37 (2001).

48-121.

For scheduled disabilities under subsection (3) of this section, a worker is compensated for his or her loss of use of a body member; loss of earning power is immaterial in determining compensation under subsection (3). Risor v. Nebraska Boiler, 277 Neb. 679, 765 N.W.2d 170 (2009).

When a worker sustains a scheduled member injury and a whole body injury in the same accident, the Nebraska Workers' Compensation Act does not prohibit the court from considering the impact of both injuries in assessing the loss of earning capacity. In making such an assessment, the court must consider whether the scheduled member injury adversely affects the worker such that the loss of earning capacity cannot be fairly and accurately assessed without considering the impact of the scheduled member injury upon the worker's employability. Bishop v. Specialty Fabricating Co., 277 Neb. 171, 760 N.W.2d 352 (2009).

When a whole body injury is the result of a scheduled member injury, the member injury should be considered in the assessment of the whole body impairment. Under such circumstances, the trial court should not enter a separate award for the member injury in addition to the award for loss of earning capacity. To allow both awards creates an impermissible double recovery. Bishop v. Specialty Fabricating Co., 277 Neb. 171, 760 N.W.2d 352 (2009).

The first step in identifying the relevant labor market for assessing a claimant's loss of earning power in a workers' compensation case is to determine whether the hub is where the injury occurred, or where the claimant resided when the injury occurred, or where the claimant resided at the time of the hearing. Money v. Tyrrell Flowers, 275 Neb. 602, 748 N.W.2d 49 (2008).

If a workers' compensation claimant relocates to a new community in good faith, the new community will serve as the hub community from which to assess the claimant's loss of earning power. Money v. Tyrrell Flowers, 275 Neb. 602, 748 N.W.2d 49 (2008).

A claimant who moved from a large labor market to a small labor market after her injury was not required to show her loss of earning power in both the large and the small labor market when her move for low cost housing was in good faith and motivated by economic necessity. Money v. Tyrrell Flowers, 275 Neb. 602, 748 N.W.2d 49 (2008).

In determining whether to include surrounding communities as part of the relevant labor market for assessing the claimant's loss of earning power, both the court-appointed vocational rehabilitation experts and the trial judge should consider the following factors: (1) availability of transportation, (2) duration of the commute, (3) length of workday the claimant is capable of working, (4) ability of the person to make the commute based on his or her physical condition, (5) economic feasibility of a person in the claimant's position working in that location, and (6) whether others who live in the claimant's hub community regularly seek employment in the prospective area. Money v. Tyrrell Flowers, 275 Neb. 602, 748 N.W.2d 49 (2008).

A trial judge was not clearly wrong in concluding that a claimant could not reasonably seek employment in the large labor market 75 miles away, considering costs of fuel, insurance, maintenance for a vehicle, and claimant's limited physical ability to make such a commute. Money v. Tyrrell Flowers, 275 Neb. 602, 748 N.W.2d 49 (2008).

In a workers' compensation case, total disability does not mean a state of absolute helplessness. It means that because of an injury, (1) a worker cannot earn wages in the same kind of work, or work of a similar nature, that he or she was trained for or accustomed to perform or (2) the worker cannot earn wages for work for any other kind of work which a person of his or her mentality and attainments could do. Money v. Tyrrell Flowers, 275 Neb. 602, 748 N.W.2d 49 (2008).

Under the "odd-lot doctrine," total disability may be found in the case of workers who, while not altogether incapacitated for work, are so handicapped that they will not be employed regularly in any well-known branch of the labor market. The essence of the test is the probable dependability with which claimant can sell his services in a competitive labor market, undistorted by such factors as business booms, sympathy of a particular employer or friends, temporary good luck, or the superhuman efforts of the claimant to rise above his crippling handicaps. Money v. Tyrrell Flowers, 275 Neb. 602, 748 N.W.2d 49 (2008).

In assessing a claimant's disability in a workers' compensation case, physical restrictions and impairment ratings are important, but once the claimant establishes the cause of disability, the trial judge is not limited to this evidence and may also rely on the claimant's testimony to determine the extent of the disability. Money v. Tyrrell Flowers, 275 Neb. 602, 748 N.W.2d 49 (2008).

Disability, in contrast to impairment, is an economic inquiry in a workers' compensation case. It can be determined only within the context of the personal, social, or occupational demands or statutory or regulatory requirements that the individual is unable to meet because of the impairment. Money v. Tyrrell Flowers, 275 Neb. 602, 748 N.W.2d 49 (2008).

When an employee injured in one community relocates to a new community, the new community will serve as the hub community from which to assess the claimant's earning capacity for purposes of workers' compensation, provided that the change of community was done in good faith and not for improper motives. Giboo v. Certified Transmission Rebuilders, 275 Neb. 369, 746 N.W.2d 362 (2008).

If a workers' compensation claimant cannot show a legitimate motive behind his or her postinjury relocation to a new community, the community where the claimant resided at the time the injury occurred will serve as the hub community from which to assess earning capacity. Giboo v. Certified Transmission Rebuilders, 275 Neb. 369, 746 N.W.2d 362 (2008).

Communities surrounding the workers' compensation claimant's hub community should be considered part of that claimant's labor market for purposes of determining that claimant's earning capacity, but only to the extent that it would be reasonable for the claimant to seek employment in that location. Giboo v. Certified Transmission Rebuilders, 275 Neb. 369, 746 N.W.2d 362 (2008).

Whether it would be reasonable for a workers' compensation claimant to seek employment outside his or her hub community should be based on the totality of the circumstances, with regard for such factors as (1) availability of transportation, (2) duration of the commute, (3) length of the workday the claimant is capable of working, (4) ability of the person to make the commute based on his or her physical condition, and (5) economic feasibility of a person in the claimant's position working in that location. Regard might also be given to the more

generalized inquiry of whether others who live in the claimant's hub community regularly seek employment in the prospective area. Giboo v. Certified Transmission Rebuilders, 275 Neb. 369, 746 N.W.2d 362 (2008).

When a whole body injury is the result of a scheduled member injury, the member injury should be considered in the assessment of whole body impairment. An impermissible double recovery occurs if a separate award for a member injury is allowed in addition to an award for loss of earning capacity. Madlock v. Square D Co., 269 Neb. 675, 695 N.W.2d 412 (2005).

A plain reading of subdivision (5) of this section requires that an employer must first offer, and the employee accept, vocational rehabilitation, or such rehabilitation must be court ordered before an employee becomes eligible for temporary total disability benefits. Bixenmann v. H. Kehm Constr., 267 Neb. 669, 676 N.W.2d 370 (2004).

Under subdivision (5) of this section, an injured employee may not undertake rehabilitation on his or her own and receive temporary total disability benefits without approval from either the court or his or her former employer. Bixenmann v. H. Kehm Constr., 267 Neb. 669, 676 N.W.2d 370 (2004).

When a worker sustains a scheduled member injury and a whole body injury in the same accident, the Nebraska Workers' Compensation Act does not prohibit the court from considering the impact of both injuries in assessing the loss of earning capacity. In making such an assessment, the court must determine whether the scheduled member injury adversely affects the worker such that the loss of earning capacity cannot be fairly and accurately assessed without considering the impact of the scheduled member injury upon the worker's employability. Zavala v. ConAgra Beef Co., 265 Neb. 188, 655 N.W.2d 692 (2003).

Under this section, when dealing with temporary partial disability, one cannot be earning wages at a similar job with the same employer and at the same time have suffered a 100-percent loss of earning capacity. Kam v. IBP, Inc., 12 Neb. App. 855, 686 N.W.2d 631 (2004).

"Earning power," as used in subsection (2) of this section, is not synonymous with wages, but includes eligibility to procure employment generally, ability to hold a job obtained, and capacity to perform the tasks of the work, as well as the ability of the worker to earn wages in the employment in which the worker is engaged or for which he or she is fitted. Weichel v. Store Kraft Mfg. Co., 10 Neb. App. 276, 634 N.W.2d 276 (2001).

48-122.

This section identifies the ongoing obligation of the employer to pay medical expenses to a dependent following the death of the employee. Olivotto v. DeMarco Bros. Co., 273 Neb. 672, 732 N.W.2d 354 (2007).

48-125.

If an appellate court determines that no reasonable controversy existed regarding a claim for workers' compensation benefits, the employer must pay waiting-time penalties from the date of the award until it pays the benefits under the appellate court's mandate. Lagemann v. Nebraska Methodist Hosp., 277 Neb. 335, 762 N.W.2d 51 (2009).

Even if an employer disputes in good faith the total compensation owed a claimant pending trial, the employer must pay any portion of the claim for which it admits liability. Lagemann v. Nebraska Methodist Hosp., 277 Neb. 335, 762 N.W.2d 51 (2009).

When an employer appeals a benefits award, it will not be excused from paying compensation 30 days following the date of the award unless the employer has an actual basis in law or fact for disputing the award. Lagemann v. Nebraska Methodist Hosp., 277 Neb. 335, 762 N.W.2d 51 (2009).

Where a reasonable controversy exists between an employer and an employee as to the payment of workers' compensation, the employer is not liable for the waiting-time penalties during the time the case is pending in the courts for final determination. Lagemann v. Nebraska Methodist Hosp., 277 Neb. 335, 762 N.W.2d 51 (2009).

There are two circumstances under this section in which the 30-day time limit applies for the payment of compensation: (1) upon the employee's notice of disability if no reasonable controversy exists regarding the claim or (2) after a final adjudicated award if one of the parties appeals and a reasonable controversy existed regarding the claim pending trial. Lagemann v. Nebraska Methodist Hosp., 277 Neb. 335, 762 N.W.2d 51 (2009).

When a party appeals a workers' compensation award to an appellate court, the award is not final and the waiting-time period for payment of benefits does not commence to run until the appellate court's mandate is filed in the Workers' Compensation Court. Lagemann v. Nebraska Methodist Hosp., 277 Neb. 335, 762 N.W.2d 51 (2009).

To avoid the penalty provided for in this section, an employer need not prevail in the employee's claim – it simply must have an actual basis in law or fact for disputing the claim and refusing compensation. Stacy v. Great Lakes Agri Mktg., 276 Neb. 236, 753 N.W.2d 785 (2008).

A reasonable controversy under this section may exist if the properly adduced evidence would support reasonable but opposite conclusions by the Workers' Compensation Court concerning an aspect of an employee's claim for workers' compensation, which conclusions affect allowance or rejection of an employee's claim, in whole or in part. Stacy v. Great Lakes Agri Mktg., 276 Neb. 236, 753 N.W.2d 785 (2008).

Whether a reasonable controversy exists under this section is a question of fact. Stacy v. Great Lakes Agri Mktg., 276 Neb. 236, 753 N.W.2d 785 (2008).

Under former law, in order to harmonize this section and sections 48-199 and 48-1,102 in the context of waiting-time penalties in a manner which is consistent with the overall purpose of the Nebraska Workers' Compensation Act, the Supreme Court holds that in order to avoid assessment of a waiting-time penalty with respect to that portion of a workers' compensation award against the State which exceeds $50,000, the State must request review and appropriation of such amount during the first legislative session following the date the award became final and must pay such amount within 30 calendar days after the approval of the appropriation by the Legislature. Soto v. State, 270 Neb. 40, 699 N.W.2d 819 (2005).

Under former law, with respect to that portion of a workers' compensation award against the State which exceeds $50,000, the 30-day period specified in subsection (1) of this section does not begin until the first day after the judgment becomes final on which the State could request review and appropriation pursuant to section 48-1,102 during a regular session of the Legislature. A waiting-time penalty may be assessed pursuant to this section if payment is not made within 30 calendar days thereafter. Soto v. State, 269 Neb. 337, 693 N.W.2d 491 (2005).

Under former law, for purposes of subsection (1) of this section, compensation sent within 30 days of the notice of disability or the entry of a final order, award, or judgment of compensation is not delinquent. Brown v. Harbor Fin. Mortgage Corp., 267 Neb. 218, 673 N.W.2d 35 (2004).

Under former law, "such payments" contained in the second sentence of subsection (1) of this section refers to all "amounts of compensation" provided for in the first sentence of said subsection. Brown v. Harbor Fin. Mortgage Corp., 267 Neb. 218, 673 N.W.2d 35 (2004).

A reasonable controversy under this section may exist (1) if there is a question of law previously unanswered by the appellate courts, which question must be answered to determine a right or liability for disposition of a claim under the Nebraska Workers' Compensation Act, or (2) if the properly adduced evidence would support reasonable but opposite conclusions by the Nebraska Workers' Compensation Court concerning an aspect of an employee's claim for workers' compensation, which conclusions affect allowance or rejection of an employee's claim, in whole or in part. To avoid the penalty provided for in this section, an employer need not prevail in the employee's claim, but must have an actual basis in law or fact for disputing the claim and refusing compensation. Dawes v. Wittrock Sandblasting & Painting, 266 Neb. 526, 667 N.W.2d 167 (2003).

An award of attorney fees under this section was remanded for evidence and specific findings as to the appropriate amount in accordance with Harmon v. Irby Constr. Co., 258 Neb. 420, 604 N.W.2d 813 (1999). Cochran v. Bill's Trucking, 10 Neb. App. 48, 624 N.W.2d 338 (2001).

48-126.

Where the worker has insufficient work history to be able to calculate his or her average weekly income based on as much of the preceding 6 months as he or she worked for the same employer, then what would ordinarily constitute that employee's week's work and, thus, that employee's average weekly income should, if possible, be estimated by considering the preceding 6 months of other employees working similar jobs for similar employers. Powell v. Estate Gardeners, 275 Neb. 287, 745 N.W.2d 917 (2008).

48-130.

Pursuant to this section, the payment of private insurance benefits does not entitle an employer to reduce an employee's benefits due under the Nebraska Workers' Compensation Act. Dawes v. Wittrock Sandblasting & Painting, 266 Neb. 526, 667 N.W.2d 167 (2003).

48-133.

Under this section, an employer has sufficient notice or knowledge of a worker's injury if a reasonable person would conclude that the injury is potentially compensable and that the employer should therefore investigate the matter further. Risor v. Nebraska Boiler, 277 Neb. 679, 765 N.W.2d 170 (2009).

When an employer's foreman, supervisor, or superintendent has knowledge of the employee's injury, that knowledge is imputed to the employer. Knowledge imputed to an employer can satisfy this section's notice requirement. Risor v. Nebraska Boiler, 277 Neb. 679, 765 N.W.2d 170 (2009).

An employee is not required to give an opinion as to the cause of an injury in order to satisfy the notice requirement under this section. Risor v. Nebraska Boiler, 277 Neb. 679, 765 N.W.2d 170 (2009).

When the parties do not dispute the facts concerning reporting and notice, whether such facts constitute sufficient notice to the employer under this section presents a question of law. Risor v. Nebraska Boiler, 277 Neb. 679, 765 N.W.2d 170 (2009).

A lack of prejudice is not an exception to the requirement of notice. Williamson v. Werner Enters., 12 Neb. App. 642, 682 N.W.2d 723 (2004).

This section contemplates a situation where an employer has notice or knowledge sufficient to lead a reasonable person to conclude that an employee's injury is potentially compensable and that therefore, the employer should investigate the matter further. Williamson v. Werner Enters., 12 Neb. App. 642, 682 N.W.2d 723 (2004).

This section requires notice of the injury, not merely notice of the accident. Williamson v. Werner Enters., 12 Neb. App. 642, 682 N.W.2d 723 (2004).

Where an employee experienced an unusual event, promptly perceived substantial pain that the employee connected with the event, within days sought medical treatment which the employee related to the event, and failed to notify the employer of the injury for approximately 5 months, such notice was not given as soon as practicable. Williamson v. Werner Enters., 12 Neb. App. 642, 682 N.W.2d 723 (2004).

48-134.

The fundamental question of the compensability of an employee's claim stands separate from whether the employee can be deprived of benefits under this section during the time of an unreasonable refusal to undergo an employer's medical examination. Hale v. Vickers, Inc., 10 Neb. App. 627, 635 N.W.2d 458 (2001).

48-137.

In determining when the statute of limitations begins to run in situations where payments of compensation have been made, "the time of the making of the last payment" means the date the employee or the employee's provider receives payment. Obermiller v. Peak Interest, 277 Neb. 656, 764 N.W.2d 410 (2009).

In an occupational disease context, the date of injury, for purposes of this section, is that date upon which the accumulated effects of the disease manifest themselves to the point the injured worker is no longer able to render further service. Dawes v. Wittrock Sandblasting & Painting, 266 Neb. 526, 667 N.W.2d 167 (2003).

48-139.

Lump-sum settlements in workers' compensation actions cannot be modified in the future or be considered when determining future workers' compensation awards, because such awards are "final." Dukes v. University of Nebraska, 12 Neb. App. 539, 679 N.W.2d 249 (2004).

48-140.

Lump-sum settlements in workers' compensation actions cannot be modified in the future or be considered when determining future workers' compensation awards, because such awards are "final." Dukes v. University of Nebraska, 12 Neb. App. 539, 679 N.W.2d 249 (2004).

48-141.

Lump-sum settlements in workers' compensation actions cannot be modified in the future or be considered when determining future workers' compensation awards, because such awards are "final." Dukes v. University of Nebraska, 12 Neb. App. 539, 679 N.W.2d 249 (2004).

48-144.01.

Section 48-144.04 establishes when the statute of limitations begins to run if an initial report required by this section is not filed, but section 48-144.04 does not provide for tolling of an already-running statute of limitations when and if subsequent reports are not filed. Dawes v. Wittrock Sandblasting & Painting, 266 Neb. 526, 667 N.W.2d 167 (2003).

48-144.04.

Under this section, an employer has sufficient knowledge of an employee's injury if a reasonable person would conclude that an employee's injury is potentially compensable and that the employer should therefore investigate the matter further. Risor v. Nebraska Boiler, 277 Neb. 679, 765 N.W.2d 170 (2009).

This section establishes when the statute of limitations begins to run if an initial report required by section 48-144.01 is not filed, but this section does not provide for tolling of an already-running statute of limitations when and if subsequent reports are not filed. Dawes v. Wittrock Sandblasting & Painting, 266 Neb. 526, 667 N.W.2d 167 (2003).

48-145.

A cause of action for retaliatory demotion exists when an employer demotes an employee for filing a workers' compensation claim. Trosper v. Bag 'N Save, 273 Neb. 855, 734 N.W.2d 703 (2007).

Nebraska recognizes a public policy exception to the at-will employment doctrine to allow an action for retaliatory discharge when an employee has been discharged for filing a workers' compensation claim. Jackson v. Morris Communications Corp., 265 Neb. 423, 657 N.W.2d 634 (2003).

48-146.

Absent fraud or collusion, insurers in privity with their insureds will be bound by a judgment against the insured, regardless of whether the insurer was notified of the underlying action. Risor v. Nebraska Boiler, 274 Neb. 906, 744 N.W.2d 693 (2008).

48-148.

A public utility employee cannot maintain a separate suit against a city for an injury incurred on the job, because the Nebraska Workers' Compensation Act is the exclusive remedy of the injured public utility employee against the city where the public utility is an agency or department of the city. Hofferber v. City of Hastings, 275 Neb. 503, 747 N.W.2d 389 (2008).

Section 48-111 and this section are routinely referred to by the Nebraska Supreme Court as the "exclusivity" provisions of the Nebraska Workers' Compensation Act. Bennett v. Saint Elizabeth Health Sys., 273 Neb. 300, 729 N.W.2d 80 (2007).

Nebraska does not recognize an exception that would allow a third party to seek contribution from an employer when it is alleged that the employer acted intentionally. Harsh International v. Monfort Indus., 266 Neb. 82, 662 N.W.2d 574 (2003).

48-151.

Under the definition of occupational disease, the unique condition of the employment must result in a hazard which distinguishes it in character from employment generally. Risor v. Nebraska Boiler, 277 Neb. 679, 765 N.W.2d 170 (2009).

The compensability of a condition resulting from the cumulative effects of work-related trauma is tested under the statutory definition of accident. Risor v. Nebraska Boiler, 277 Neb. 679, 765 N.W.2d 170 (2009).

A worker's noise-induced hearing loss is a condition resulting from the cumulative effects of work-related trauma, tested under the statutory definition of accident. Risor v. Nebraska Boiler, 277 Neb. 679, 765 N.W.2d 170 (2009).

An injured worker must satisfy three elements to prove an injury is the result of an accident: (1) The injury must be unexpected or unforeseen, (2) the accident must happen suddenly and violently, and (3) the accident must produce at the time objective symptoms of injury. Risor v. Nebraska Boiler, 277 Neb. 679, 765 N.W.2d 170 (2009).

The "suddenly and violently" component of an "accident" does not mean instantaneously and with force; instead, the element is satisfied if the injury occurs at an identifiable point in time, requiring the employee to discontinue employment and seek medical treatment. Risor v. Nebraska Boiler, 277 Neb. 679, 765 N.W.2d 170 (2009).

An employee establishes an identifiable point in time when a repetitive trauma injury occurs if the employee stops work and seeks medical treatment. The law does not establish a minimum time that an employee must

discontinue work for medical treatment to be eligible for benefits. The length of time is not the controlling factor. Risor v. Nebraska Boiler, 277 Neb. 679, 765 N.W.2d 170 (2009).

A job transfer can constitute a discontinuance of work that establishes the date of injury resulting from an accident under the Nebraska Workers' Compensation Act. Risor v. Nebraska Boiler, 277 Neb. 679, 765 N.W.2d 170 (2009).

An injury caused by a mental stimulus does not meet the requirement that a compensable accidental injury involve violence to the physical structure of the body. Zach v. Nebraska State Patrol, 273 Neb. 1, 727 N.W.2d 206 (2007).

A compensable injury caused by an occupational disease must involve some physical stimulus constituting violence to the physical structure of the body. Zach v. Nebraska State Patrol, 273 Neb. 1, 727 N.W.2d 206 (2007).

A worker becomes disabled, and thus injured, from an occupational disease at the point in time when a permanent medical impairment or medically assessed work restrictions result in labor market access loss. Ludwick v. TriWest Healthcare Alliance, 267 Neb. 887, 678 N.W.2d 517 (2004).

The compensability of a condition resulting from the cumulative effects of work-related trauma is to be tested under the statutory definition of accident. For purposes of this section, "suddenly and violently" does not mean instantaneously and with force, but, rather, the element is satisfied if the injury occurs at an identifiable point in time requiring the employee to discontinue employment and seek medical treatment. For purposes of this section, the time of an accident is sufficiently definite, for purposes of proving that an accident happened "suddenly and violently," if either the cause is reasonably limited in time or the result materializes at an identifiable point. Dawes v. Wittrock Sandblasting & Painting, 266 Neb. 526, 667 N.W.2d 167 (2003).

48-161.

While, under this section, the compensation court may determine the existence of insurance, such jurisdiction is not exclusive and such a determination is not mandatory. Risor v. Nebraska Boiler, 274 Neb. 906, 744 N.W.2d 693 (2008).

48-162.01.

In determining whether to include surrounding communities as part of the relevant labor market for assessing the claimant's loss of earning power, both the court-appointed vocational rehabilitation experts and the trial judge should consider the following factors: (1) availability of transportation, (2) duration of the commute, (3) length of workday the claimant is capable of working, (4) ability of the person to make the commute based on his or her physical condition, (5) economic feasibility of a person in the claimant's position working in that location, and (6) whether others who live in the claimant's hub community regularly seek employment in the prospective area. Money v. Tyrrell Flowers, 275 Neb. 602, 748 N.W.2d 49 (2008).

The opinions of a court-appointed vocational rehabilitation expert regarding a workers' compensation claimant's vocational rehabilitation and loss of earning power have a rebuttable presumption of validity. Money v. Tyrrell Flowers, 275 Neb. 602, 748 N.W.2d 49 (2008).

If an employer believes a court-appointed vocational expert's opinion in selecting the relevant geographic area for assessing a claimant's loss of earning power is incorrect, the employer has the burden to rebut the expert's opinion by showing there are employment opportunities reasonably available to the claimant in a prospective area. Money v. Tyrrell Flowers, 275 Neb. 602, 748 N.W.2d 49 (2008).

Pursuant to subsection (3) of this section, a rebuttable presumption in favor of a court-appointed vocational rehabilitation expert's opinion in workers' compensation proceedings can be rebutted by a showing that the experts' assessment was predicated on principles that are contrary to law. Giboo v. Certified Transmission Rebuilders, 275 Neb. 369, 746 N.W.2d 362 (2008).

Subsection (7) of this section establishes a two-part test to determine whether benefits should be suspended, reduced, or limited. First, the employee must either refuse to undertake or fail to cooperate with a court-ordered physical, medical, or vocational rehabilitation program. Second, the employee's refusal must be without reasonable cause. Lowe v. Drivers Mgmt. Inc., 274 Neb. 732, 743 N.W.2d 82 (2007).

Both parts of the two-part test in subsection (7) of this section present factual questions to be determined by the trial judge based upon the evidence. Lowe v. Drivers Mgmt. Inc., 274 Neb. 732, 743 N.W.2d 82 (2007).

Under the provisions of subsection (7) of this section, the employer bears the burden of proof to demonstrate that an injured employee has refused to undertake or failed to cooperate with a physical, medical, or vocational rehabilitation program and that such refusal or failure is without reasonable cause such that the compensation court or judge may properly rely on such evidence to suspend, reduce, or limit the compensation otherwise payable under the Nebraska Workers' Compensation Act. Lowe v. Drivers Mgmt. Inc., 274 Neb. 732, 743 N.W.2d 82 (2007).

An illegal immigrant's avowed intent to remain an unauthorized worker in the United States is contrary to the statutory purpose of this section of returning an employee to suitable employment. Ortiz v. Cement Products, 270 Neb. 787, 708 N.W.2d 610 (2005).

Pursuant to Neb. Evid. R. 301, in all cases not otherwise provided for by statute or by the Nebraska Evidence Rules, a presumption imposes on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence. This rule applies to the rebuttable presumption that an opinion regarding loss of earning capacity expressed by a vocational rehabilitation counselor appointed or selected pursuant to this section is correct. Dawes v. Wittrock Sandblasting & Painting, 266 Neb. 526, 667 N.W.2d 167 (2003).

48-162.03.

Under subsection (1) of this section, the Nebraska Workers' Compensation Court has authority to rule on a motion for default judgment. Cruz-Morales v. Swift Beef Co., 275 Neb. 407, 746 N.W.2d 698 (2008).

48-163.

The Nebraska Workers' Compensation Court Rules of Procedure may supersede or supplant the Nebraska Court Rules of Pleading in Civil Actions. Cruz-Morales v. Swift Beef Co., 275 Neb. 407, 746 N.W.2d 698 (2008).

48-168.

The Nebraska Workers' Compensation Court Rules of Procedure may supersede or supplant the Nebraska Court Rules of Pleading in Civil Actions. Cruz-Morales v. Swift Beef Co., 275 Neb. 407, 746 N.W.2d 698 (2008).

It is a general principle that intervention is not authorized after trial and neither subsection (1) of this section nor the beneficent purposes of the Nebraska Workers' Compensation Act authorize a postaward intervention by the employer's insurer. Risor v. Nebraska Boiler, 274 Neb. 906, 744 N.W.2d 693 (2008).

No Nebraska statute grants equity jurisdiction to the compensation court. Risor v. Nebraska Boiler, 274 Neb. 906, 744 N.W.2d 693 (2008).

The Workers' Compensation Court is not bound by the usual common-law or statutory rules of evidence or by any technical or formal rules of procedure. Olivotto v. DeMarco Bros. Co., 273 Neb. 672, 732 N.W.2d 354 (2007).

Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), does not apply in a workers' compensation case where the rules of evidence do not apply. Veatch v. American Tool, 267 Neb. 711, 676 N.W.2d 730 (2004).

Technical or formal rules of procedure do not bind the Nebraska Workers' Compensation Court other than as provided in the Nebraska Workers' Compensation Act. Armstrong v. Watkins Concrete Block, 12 Neb. App. 729, 685 N.W.2d 495 (2004).

48-177.

The right of a plaintiff in a workers' compensation case to voluntary dismissal is a right that is not a matter of judicial grace or discretion. Knapp v. Village of Beaver City, 273 Neb. 156, 728 N.W.2d 96 (2007).

48-179.

A trial court's order reserving ruling on issues of permanent impairment, if any, and entitlement to vocational rehabilitation benefits is not a final order. Merrill v. Griswold's, Inc., 270 Neb. 458, 703 N.W.2d 893 (2005).

An appeal to a review panel of the Workers' Compensation Court must be taken from a final order. Merrill v. Griswold's, Inc., 270 Neb. 458, 703 N.W.2d 893 (2005).

Generally, when multiple issues are presented to a trial court for simultaneous disposition in the same proceeding and the court decides some of the issues, while reserving some issue or issues for later determination, the court's determination of less than all the issues is an interlocutory order and is not a final order for the purpose of an appeal. Merrill v. Griswold's, Inc., 270 Neb. 458, 703 N.W.2d 893 (2005).

The issue of whether an appellant was entitled to interest on his entire award should have been raised on appeal or cross-appeal from the original award, and the appellant's failure to do so precludes him from raising the issue for the first time on appeal after the original cause had been remanded on a separate issue. Dietz v. Yellow Freight Sys., 269 Neb. 990, 697 N.W.2d 693 (2005).

Under this section, the appeal from the single judge to the review panel must be taken from a final order. Dawes v. Wittrock Sandblasting & Painting, 266 Neb. 526, 667 N.W.2d 167 (2003).

While a Workers' Compensation Court review panel has the statutory authority to remand a case, it exceeds that authority when it remands a case with directions to reconsider a decision without first concluding that the single judge made an error of fact or law. An order of a single judge of the Workers' Compensation Court may be "contrary to law" within the meaning of this section if the order fails to satisfy the requirements of Workers' Comp. Ct. R. of Proc. 11. Dawes v. Wittrock Sandblasting & Painting, 266 Neb. 526, 667 N.W.2d 167 (2003).

An appellate court does not have jurisdiction over an appeal from a decision by the Nebraska Workers' Compensation Court, unless such decision has been reviewed by a three-judge panel of the Workers' Compensation Court as provided in the Nebraska Workers' Compensation Act. Lyle v. Drivers Mgmt., Inc., 12 Neb. App. 350, 673 N.W.2d 237 (2004).

Under this section, an appellate court cannot consider errors of the trial judge which were not assigned to the Workers' Compensation Court review panel. Cochran v. Bill's Trucking, 10 Neb. App. 48, 624 N.W.2d 338 (2001).

48-185.

An appellate court may modify, reverse, or set aside a Workers' Compensation Court decision only upon the grounds set forth in this section. Worline v. ABB/Alstom Power Integrated CE Services, 272 Neb. 797, 725 N.W.2d 148 (2006).

48-199.

Under former law, in order to harmonize this section and sections 48-1,102 and 48-125 in the context of waiting-time penalties in a manner which is consistent with the overall purpose of the Nebraska Workers'

Compensation Act, the Supreme Court holds that in order to avoid assessment of a waiting-time penalty with respect to that portion of a workers' compensation award against the State which exceeds $50,000, the State must request review and appropriation of such amount during the first legislative session following the date the award became final and must pay such amount within 30 calendar days after the approval of the appropriation by the Legislature. Soto v. State, 270 Neb. 40, 699 N.W.2d 819 (2005).

48-1,102.

Under former law, in order to harmonize this section and sections 48-199 and 48-125 in the context of waiting-time penalties in a manner which is consistent with the overall purpose of the Nebraska Workers' Compensation Act, the Supreme Court holds that in order to avoid assessment of a waiting-time penalty with respect to that portion of a workers' compensation award against the State which exceeds $50,000, the State must request review and appropriation of such amount during the first legislative session following the date the award became final and must pay such amount within 30 calendar days after the approval of the appropriation by the Legislature. Soto v. State, 270 Neb. 40, 699 N.W.2d 819 (2005).

Under former law, with respect to that portion of a workers' compensation award against the State which exceeds $50,000, the 30-day period specified in subsection (1) of section 48-125 does not begin until the first day after the judgment becomes final on which the State could request review and appropriation pursuant to this section during a regular session of the Legislature. A waiting-time penalty may be assessed pursuant to section 48-125 if payment is not made within 30 calendar days thereafter. Soto v. State, 269 Neb. 337, 693 N.W.2d 491 (2005).

48-425.

This section does not apply to employer-independent contractor relationships. Semler v. Sears, Roebuck, & Co., 268 Neb. 857, 689 N.W.2d 327 (2004).

48-602.

Based upon the plain and ordinary meaning of the first definition contained in subsection (27) of this section, two elements must be satisfied to demonstrate unemployment: First, the individual must not perform any services for the relevant time period; and second, no wages may be payable with respect to that time period. Wadkins v. Lecuona, 274 Neb. 352, 740 N.W.2d 34 (2007).

In determining whether wages are payable with respect to a time period, within the meaning of subsection (27) of this section, the test is not in what week the remuneration is received but in what week it is earned or to which it may reasonably be considered to apply. Generally speaking, wages are tied to the week of work and not to the week in which they are paid. Wadkins v. Lecuona, 274 Neb. 352, 740 N.W.2d 34 (2007).

Vacation pay, within the meaning of subsection (18) of this section, is generally regarded, not as a gratuity or gift, but as additional wages for services performed. It is not in the nature of compensation for the calendar days it covers—it is more like a contracted-for bonus for a whole year’s work. A “vacation” is also understood to be a respite from active duty, during which activity or work is suspended, purposed for rest, relaxation, and personal pursuits. Wadkins v. Lecuona, 274 Neb. 352, 740 N.W.2d 34 (2007).

Under former law, wages may include noncash benefits under certain circumstances. In-kind benefits received in return for services provided may constitute wages for purposes of determining eligibility for unemployment compensation benefits. Lecuona v. McCord, 270 Neb. 213, 699 N.W.2d 403 (2005).

48-627.

Availability is required for eligibility to receive unemployment compensation benefits. Robinson v. Commissioner of Labor, 267 Neb. 579, 675 N.W.2d 683 (2004).

Without an order from the sentencing court granting the privilege to leave the jail for work, an inmate was not "available" for work under this section. Robinson v. Commissioner of Labor, 267 Neb. 579, 675 N.W.2d 683 (2004).

48-801.

The Industrial Relations Act is not only an attempt to level the employment playing field, but is also a mechanism designed to protect the citizens of Nebraska from the effects and consequences of labor strife in public sector employment. Omaha Police Union Local 101 v. City of Omaha, 274 Neb. 70, 736 N.W.2d 375 (2007).

Public employees belonging to a labor organization have the protected right to engage in conduct and make remarks, including publishing statements through the media, concerning wages, hours, or terms and conditions of employment. Omaha Police Union Local 101 v. City of Omaha, 274 Neb. 70, 736 N.W.2d 375 (2007).

Employees lose the statutory protection of the Industrial Relations Act for conduct or speech if it is flagrant misconduct, which includes, but is not limited to, statements or actions that (1) are of an outrageous and insubordinate nature, (2) compromise the public employer's ability to accomplish its mission, or (3) disrupt discipline, as well as conduct that is clearly outside the bounds of any protection such as assault and battery or racial discrimination. Omaha Police Union Local 101 v. City of Omaha, 274 Neb. 70, 736 N.W.2d 375 (2007).

The Commission of Industrial Relations must balance the employee's right to engage in protected activity, which permits some leeway for impulsive behavior, against the employer's right to maintain order and respect for its supervisory staff. Factors that the commission may consider, but would not necessarily be determinative, include: (1) the place and subject matter of the conduct or speech, (2) whether the employee's conduct or speech was impulsive or designed, (3) whether the conduct or speech was provoked by the employer's conduct, and (4) the nature of the intemperate language or conduct. Omaha Police Union Local 101 v. City of Omaha, 274 Neb. 70, 736 N.W.2d 375 (2007).

48-802.

If the Commission of Industrial Relations finds that an accused party has committed a prohibited practice under subsection (2) of section 48-825, it has the authority to order an appropriate remedy, and such authority is to be liberally construed to effectuate the public policy enunciated in this section. Operating Engrs. Local 571 v. City of Plattsmouth, 265 Neb. 817, 660 N.W.2d 480 (2003).

48-816.

Police response time to a two-officer 911 emergency dispatch call relates to officer safety, and, thus, the manner in which it is determined affects a condition of employment. Omaha Police Union Local 101 v. City of Omaha, 274 Neb. 70, 736 N.W.2d 375 (2007).

A deviation clause in a teacher contract falls under the category of "wages, hours, and other terms of employment, or any question arising thereunder," as stated in subsection (1) of this section, and is a subject of mandatory bargaining. Hyannis Ed. Assn. v. Grant Cty. Sch. Dist. No. 38-0011, 269 Neb. 956, 698 N.W.2d 45 (2005).

48-818.

A prevalence determination by the Commission of Industrial Relations is a subjective determination, and the standard inherent in the word "prevalent" will be one of general practice, occurrence, or acceptance. Hyannis Ed. Assn. v. Grant Cty. Sch. Dist. No. 38-0011, 269 Neb. 956, 698 N.W.2d 45 (2005).

A valid prevalence analysis by the Commission of Industrial Relations does not require as a prerequisite a complete identity of provisions in the array. Hyannis Ed. Assn. v. Grant Cty. Sch. Dist. No. 38-0011, 269 Neb. 956, 698 N.W.2d 45 (2005).

When discussing the Commission of Industrial Relations' authority under this section, the Nebraska Supreme Court has acknowledged that a prevalent wage rate to be determined by the commission must almost invariably be determined after consideration of a combination of factors. Hyannis Ed. Assn. v. Grant Cty. Sch. Dist. No. 38-0011, 269 Neb. 956, 698 N.W.2d 45 (2005).

48-819.01.

The Commission on Industrial Relations' issuance of cease and desist orders is the equivalent of the commission ordering a party to cease and desist violating provisions of the Industrial Relations Act. Such orders are appropriate and adequate remedies under this section and subsection (2) of section 48-825. Crete Ed. Assn. v. Saline Cty. Sch. Dist. No. 76-0002, 265 Neb. 8, 654 N.W.2d 166 (2002).

Under the facts presented in this case, the order of the Commission on Industrial Relations to post notices regarding the employer's violation of the Industrial Relations Act was not an appropriate and adequate remedy under this section and subsection (2) of section 48-825. Crete Ed. Assn. v. Saline Cty. Sch. Dist. No. 76-0002, 265 Neb. 8, 654 N.W.2d 166 (2002).

48-824.

In an appeal from a Commission of Industrial Relations order regarding prohibited practices stated in this section, an appellate court will affirm a factual finding of the commission, if, considering the whole record, a trier of fact could reasonably conclude that the finding is supported by a preponderance of the competent evidence. Omaha Police Union Local 101 v. City of Omaha, 274 Neb. 70, 736 N.W.2d 375 (2007).

The “deliberate and reckless untruth” standard of the National Labor Relations Act is not the appropriate method to analyze the speech of public service employees under the Industrial Relations Act. Omaha Police Union Local 101 v. City of Omaha, 274 Neb. 70, 736 N.W.2d 375 (2007).

48-825.

In an appellate court's review of orders and decisions of the Commission of Industrial Relations involving an industrial dispute over wages and conditions of employment, the appellate court's standard of review is as follows: Any order or decision of the commission may be modified, reversed, or set aside by the appellate court on one or more of the following grounds and no other: (1) If the commission acts without or in excess of its powers, (2) if the order was procured by fraud or is contrary to law, (3) if the facts found by the commission do not support the order, and (4) if the order is not supported by a preponderance of the competent evidence on the record considered as a whole. Hyannis Ed. Assn. v. Grant Cty. Sch. Dist. No. 38-0011, 269 Neb. 956, 698 N.W.2d 45 (2005).

If the Commission of Industrial Relations finds that an accused party has committed a prohibited practice under subsection (2) of this section, it has the authority to order an appropriate remedy, and such authority is to be liberally construed to effectuate the public policy enunciated in section 48-802. Operating Engrs. Local 571 v. City of Plattsmouth, 265 Neb. 817, 660 N.W.2d 480 (2003).

The Commission on Industrial Relations' issuance of cease and desist orders is the equivalent of the commission ordering a party to cease and desist violating provisions of the Industrial Relations Act. Such orders are appropriate and adequate remedies under subsection (2) of this section and section 48-819.01. Crete Ed. Assn. v. Saline Cty. Sch. Dist. No. 76-0002, 265 Neb. 8, 654 N.W.2d 166 (2002).

Under the facts presented in this case, the order of the Commission on Industrial Relations to post notices regarding the employer's violation of the Industrial Relations Act was not an appropriate and adequate remedy under subsection (2) of this section and section 48-819.01. Crete Ed. Assn. v. Saline Cty. Sch. Dist. No. 76-0002, 265 Neb. 8, 654 N.W.2d 166 (2002).

48-1114.

The unlawful practice, the opposition to which is protected by subdivision (3) of this section, is that of the employer and not that of fellow employees. Wolfe v. Becton Dickinson & Co., 266 Neb. 53, 662 N.W.2d 599 (2003).

48-1229.

The Nebraska Wage Payment and Collection Act does not prohibit an employer from providing a sick leave benefit which may be used only in the event of illness or injury and which has no monetary value upon termination of employment if it is not so used. Loves v. World Ins. Co., 277 Neb. 359, 773 N.W.2d 348 (2009).

The Nebraska Wage Payment and Collection Act does not prohibit an employer from providing a sick leave benefit which may be used only in the event of illness or injury and which has no monetary value upon termination of employment if it is not so used. Loves v. World Ins. Co., 276 Neb. 936, 758 N.W.2d 640 (2008).

Under the plain language of subsection (4) of this section, unused sick leave is not a part of wages payable to a separating employee unless there is a specific agreement otherwise. Loves v. World Ins. Co., 276 Neb. 936, 758 N.W.2d 640 (2008).

Accrued vacation time, which is part of an employment agreement, is due and payable as wages upon termination of employment. Roseland v. Strategic Staff Mgmt., 272 Neb. 434, 722 N.W.2d 499 (2006).

48-1231.

A party has no viable claim to a wage that has not yet been received. Law Offices of Ronald J. Palagi v. Howard, 275 Neb. 334, 747 N.W.2d 1 (2008).

In a wage claim brought under section 15-841 against a city of the primary class, there is nothing in the plain language of this section that requires an employee to plead a specific cause of action for attorney fees or to file a separate proceeding for attorney fees in order to receive an award of attorney fees under the Nebraska Wage Payment and Collection Act. Rauscher v. City of Lincoln, 269 Neb. 267, 691 N.W.2d 844 (2005).

48-1232.

It is in the court's discretion whether to order an employer to pay to the common schools fund an amount equal to the judgment. There was a reasonable dispute concerning whether payment for unused vacation leave was due to the employees. Roseland v. Strategic Staff Mgmt., 272 Neb. 434, 722 N.W.2d 499 (2006).

The amount of penalty ordered to be paid to a fund to be distributed to the common schools of the state is a matter left to the discretion of the trial court, subject to the limitations prescribed by statute. Kinney v. H.P. Smith Ford, 266 Neb. 591, 667 N.W.2d 529 (2003).

49-801.

In conjunction with section 25-2221 and subsection (13) of this section, a political subdivision has until the end of the last day of the 6-month period after a claimant has filed a tort claim upon which to make a final disposition of such claim. Geddes v. York County, 273 Neb. 271, 729 N.W.2d 661 (2007).

49-1445.

Generally, the Nebraska Political Accountability and Disclosure Act requires candidates for elective state office to form candidate committees and file campaign statements with the Nebraska Accountability and Disclosure Commission once the candidate has raised, received, or expended $5,000 in a calendar year. Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).

49-1447.

A candidate for an elective state office is responsible for filing all statements and reports required to be filed by his or her candidate committee pursuant to the Nebraska Political Accountability and Disclosure Act and the Campaign Finance Limitation Act. Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).

49-1454.

The Nebraska Political Accountability and Disclosure Act requires candidate committees to file two preelection campaign statements and one postelection campaign statement for both the primary and general elections. Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).

49-1459.

The Nebraska Political Accountability and Disclosure Act requires candidate committees to file two preelection campaign statements and one postelection campaign statement for both the primary and general elections. Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).

49-14,101.02.

This section is penal in nature and must be strictly construed in the context of the object sought to be accomplished, the evils and mischiefs sought to be remedied, and the purpose sought to be served. Vokal v. Nebraska Acct. & Disclosure Comm., 276 Neb. 988, 759 N.W.2d 75 (2009).

The filming of a city council member in his city office for the purpose of creating a video advertisement for his reelection campaign was not a "use" of resources in violation of this section. Vokal v. Nebraska Acct. & Disclosure Comm., 276 Neb. 988, 759 N.W.2d 75 (2009).

49-14,123.

The Nebraska Accountability and Disclosure Commission is required to prescribe forms for statements and reports that are required to be filed under both the Nebraska Political Accountability and Disclosure Act and the Campaign Finance Limitation Act and furnish such forms to persons required to file such statements and reports, as well as to distribute these forms to the appropriate local officials. Nebraska Legislature on behalf of State v. Hergert, 271 Neb. 976, 720 N.W.2d 372 (2006).

52-118.01.

Under the facts of the case, evidence of a contractual relationship existed to create an exemption from the notice requirements of this section. Gerhold Concrete Co. v. St. Paul Fire & Marine Ins., 269 Neb. 692, 695 N.W.2d 665 (2005).

52-130.

General cleanup activities in preparation for sale of property are inconsistent with the property changes contemplated and required by this section for a valid construction lien. Taylor v. Taylor, 277 Neb. 617, 764 N.W.2d 101 (2009).

52-137.

The prime purpose of a notice of commencement is to eliminate as a controvertible question of fact the time of visible commencement of operations by providing a method to determine this time with certainty. Borrenpohl v. DaBeers Properties, 276 Neb. 426, 755 N.W.2d 39 (2008).

52-401.

By perfecting the lien created under this section before the tort-feasor pays the judgment or settlement to the patient, the health care provider creates an obligation on the tort-feasor to ensure that the provider's bill will be satisfied from the funds that the tort-feasor owes to the patient. Midwest Neurosurgery v. State Farm Ins. Cos., 268 Neb. 642, 686 N.W.2d 572 (2004).

If a tort-feasor's insurer impairs a lien created under this section, then the insurer is directly liable to the health care provider for the amount that would have been necessary to satisfy the lien. Midwest Neurosurgery v. State Farm Ins. Cos., 268 Neb. 642, 686 N.W.2d 572 (2004).

In this section, the phrase "usual and customary charges" acts as a cap; it prevents the lien from being an amount greater than what the health care provider typically charges other patients for the services that it provided to the injured party. Midwest Neurosurgery v. State Farm Ins. Cos., 268 Neb. 642, 686 N.W.2d 572 (2004).

Under this section, the lien is equal to the debt still owed to the health care provider for its usual and customary charges. Midwest Neurosurgery v. State Farm Ins. Cos., 268 Neb. 642, 686 N.W.2d 572 (2004).

A hospital lien which attaches prior to a patient's filing for bankruptcy relief is unaffected by the patient's discharge in bankruptcy. An insurance company breaches its duty to a hospital not to impair the hospital's rights under its lien by settling directly with a patient rather than making payment to the hospital. Alegent Health v. American Family Ins., 265 Neb. 312, 656 N.W.2d 906 (2003).

The lien of a physician, nurse, hospital, or other health care provider cannot exceed the amount the health care provider agreed to accept for the services rendered to a patient, even if the usual and customary charge for such services is greater than that sum. Midwest Neurosurgery v. State Farm Ins. Cos., 12 Neb. App. 328, 673 N.W.2d 228 (2004).

The underlying common-law contractual obligation between a patient and a medical provider is not affected by a statutory lien. If a patient receives medical services, he or she is always responsible for payment irrespective of whether there is a financially responsible tort-feasor against whom a statutory lien can be asserted in the event of a settlement or judgment in the patient’s favor. The patient’s personal liability for medical services remains intact irrespective of the lien statute. In re Conservatorship of Marshall, 10 Neb. App. 589, 634 N.W.2d 300 (2001).

53-132.

A district court’s decision reversing the Nebraska Liquor Control Commission’s approval of a class D liquor license was affirmed where the district court properly considered all the factors listed in subsection (3) and where the court’s decision was not arbitrary, capricious, or unreasonable. Orchard Hill Neighborhood v. Orchard Hill Mercantile, 274 Neb. 154, 738 N.W.2d 820 (2007).

53-135.

An appeal from the district court’s decision reversing the Nebraska Liquor Control Commission’s approval of a class D liquor license under section 53-135.02 was not moot despite the expiration of the original license during the pendency of an appeal, because a licensee has a constitutionally protected interest in obtaining the renewal of an existing license, and that interest would be jeopardized if the license were wrongfully taken away. Orchard Hill Neighborhood v. Orchard Hill Mercantile, 274 Neb. 154, 738 N.W.2d 820 (2007).

53-135.02.

An appeal from the district court's decision reversing the Nebraska Liquor Control Commission's approval of a class D liquor license under this section was not moot despite the expiration of the original license during the pendency of an appeal, because a licensee has a constitutionally protected interest in obtaining the renewal of an existing license, and that interest would be jeopardized if the license were wrongfully taken away. Orchard Hill Neighborhood v. Orchard Hill Mercantile, 274 Neb. 154, 738 N.W.2d 820 (2007).

53-169.01.

The interest forbidden by this section is a financial or business interest. Nebraska Liq. Distrib. v. Nebraska Liq. Cont. Comm., 269 Neb. 401, 693 N.W.2d 539 (2005).

While the forbidden interest in this section is worded as that of the manufacturer in the wholesaler and not the interest of the wholesaler in the manufacturer, the obvious intent of the Legislature is to forbid both types of interests. Nebraska Liq. Distrib. v. Nebraska Liq. Cont. Comm., 269 Neb. 401, 693 N.W.2d 539 (2005).

Amendments made to this section by Laws 2007, LB 578, contained a Grandfather Clause that violated the Equal Protection Clause and the Privileges and Immunities Clause of the United States Constitution and the Grandfather Clause was not severable from the other amendments. The section as amended is unconstitutional. Southern Wine & Spirits of America Inc. v. Heineman, 534 F.Supp.2d 1001 (D. Neb. 2008).

54-611.

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

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

55-160.

Under former law, the term "workday" for purposes of military leave means any 24-hour period in which work is done. Hall v. City of Omaha, 266 Neb. 127, 663 N.W.2d 97 (2003).

59-821.

Because the remedial provisions of the Junkin Act and Clayton Act are so similar, section 59-829 requires Nebraska courts to follow the federal courts' construction of the Clayton Act. Kanne v. Visa U.S.A., 272 Neb. 489, 723 N.W.2d 293 (2006).

The 2002 amendment to this section did not reject the application of standing requirements to damages under this section. It simply removed the automatic bar against indirect purchaser actions announced in Illinois Brick Co. v. Illinois, 431 U.S. 720, 97 S. Ct. 2061, 52 L. Ed. 2d 707 (1977). It did not eliminate separate and distinct standing requirements. Kanne v. Visa U.S.A., 272 Neb. 489, 723 N.W.2d 293 (2006).

59-829.

Because the remedial provisions of the Junkin Act and Clayton Act are so similar, this section requires Nebraska courts to follow the federal courts' construction of the Clayton Act. Kanne v. Visa U.S.A., 272 Neb. 489, 723 N.W.2d 293 (2006).

The purpose of this section is to achieve uniform application of the state and federal laws regarding monopolistic practices. The goal is to establish a uniform standard of conduct so that businesses will know what conduct is permitted and to protect the consumer from illegal conduct. Arthur v. Microsoft Corp., 267 Neb. 586, 676 N.W.2d 29 (2004).

59-1601.

The Consumer Protection Act is equitable in nature. State ex rel. Stenberg v. Consumer's Choice Foods, 276 Neb. 481, 755 N.W.2d 583 (2008).

59-1602.

It was a violation of the Consumer Protection Act when consumers were led to believe they would receive a free freezer or another appliance by entering into a contract for food. State ex rel. Stenberg v. Consumer's Choice Foods, 276 Neb. 481, 755 N.W.2d 583 (2008).

59-1604.

As related to a course of action for any person injured in violation of this section, section 59-1609 contemplates an action by indirect purchasers. Arthur v. Microsoft Corp., 267 Neb. 586, 676 N.W.2d 29 (2004).

This section allows any person who is injured by a violation of sections 59-1602 to 59-1606 which directly or indirectly affects the people of Nebraska to bring a civil action to recover damages. Arthur v. Microsoft Corp., 267 Neb. 586, 676 N.W.2d 29 (2004).

59-1609.

As related to a cause of action for any person injured in violation of section 59-1604, this section contemplates an action by indirect purchasers. Arthur v. Microsoft Corp., 267 Neb. 586, 676 N.W.2d 29 (2004).

60-476.01.

For purposes of the Motor Vehicle Operator's License Act, a motorist's ineligibility to hold a driver's license in another state constitutes a revocation as it is defined by this section. Wilczewski v. Neth, 273 Neb. 324, 729 N.W.2d 678 (2007).

60-491.

A person who violates subsection (10) of this section is guilty of negligence and liable for damages proximately resulting from the negligent operation of the motor vehicle. DeWester v. Watkins, 275 Neb. 173, 745 N.W.2d 330 (2008).

60-498.

Conclusory notation of "D.U.I." provides no factual reason for an officer's decision to arrest a driver on suspicion of driving under the influence of alcohol instead of merely citing the driver for speeding when excessive speed was the initial reason for the stop. Snyder v. Department of Motor Vehicles, 274 Neb. 168, 736 N.W.2d 731 (2007).

In an administrative license revocation proceeding, the sworn report of the arresting officer must, at a minimum, contain the information specified in subsection (3) of section 60-498.01 in order to confer jurisdiction. Snyder v. Department of Motor Vehicles, 274 Neb. 168, 736 N.W.2d 731 (2007).

60-498.01.

Sworn reports in administrative license revocation proceedings are, by definition, affidavits. Johnson v. Neth, 276 Neb. 886, 758 N.W.2d 395 (2008).

An acknowledgment on a sworn report which does not set forth the name of the individual making the acknowledgment, i.e., the arresting officer, does not substantially comply with the requirements of Nebraska law. Johnson v. Neth, 276 Neb. 886, 758 N.W.2d 395 (2008).

The arresting officer's sworn report triggers the administrative license revocation process by establishing a prima facie basis for revocation. Nothnagel v. Neth, 276 Neb. 95, 752 N.W.2d 149 (2008).

The sworn report of the arresting officer must indicate (1) that the person was arrested as described in section 60-6,197(2) and the reasons for the arrest, (2) that the person was requested to submit to the required test, and (3) that the person refused to submit to the required test. Nothnagel v. Neth, 276 Neb. 95, 752 N.W.2d 149 (2008).

Although this section limits the issues under dispute, it does not prohibit evidence pertinent to the issue of enhancement after those issues have been resolved. Stenger v. Department of Motor Vehicles, 274 Neb. 819, 743 N.W.2d 758 (2008).

In an administrative license revocation proceeding, the sworn report of the arresting officer must, at a minimum, contain the information specified in subsection (3) of this section in order to confer jurisdiction. Snyder v. Department of Motor Vehicles, 274 Neb. 168, 736 N.W.2d 731 (2007).

In an administrative license revocation proceeding, the sworn report of the arresting officer must, at a minimum, contain the information specified in the applicable statute in order to confer jurisdiction. Betterman v. Department of Motor Vehicles, 273 Neb. 178, 728 N.W.2d 570 (2007).

The failure to hold a hearing within the time provided in subsection (6)(b) of this section does not invalidate the administrative license revocation proceeding unless the motorist can show that he or she was prejudiced by the delay. Betterman v. Department of Motor Vehicles, 273 Neb. 178, 728 N.W.2d 570 (2007).

The administrative license revocation provisions pertaining to motorists who refuse to submit to chemical testing do not violate the due process or equal protection rights of those motorists by treating them differently than motorists who submit to, but fail, such testing. Betterman v. Department of Motor Vehicles, 273 Neb. 178, 728 N.W.2d 570 (2007).

The due process rights of a motorist who refuses to submit to chemical testing are not violated by this section even though the statutory scheme does not operate to reinstate the motorist's administratively revoked driver's license if he or she is acquitted of the criminal refusal charge. Kenley v. Neth, 271 Neb. 402, 712 N.W.2d 251 (2006).

This section does not violate the Equal Protection Clauses of the federal and state Constitutions by treating motorists who refuse to submit to chemical testing differently than motorists who submit to, but fail, such testing. Kenley v. Neth, 271 Neb. 402, 712 N.W.2d 251 (2006).

A report that does not contain the affirmation of an "arresting peace officer" that the facts recited in the report are true is not a proper "sworn report" as required by this section. Arndt v. Department of Motor Vehicles, 270 Neb. 172, 699 N.W.2d 39 (2005).

An arresting officer's sworn report must, at a minimum, contain the information specified in this section in order to confer jurisdiction upon the Department of Motor Vehicles to revoke an operator's license. Hahn v. Neth, 270 Neb. 164, 699 N.W.2d 32 (2005).

Although this section does not allow a motorist to challenge the validity of the initial traffic stop, it does not violate due process because the Fourth Amendment exclusionary rule is not applicable in civil license revocation proceedings. Chase v. Neth, 269 Neb. 882, 697 N.W.2d 675 (2005).

Although this section requires the "sworn report" required by subsection (2) of this section to include the "reasons for [the] arrest," an arresting officer need not specifically delineate on the sworn report all of the information contained on an attached probable cause form, so long as the sworn report provides adequate notice that one is being accused of driving under the influence and/or failure of a chemical test. Taylor v. Wimes, 10 Neb. App. 432, 632 N.W.2d 366 (2001).

60-498.02.

When the Department of Motor Vehicles provided the motorist a copy of his driver abstract before the revocation hearing and an opportunity to challenge the accuracy of his driver abstract at the revocation hearing, the requirements of due process were met. Stenger v. Department of Motor Vehicles, 274 Neb. 819, 743 N.W.2d 758 (2008).

The administrative license revocation provisions pertaining to motorists who refuse to submit to chemical testing do not violate the due process or equal protection rights of those motorists by treating them differently than motorists who submit to, but fail, such testing. Betterman v. Department of Motor Vehicles, 273 Neb. 178, 728 N.W.2d 570 (2007).

60-4,168.

Prosecuting an individual for driving under the influence after the individual's commercial driver's license has been already disqualified does not violate double jeopardy. State v. Arterburn, 276 Neb. 47, 751 N.W.2d 157 (2008).

The Legislature intended this section to be a civil sanction, and the statute is not so punitive in its purpose or effect as to negate the Legislature's intent. State v. Arterburn, 276 Neb. 47, 751 N.W.2d 157 (2008).

60-693.

Evidence of conviction for a traffic infraction, including a conviction for violation of a municipal ordinance, is not admissible in a civil suit for damages arising out of the same traffic infraction. Stevenson v. Wright, 273 Neb. 789, 733 N.W.2d 559 (2007).

60-6,109.

In order for a driver to be held to the higher standard of care in this section, there must be evidence both that the person was actually confused or actually incapacitated and that such condition was objectively obvious to a reasonable driver. State v. Welch, 275 Neb. 517, 747 N.W.2d 613 (2008).

60-6,121.

Once a city elects to install a pedestrian crosswalk signal, it is required to conform to the Manual on Uniform Traffic Control Devices in determining the pedestrian clearance interval, and the discretionary immunity exception of section 13-910 does not apply. Tadros v. City of Omaha, 269 Neb. 528, 694 N.W.2d 180 (2005).

60-6,140.

A state trooper had probable cause to stop a vehicle, in which the defendant was a passenger, for following too closely, despite the trooper's statement that he had a hunch the passengers could be involved in transporting contraband. The trooper testified that he observed the vehicle following one car length behind a semi-truck while

both vehicles were traveling over 70 miles per hour in the rain; thus, the trooper's alleged ulterior motivation for the stop was irrelevant. State v. Draganescu, 276 Neb. 448, 755 N.W.2d 57 (2008).

60-6,192.

Before evidence of vehicular speed determined by use of a speed measurement device is admissible, the State must establish with reasonable proof that the equipment was accurate and functioning properly at the time the determination of the speed of the vehicle was made. State v. Jacobson, 273 Neb. 289, 728 N.W.2d 613 (2007).

To present "reasonable proof" that a primary measuring instrument that measures the speed of a vehicle was operating correctly, one must show that such device was tested against a device whose instrumental integrity or reliability had been established. State v. Jacobson, 273 Neb. 289, 728 N.W.2d 613 (2007).

60-6,196.

The offense of driving under the influence in violation of this section is a lesser-included offense of driving under the influence causing serious bodily injury in violation of section 60-6,198. State v. Dragoo, 277 Neb. 858, 765 N.W.2d 666 (2009).

A sentence of probation is excessively lenient when record shows a history of alcohol-related motor vehicle offenses spanning more than 30 years, an extreme alcohol addiction, and a lack of respect for court orders. State v. Rice, 269 Neb. 717, 695 N.W.2d 418 (2005).

The Omaha Municipal Code conflicts with this section. State v. Loyd, 265 Neb. 232, 655 N.W.2d 703 (2003).

For a prior conviction based on a plea of guilty to be used for enhancement purposes in an action under this section, the record must show that the defendant entered the guilty plea to the charge. State v. Schulte, 12 Neb. App. 924, 687 N.W.2d 411 (2004).

For purposes of this section, substitution of "revocation" with "suspension" has no prejudicial effect. State v. Mulinix, 12 Neb. App. 836, 687 N.W.2d 1 (2004).

Alcohol-related violations of this section may be proved either by establishing that one was in actual physical control of a motor vehicle while under the influence or by establishing that one was in actual physical control of a motor vehicle while having more than the prohibited amount of alcohol in his or her body. State v. Robinson, 10 Neb. App. 848, 639 N.W.2d 432 (2002).

60-6,197.

The sworn report of the arresting officer must indicate (1) that the person was arrested as described in subsection (2) of this section and the reasons for the arrest, (2) that the person was requested to submit to the required test, and (3) that the person refused to submit to the required test. Nothnagel v. Neth, 276 Neb. 95, 752 N.W.2d 149 (2008).

Any person who operates a motor vehicle in Nebraska is deemed to have given consent to submit to chemical tests for the purpose of determining the concentration of alcohol in the blood, breath, or urine. Snyder v. Department of Motor Vehicles, 274 Neb. 168, 736 N.W.2d 731 (2007).

Any person arrested for suspicion of driving under the influence of alcohol may be directed by an officer to submit to a chemical test to determine the concentration of alcohol in that person's body. Snyder v. Department of Motor Vehicles, 274 Neb. 168, 736 N.W.2d 731 (2007).

An arrested motorist refuses to submit to a chemical test when the motorist's conduct, demonstrated under the circumstances confronting the officer requesting the chemical test, justifies a reasonable person's belief that the motorist understood the officer's request for a test and manifested a refusal or unwillingness to submit to the requested test. Betterman v. Department of Motor Vehicles, 273 Neb. 178, 728 N.W.2d 570 (2007).

60-6,197.06.

A 15-year revocation must be part of any sentence for a conviction under this section, including a sentence of probation. State v. Hense, 276 Neb. 313, 753 N.W.2d 832 (2008).

60-6,198.

The offense of driving under the influence in violation of section 60-6,196 is a lesser-included offense of driving under the influence causing serious bodily injury in violation of this section. State v. Dragoo, 277 Neb. 858, 765 N.W.2d 666 (2009).

60-6,201.

Evidence of breath or blood alcohol content over the statutory limit is not necessarily insufficient simply because the defendant's expert testimony as to the margin of error is not specifically rebutted by expert testimony from the State. State v. Kuhl, 276 Neb. 497, 755 N.W.2d 389 (2008).

60-6,210.

Admission of evidence of blood test results in a criminal prosecution for manslaughter under section 28-305 is not authorized under this section. State v. Brouillette, 265 Neb. 214, 655 N.W.2d 876 (2003).

60-6,211.

The commutation of a motor vehicle operator's license suspension by the judiciary is an improper use of a power reserved for the executive branch, and since the thrust of this section is toward that end, it is unconstitutional. State v. Diaz, 266 Neb. 966, 670 N.W.2d 794 (2003).

60-6,230.

The use of hazard lights while driving is proscribed by the plain language of subsection (1) of this section. State v. Warriner, 267 Neb. 424, 675 N.W.2d 112 (2004).

60-6,273.

Under this section, evidence that a person was not wearing a seatbelt is admissible only as evidence concerning the mitigation of damages and cannot be used with respect to the issue of liability or proximate cause. Fickle v. State, 273 Neb. 990, 735 N.W.2d 754 (2007).

Evidence of seatbelt misuse or nonuse was not admissible under this section where the plaintiff had dropped her claim that the seatbelt was faulty and stipulated before trial to a 5-percent reduction in the judgment. The trial court's reduction of the jury's award by 5 percent represented the full mitigation of damages available. Shipler v. General Motors Corp., 271 Neb. 194, 710 N.W.2d 807 (2006).

64-107.

The certification of a notary public's official duties, over his or her signature and official seal, is received by the courts as presumptive evidence of the facts certified therein. Johnson v. Neth, 276 Neb. 886, 758 N.W.2d 395 (2008).

64-203.

An attestation clause that does not list a name in the acknowledgment section is incomplete. Johnson v. Neth, 276 Neb. 886, 758 N.W.2d 395 (2008).

66-1863.

This section specifically gives the Nebraska Public Service Commission jurisdiction to determine whether extensions or enlargements are in the public interest. Metropolitan Util. Dist. v. Aquila, 271 Neb. 454, 712 N.W.2d 280 (2006).

67-404.

Except for limited exceptions, the provisions of the Uniform Partnership Act of 1998 are default rules that govern the relations among partners in situations they have not addressed in a partnership agreement. Shoemaker v. Shoemaker, 275 Neb. 112, 745 N.W.2d 299 (2008).

67-410.

In both actions inter sese between alleged partners and actions by a third party against an alleged partnership, the party asserting the existence of a partnership must prove that relationship by a preponderance of the evidence. In re Dissolution & Winding Up of KeyTronics, 274 Neb. 936, 744 N.W.2d 425 (2008).

In considering the parties' intent to form an association, it is generally considered relevant how the parties characterize their relationship or how they have previously referred to one another. In re Dissolution & Winding Up of KeyTronics, 274 Neb. 936, 744 N.W.2d 425 (2008).

If the parties' voluntary actions objectively form a relationship in which they carry on as co-owners of a business for profit, then they may inadvertently create a partnership despite their expressed subjective intention not to do so. In re Dissolution & Winding Up of KeyTronics, 274 Neb. 936, 744 N.W.2d 425 (2008).

Being "co-owners" of a business for profit does not refer to the co-ownership of property, but to the co-ownership of the business intended to garner profits. In re Dissolution & Winding Up of KeyTronics, 274 Neb. 936, 744 N.W.2d 425 (2008).

The objective indicia of co-ownership required for a partnership are commonly considered to be (1) profit sharing, (2) control sharing, (3) loss sharing, (4) contribution, and (5) co-ownership of property, but no single indicium is either necessary or sufficient to prove co-ownership. In re Dissolution & Winding Up of KeyTronics, 274 Neb. 936, 744 N.W.2d 425 (2008).

A business qualifies as a partnership under the "business for profit" element of subsection (1) of this section so long as the parties intended to carry on a business with the expectation of profits. In re Dissolution & Winding Up of KeyTronics, 274 Neb. 936, 744 N.W.2d 425 (2008).

67-412.

The presumption in subsection (3) of this section can apply when the partnership provides only a portion of the purchase price, and it can apply even though a third party who is not a partner to the firm holds title. Mogensen v. Mogensen, 273 Neb. 208, 729 N.W.2d 44 (2007).

In determining whether a party has rebutted the presumption in subsection (3) of this section, no single factor or combination of factors is dispositive. Mogensen v. Mogensen, 273 Neb. 208, 729 N.W.2d 44 (2007).

67-431.

Under the Uniform Partnership Act of 1998, a partner's voluntary withdrawal does not result in mandatory dissolution of the partnership; it results in a partner's dissociation. Shoemaker v. Shoemaker, 275 Neb. 112, 745 N.W.2d 299 (2008).

67-433.

Under subsection (1) of this section, the 1998 Uniform Partnership Act creates separate paths through which a dissociated partner can recover partnership interests – dissolution with winding up of partnership business or mandatory buyout. Shoemaker v. Shoemaker, 275 Neb. 112, 745 N.W.2d 299 (2008).

When a partnership agreement mandates a buyout of a withdrawing partner's interest but fails to specify a remedy for the partnership's failure to pay, or to timely pay, the buyout price, the default rules for mandatory buyouts apply. Shoemaker v. Shoemaker, 275 Neb. 112, 745 N.W.2d 299 (2008).

67-434.

Nothing in this section provides that dissolution of a partnership is a remedy for a partnership's failure to timely pay an estimated buyout price to a withdrawing partner. Shoemaker v. Shoemaker, 275 Neb. 112, 745 N.W.2d 299 (2008).

Subsection (9) of this section provides a withdrawing partner's remedies for a partnership's failure to timely pay a buyout price or its unsatisfactory offer. Shoemaker v. Shoemaker, 275 Neb. 112, 745 N.W.2d 299 (2008).

If a partnership agreement is silent on profit distributions to a withdrawing partner after dissociation but before completion of the buyout of the withdrawing partner's interest, the 1998 Uniform Partnership Act does not authorize profit distributions. Shoemaker v. Shoemaker, 275 Neb. 112, 745 N.W.2d 299 (2008).

67-439.

Dissolution of a partnership for a partner's voluntary withdrawal under subsection (1) of this section is a default rule that applies only when the partnership agreement does not provide for the partnership business to continue. Shoemaker v. Shoemaker, 275 Neb. 112, 745 N.W.2d 299 (2008).

The 1998 Uniform Partnership Act does not require remaining partners to strictly comply with a buyout provision in a partnership agreement to prevent dissolution upon the voluntary withdrawal of a partner; strict compliance is inconsistent with the act's provision of remedies for the withdrawing partner. Shoemaker v. Shoemaker, 275 Neb. 112, 745 N.W.2d 299 (2008).

71-519.

The newborn screening statutes do not violate the free exercise provisions of the Nebraska Constitution. In re Interest of Anaya, 276 Neb. 825, 758 N.W.2d 10 (2008).

71-524.

By its terms, in addition to the specific and therefore preferred remedy in district court, this section states that the newborn screening statutes may also be enforced through "other remedies which may be available by law." Under the proper set of proven facts, enforcement through the neglect provisions of the juvenile code may be one such "other remedy." In re Interest of Anaya, 276 Neb. 825, 758 N.W.2d 10 (2008).

71-1202.

The Sex Offender Commitment Act is not excessive in relation to its assigned nonpunitive purpose, which is to protect the public and provide treatment to dangerous sex offenders who are likely to reoffend. In re Interest of J.R., 277 Neb. 362, 762 N.W.2d 305 (2009).

71-1203.

The explicit purpose of the Sex Offender Commitment Act is to protect the public from sex offenders who continue to pose a threat of harm to others. In re Interest of J.R., 277 Neb. 362, 762 N.W.2d 305 (2009).

71-1209.

Under subsection (1)(b) of this section, the State's burden to prove that "neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than inpatient or outpatient treatment ordered by the mental health board are available or would suffice" was not met when the State provided evidence only of the treatment that would be recommended if the subject were to remain within the Department of Correctional Services. In re Interest of O.S., 277 Neb. 577, 763 N.W.2d 723 (2009).

72-1249.02.

This section authorizes an investment officer to enter into contracts for investment management services. Myers v. Nebraska Invest. Council, 272 Neb. 669, 724 N.W.2d 776 (2006).

75-136.

All appeals from orders of the Nebraska Public Service Commission are to follow the procedural requirements of the Administrative Procedure Act. Chase 3000, Inc. v. Nebraska Pub. Serv. Comm., 273 Neb. 133, 728 N.W.2d 560 (2007).

76-2,120.

Attorney fees are mandatory for a successful plaintiff in an action under subsection (12) of this section. Pepitone v. Winn, 272 Neb. 443, 722 N.W.2d 710 (2006).

76-715.01.

The timely filing of an affidavit of service as required by this section is not jurisdictional, but instead is merely directory. As is stated by section 76-717, the act which confers jurisdiction on the district court in a condemnation action is the filing of the notice of appeal. Wooden v. County of Douglas, 275 Neb. 971, 751 N.W.2d 151 (2008).

76-717.

The timely filing of an affidavit of service as required by section 76-715.01 is not jurisdictional, but instead is merely directory. As is stated by this section, the act which confers jurisdiction on the district court in a condemnation action is the filing of the notice of appeal. Wooden v. County of Douglas, 275 Neb. 971, 751 N.W.2d 151 (2008).

77-132.

This section does not violate Neb. Const. art. VIII, sec. 1. Agena v. Lancaster Cty. Bd. of Equal., 276 Neb. 851, 758 N.W.2d 363 (2008).

77-202.

The lease of property from one exempt organization to another exempt organization does not create a taxable use, so long as the property is used exclusively for exempt purposes. Fort Calhoun Baptist Ch. v. Washington Cty. Bd. of Equal., 277 Neb. 25, 759 N.W.2d 475 (2009).

The intention to use property in the future for an exempt purpose is not a use of the property for exempt purposes under this section. St. Monica's v. Lancaster Cty. Bd. of Equal., 275 Neb. 999, 751 N.W.2d 604 (2008).

77-202.04.

This section delineates who may appeal from the decision of the county board of equalization on a tax exemption determination and applies regardless of whether the appeal was by petition in error. McClellan v. Board of Equal. of Douglas Cty., 275 Neb. 581, 748 N.W.2d 66 (2008).

77-1359.

The inclusion of the term "parcel" requires a county assessor to consider the use of an entire tract of land, including any homesite, to determine whether that property qualifies as agricultural. Agena v. Lancaster Cty. Bd. of Equal., 276 Neb. 851, 758 N.W.2d 363 (2008).

This section does not violate Neb. Const. art. VIII, sec. 1. Agena v. Lancaster Cty. Bd. of Equal., 276 Neb. 851, 758 N.W.2d 363 (2008).

77-1837.

Where the original tax certificate is in the possession of the treasurer, the holder of the certificate is not obligated to undertake the formalistic procedure of requesting the return of the original tax certificate only to "present" the tax certificate back to the treasurer. Ottaco Acceptance, Inc. v. Larkin, 273 Neb. 765, 733 N.W.2d 539 (2007).

77-1839.

This section and section 77-1857 merely require that the treasurer's seal be affixed. They do not require that the treasurer's seal be entirely legible. Ottaco Acceptance, Inc. v. Larkin, 273 Neb. 765, 733 N.W.2d 539 (2007).

77-1843.

Even if title under a tax deed is void or voidable, the conditions precedent set forth in this section and section 77-1844 must be met in order to first question and then defeat title. Ottaco Acceptance, Inc. v. Larkin, 273 Neb. 765, 733 N.W.2d 539 (2007).

77-1844.

Even if title under a tax deed is void or voidable, the conditions precedent set forth in section 77-1843 and this section must be met in order to first question and then defeat title. Ottaco Acceptance, Inc. v. Larkin, 273 Neb. 765, 733 N.W.2d 539 (2007).

77-1857.

Section 77-1839 and this section merely require that the treasurer's seal be affixed. They do not require that the treasurer's seal be entirely legible. Ottaco Acceptance, Inc. v. Larkin, 273 Neb. 765, 733 N.W.2d 539 (2007).

77-1913.

Subsequent taxes that a purchaser at a sheriff's sale in the foreclosure of a tax certificate is required to pay before confirmation of the sale are limited to those levied and assessed on the property under foreclosure, i.e., taxes assessed and levied after commencement of the foreclosure proceeding. "Subsequent taxes" within the meaning of this section do not include taxes, whether general taxes or special assessments, that were assessed and levied prior to the commencement of the foreclosure proceeding. INA Group v. Young, 271 Neb. 956, 716 N.W.2d 733 (2006).

77-2003.

This section provides that personal representatives and recipients of property are liable for the payment of inheritance tax on transfers upon death and that there is a lien on the real property subject to the tax until it is paid or terminated by section 77-2039. In re Estate of Reed, 271 Neb. 653, 715 N.W.2d 496 (2006).

77-2037.

This statute provides, inter alia, that an inheritance tax lien ceases 10 years from the date of death if no proceeding is started within that 10-year period. It does not relate to the inheritance tax liability of personal representatives or recipients of property. In re Estate of Reed, 271 Neb. 653, 715 N.W.2d 496 (2006).

77-2039.

Section 77-2003 provides that personal representatives and recipients of property are liable for the payment of inheritance tax on transfers upon death and that there is a lien on the real property subject to the tax until it is paid or terminated by this section. In re Estate of Reed, 271 Neb. 653, 715 N.W.2d 496 (2006).

77-2108.

Estate taxes will be apportioned under this section unless there is a clear and unambiguous direction to the contrary. In re Estate of Eriksen, 271 Neb. 806, 716 N.W.2d 105 (2006).

Review of apportionment proceedings under this section is de novo on the record. In re Estate of Eriksen, 271 Neb. 806, 716 N.W.2d 105 (2006).

77-2701.34.

A contractor who provided thermal paper and play slips to the Nebraska Lottery as one element of a contract to provide the Nebraska Lottery with a comprehensive on-line lottery gaming system was not purchasing the items for resale to the Nebraska Lottery; thus, the items were not exempt from consumer's use tax. Intralot, Inc. v. Nebraska Dept. of Rev., 276 Neb. 708, 757 N.W.2d 182 (2008).

77-2701.47.

Under this section and section 77-2704.22(1), the sale of manufacturing machinery and equipment includes the sale of items that are assembled to make manufacturing machinery and equipment. Concrete Indus. v. Nebraska Dept. of Rev., 277 Neb. 897, 766 N.W.2d 103 (2009).

77-2703.

A contractor who provided thermal paper and play slips to the Nebraska Lottery as one element of a contract to provide the Nebraska Lottery with a comprehensive on-line lottery gaming system was not purchasing the items for resale to the Nebraska Lottery; thus, the items were not exempt from consumer's use tax. Intralot, Inc. v. Nebraska Dept. of Rev., 276 Neb. 708, 757 N.W.2d 182 (2008).

77-2704.22.

Under section 77-2701.47 and subsection (1) of this section, the sale of manufacturing machinery and equipment includes the sale of items that are assembled to make manufacturing machinery and equipment. Concrete Indus. v. Nebraska Dept. of Rev., 277 Neb. 897, 766 N.W.2d 103 (2009).

77-2708.

A late filing cannot be excused on equitable grounds where the claim was time barred because it was filed beyond the limitations period specified in subsection (2)(b) of this section, as extended by agreement of the parties. Becton, Dickinson & Co. v. Nebraska Dept. of Rev., 276 Neb. 640, 756 N.W.2d 280 (2008).

77-4103.

Components are not qualified property unless they are part of the tangible property otherwise covered by subsection (13) of this section, and they are themselves depreciable or subject to amortization or other recovery. Goodyear Tire & Rubber Co. v. State, 275 Neb. 594, 748 N.W.2d 42 (2008).

77-5016.

The Tax Equalization and Review Commission determines de novo all questions raised in proceedings before it. Brenner v. Banner Cty. Bd. of Equal., 276 Neb. 275, 753 N.W.2d 802 (2008).

The taxpayer's burden is to present clear and convincing evidence to rebut the presumption that the Board of Equalization faithfully performed its valuation duties. Brenner v. Banner Cty. Bd. of Equal., 276 Neb. 275, 753 N.W.2d 802 (2008).

The Tax Equalization and Review Commission is not required to accept any and all evidence offered during an informal hearing; it has some discretion in determining the probative value of proffered evidence and may exclude that which it determines to be incompetent, irrelevant, immaterial, and unduly repetitious. Brenner v. Banner Cty. Bd. of Equal., 276 Neb. 275, 753 N.W.2d 802 (2008).

The Tax Equalization and Review Commission is not required to make specific findings with respect to arguments or issues which it does not deem significant or necessary to its determination. Brenner v. Banner Cty. Bd. of Equal., 276 Neb. 275, 753 N.W.2d 802 (2008).

79-201.

Where a juvenile is adjudicated solely on the basis of habitual truancy from school under subsection (3)(b) of section 43-247 and the status of truancy is subsequently terminated by the lawful execution of a parental release authorizing discontinuation of school pursuant to subsection (3)(d) of this section, a juvenile court may terminate its jurisdiction without a finding that such termination is in the best interests of the juvenile. In re Interest of Kevin K., 274 Neb. 678, 742 N.W.2d 767 (2007).

79-413.

A state committee's approval of a petition for reorganization, including a school district's reallocation of bonding authority, is a "change" within the committee's jurisdiction under subsection (4) of this section, subject to appeal, and it may not be collaterally attacked. Cumming v. Red Willow Sch. Dist. No. 179, 273 Neb. 483, 730 N.W.2d 794 (2007).

79-419.

Under the precursor to subsection (2) of this section, merging school boards were not authorized to include in their merger petition a requirement that the surviving school board obtain a majority vote from voters in a former school district or a unanimous vote from school board members before moving grades four through six from an elementary school in a former district. Citizens for Eq. Ed. v. Lyons-Decatur Sch. Dist., 274 Neb. 278, 739 N.W.2d 742 (2007).

79-458.

Deficiencies in a petition filed under this section do not necessarily defeat the jurisdiction of a freeholder board. Koch v. Cedar Cty. Freeholder Bd., 276 Neb. 1009, 759 N.W.2d 464 (2009).

A party filing a petition under this section has a direct and legal interest in an appeal filed with the district court objecting to the granting of that petition. Koch v. Cedar Cty. Freeholder Bd., 276 Neb. 1009, 759 N.W.2d 464 (2009).

In determining whether land is contiguous under this section, a freeholder board shall consider all petitions together in order to find that otherwise noncontiguous land is nevertheless contiguous. Koch v. Cedar Cty. Freeholder Bd., 276 Neb. 1009, 759 N.W.2d 464 (2009).

81-885.01.

Pursuant to the Nebraska Real Estate License Act, any person collecting a fee or commission on the sale of real estate must be a licensed real estate broker or salesperson unless they meet one of the exceptions provided in the act. In re Estate of Ronan, 277 Neb. 516, 763 N.W.2d 704 (2009).

81-885.04.

The exception provided by subsection (2) of this section is limited to those instances where an attorney is acting within the scope of his duties as an attorney. In re Estate of Ronan, 277 Neb. 516, 763 N.W.2d 704 (2009).

81-8,219.

Under subsection (9) of this section, the State is immune from liability against allegations of a malfunctioning traffic signal unless the malfunction was not corrected by the State within a reasonable time after it received actual or constructive notice of the problem. Fickle v. State, 273 Neb. 990, 735 N.W.2d 754 (2007).

81-8,227.

The beneficence of the discovery rule is not bestowed on a potential plaintiff where the potential plaintiff in fact discovers, or in the exercise of reasonable diligence should have discovered, an injury within the initial period of limitations running from the wrongful act or omission. Carruth v. State, 271 Neb. 433, 712 N.W.2d 575 (2006).

81-8,305.

This section does not violate article VIII, section 9, of the Nebraska Constitution. Pavers, Inc. v. Board of Regents, 276 Neb. 559, 755 N.W.2d 400 (2008).

81-1170.01.

Requests need not be made under this section before filing suit in retirement benefits controversies. Livengood v. Nebraska State Patrol Ret. Sys., 273 Neb. 247, 729 N.W.2d 55 (2007).

81-1377.

The specific number of unused sick leave hours included in a retirement calculation does not constitute a retirement program under subsection (2) of this section. Livengood v. Nebraska State Patrol Ret. Sys., 273 Neb. 247, 729 N.W.2d 55 (2007).

81-2026.

Subsection (3) of this section, as it existed in 2002, is ambiguous as to the proper distribution of a deceased trooper's annuity where there are surviving minor children who are not all in the care of a surviving spouse. Consistent with the legislative intent of subsection (3) of this section, to provide benefits to the surviving members of a trooper's family, this section requires distribution of benefits to all of a deceased trooper's minor children, regardless of with whom they reside. Zach v. Eacker, 271 Neb. 868, 716 N.W.2d 437 (2006).

83-174.01.

A prerequisite of the Sex Offender Commitment Act is a criminal conviction for a sex offense. In re Interest of J.R., 277 Neb. 362, 762 N.W.2d 305 (2009).

83-174.03.

Where the facts necessary to establish an aggravated offense as defined by the Sex Offender Registration Act are not specifically included in the elements of the offense of which the defendant is convicted, such facts must be specifically found by the jury in order to impose lifetime community supervision as a term of the sentence. State v. Payan, 277 Neb. 663, 765 N.W.2d 192 (2009).

The legislative intent in enacting this section was to establish an additional form of punishment for some sex offenders. State v. Payan, 277 Neb. 663, 765 N.W.2d 192 (2009).

83-1,110.

An inmate sentenced to life imprisonment for first degree murder is not eligible for parole until the Nebraska Board of Pardons commutes his or her sentence to a term of years. Poindexter v. Houston, 275 Neb. 863, 750 N.W.2d 688 (2008).

83-964.

Under former law, Nebraska's statutes specifying electrocution as the mode of inflicting the death penalty are separate, and severable, from the procedures by which the trial court sentences the defendant. State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008).

Under former law, that a method of execution is cruel and unusual punishment bears solely on the legality of the execution of the sentence and not on the validity of the sentence itself. State v. Mata, 275 Neb. 1, 745 N.W.2d 229 (2008).

84-712.01.

Records of deaths that occurred at a state-run mental institution, indicating the place of burial, are public records as defined by this section. State ex rel. Adams Cty. Historical Soc. v. Kinyoun, 277 Neb. 749, 765 N.W.2d 212 (2009).

84-912.01.

This section did not require a hearing before the Department of Administrative Services to decide the issues raised by the petitioners, the petition for a declaratory order did not require the department to act in a quasi-judicial manner, and the proceeding was not a contested case under the Administrative Procedure Act. Kaplan v. McClurg, 271 Neb. 101, 710 N.W.2d 96 (2006).

84-917.

Any aggrieved party seeking judicial review of an administrative decision under the Administrative Procedure Act must file a petition within 30 days after service of that decision, pursuant to this section. The Administrative Procedure Act makes no mention of an extended or different deadline for filing a cross-petition in the district court. Ahmann v. Correctional Ctr. Lincoln, 276 Neb. 590, 755 N.W.2d 608 (2008).

In accordance with subsection (5)(a) of this section, when reviewing a final decision of an administrative agency in a contested case under the Administrative Procedure Act, a court may not take judicial notice of an adjudicative fact that was not presented to the agency, because the taking of such evidence would impermissibly expand the court's statutory scope of review de novo on the record of the agency. Betterman v. Department of Motor Vehicles, 273 Neb. 178, 728 N.W.2d 570 (2007).

Under subsection (6)(b) of this section, a district court has discretion concerning the disposition of an appeal from an administrative agency. Nebraska Liq. Distrib. v. Nebraska Liq. Cont. Comm., 272 Neb. 390, 722 N.W.2d 10 (2006).

84-918.

A judgment or final order rendered by a district court in a judicial review under the Administrative Procedure Act may be reversed, vacated, or modified by an appellate court for errors appearing on the record. When reviewing such an order, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. Parker v. State ex rel. Bruning, 276 Neb. 359, 753 N.W.2d 843 (2008).

84-1410.

There is no absolute discovery privilege for communications that occur during a closed session. State ex rel. Upper Republican NRD v. District Judges, 273 Neb. 148, 728 N.W.2d 275 (2007).

84-1411.

Under subsection (1) of this section, the Legislature has imposed only two conditions on the public body's notification method of a public meeting: (1) It must give reasonable advance publicized notice of the time and place of each meeting and (2) it must be recorded in the public body's minutes. City of Elkhorn v. City of Omaha, 272 Neb. 867, 725 N.W.2d 792 (2007).

84-1414.

The reading of ordinances constitutes a formal action under subsection (1) of this section. City of Elkhorn v. City of Omaha, 272 Neb. 867, 725 N.W.2d 792 (2007).

Any citizen of the state may commence an action to declare a public body's action void. City of Elkhorn v. City of Omaha, 272 Neb. 867, 725 N.W.2d 792 (2007).

86-158.

All appeals from orders of the Nebraska Public Service Commission are to follow the procedural requirements of the Administrative Procedure Act. Chase 3000, Inc. v. Nebraska Pub. Serv. Comm., 273 Neb. 133, 728 N.W.2d 560 (2007).

86-324.

The surcharge assessed by the Public Service Commission based on the Nebraska Telecommunications Universal Service Fund Act is not a tax. Schumacher v. Johanns, 272 Neb. 346, 722 N.W.2d 37 (2006).

The Nebraska Telecommunications Universal Service Fund Act is not an unconstitutional delegation of authority to the Public Service Commission. Schumacher v. Johanns, 272 Neb. 346, 722 N.W.2d 37 (2006).

87-301.

The terms of the Uniform Deceptive Trade Practices Act provide only for equitable relief consistent with general principles of equity. State ex rel. Stenberg v. Consumer's Choice Foods, 276 Neb. 481, 755 N.W.2d 583 (2008).

87-302.

To establish a violation of the Uniform Deceptive Trade Practices Act, there must have been a representation regarding the nature of goods or services and the representation must have been for characteristics or benefits that the goods or services did not have. State ex rel. Stenberg v. Consumer's Choice Foods, 276 Neb. 481, 755 N.W.2d 583 (2008).

NEBRASKA UNIFORM COMMERCIAL CODE

UCC 2-201.

An agreement for the purchase of a truck for more than $500 that is not signed by the party against whom enforcement is sought is unenforceable unless one of the limited exceptions set forth in this section is present. Woodhouse Ford v. Laflan, 268 Neb. 722, 687 N.W.2d 672 (2004).

The fact that there was no evidence of any oral or written agreement to purchase a truck that had a purchase price of more than $500 is sufficient to establish the absence of a purchase agreement that conforms to this section. Woodhouse Ford v. Laflan, 268 Neb. 722, 687 N.W.2d 672 (2004).

UCC 2-313.

Pursuant to this section, in order to create an express warranty, the seller must make an affirmation of fact or promise to the buyer which relates to the goods and becomes part of the basis of the bargain. Freeman v. Hoffman-La Roche, Inc., 260 Neb. 552, 618 N.W.2d 827 (2000).

UCC 2-606.

Evidence that someone tried to return a truck that was in their possession for the purpose of a test drive is sufficient to show that the truck was not accepted within the meaning of this section. Woodhouse Ford v. Laflan, 268 Neb. 722, 687 N.W.2d 672 (2004).

UCC 2-607.

Pursuant to subdivision (3)(a) of this section, whether the notice given is satisfactory and whether it is given within a reasonable time are generally questions of fact to be measured by all the circumstances of the case. Fitl v. Strek, 269 Neb. 51, 690 N.W.2d 605 (2005).

Pursuant to subsection (4) of this section, the burden is on the buyer to show a breach with respect to the goods accepted. Fitl v. Strek, 269 Neb. 51, 690 N.W.2d 605 (2005).

The notice requirement set forth in subdivision (3)(a) of this section serves three purposes. It provides the seller with an opportunity to correct any defect, to prepare for negotiation and litigation, and to protect itself against stale claims asserted after it is too late for the seller to investigate them. Fitl v. Strek, 269 Neb. 51, 690 N.W.2d 605 (2005).

UCC 2-725.

Pursuant to subsection (2) of this section, in order to constitute a future performance warranty, the terms of the warranty must unambiguously indicate that the manufacturer is warranting the future performance of the good for a specified period of time. Controlled Environ. Constr. v. Key Indus. Refrig., 266 Neb. 927, 670 N.W.2d 771 (2003).

Pursuant to subsection (2) of this section, the determination of a discovery date is essentially an inquiry into all of the facts and circumstances facing the buyer; thus, a court should examine all relevant evidence that bears on the buyer's discovery. Controlled Environ. Constr. v. Key Indus. Refrig., 266 Neb. 927, 670 N.W.2d 771 (2003).

Pursuant to subsection (2) of this section, the mere existence of "repair or replace" language in a warranty will not disturb a finding that the warranty extends to future performance. Controlled Environ. Constr. v. Key Indus. Refrig., 266 Neb. 927, 670 N.W.2d 771 (2003).

Pursuant to subsection (2) of this section, when a warranty extends to future performance, the statute of limitations is tolled and the cause of action does not begin to accrue until the breach of that warranty is or should have been discovered. The discovery analysis should focus on the buyer's knowledge of the nature and extent of the problem(s) with the goods. It is only when a buyer discovers, or should have discovered, facts sufficient to doubt the overall quality of the goods that subsection (2) is satisfied and the statute of limitations begins to run. Controlled Environ. Constr. v. Key Indus. Refrig., 266 Neb. 927, 670 N.W.2d 771 (2003).

Subsection (1) of this section prohibits the parties, at least by original agreement, from extending the statute of limitations. Controlled Environ. Constr. v. Key Indus. Refrig., 266 Neb. 927, 670 N.W.2d 771 (2003).

The future performance exception contained in subsection (2) of this section applies only to an express warranty and not to an implied warranty. Controlled Environ. Constr. v. Key Indus. Refrig., 266 Neb. 927, 670 N.W.2d 771 (2003).

The limitations period was designed to be relatively short to serve as a point of finality for businesses after which they could destroy records without the fear of subsequent suits. Controlled Environ. Constr. v. Key Indus. Refrig., 266 Neb. 927, 670 N.W.2d 771 (2003).

The statute of limitations accrues upon tender, unless the warranty extends to future performance. There is no exception for new warranties extended postsale, and the creation of such an exception is not a matter for this court. Controlled Environ. Constr. v. Key Indus. Refrig., 266 Neb. 927, 670 N.W.2d 771 (2003).

UCC 3-309.

Under this section and section 30-2456, a successor personal representative may enforce a lost note made payable to his or her decedent if the successor proves by clear and convincing evidence that (1) the predecessor personal representative was in possession of the notes and entitled to enforce them when the loss of possession

occurred; (2) the loss of possession was not the result of a voluntary transfer by predecessor or lawful seizure; and (3) possession of the notes cannot be obtained because they were either destroyed, their whereabouts cannot be determined, or they are in the wrongful possession of an unknown person or a person who cannot be found or is not amenable to service of process. Where an estate has insufficient funds to provide for an indemnification bond, a court's withholding of judgment from the personal representative until the statute of limitations for enforcing negotiable instruments expires is a reasonable exercise of discretion in providing adequate protection for the defendant under subsection (b) of this section. Fales v. Norine, 263 Neb. 932, 644 N.W.2d 513 (2002).

UCC 3-605.

Under former section 3-606, it discharges only the obligations of those parties who sign a negotiable instrument in the capacity of a surety. Borley Storage & Transfer Co. v. Whitted, 271 Neb. 84, 710 N.W.2d 71 (2006).

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

ARTICLE I

BILL OF RIGHTS

Section
30. Discrimination or grant of preferential treatment prohibited; public employment, public education, or public contracting; section, how construed; remedies.

Sec. 30 Discrimination or grant of preferential treatment prohibited; public employment, public education, or public contracting; section, how construed; remedies.

(1) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting. (2) This section shall apply only to action taken after the section's effective date. (3) Nothing in this section prohibits bona fide qualifications based on sex that are reasonably necessary to the normal operation of public employment, public education, or public contracting. (4) Nothing in this section shall invalidate any court order or consent decree that is in force as of the effective date of this section. (5) Nothing in this section prohibits action that must be taken to establish or maintain eligibility for any federal program, if ineligibility would result in a loss of federal funds to the state. (6) For purposes of this section, state shall include, but not be limited to: (a) the State of Nebraska; (b) any agency, department, office, board, commission, committee, division, unit, branch, bureau, council, or sub-unit of the state; (c) any public institution of higher education; (d) any political subdivision of or within the state; and (e) any government institution or instrumentally of or within the state. (7) The remedies available for violations of this section shall be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of Nebraska's antidiscrimination law. (8) This section shall be self executing. If any part or parts of this section are found to be in conflict with federal law or the Constitution of the United States, this section shall be implemented to the maximum extent that federal law and the Constitution of the United States permit. Any provision held invalid shall be severable from the remaining portions of this section.

Source: Neb. Const. art. I, sec. 30 (2008); Adopted 2008, Initiative Measure No. 424.

ARTICLE XIII

STATE, COUNTY, AND MUNICIPAL INDEBTEDNESS

Section
4. Nonprofit enterprise development; powers of counties and municipalities.

Sec. 4 Nonprofit enterprise development; powers of counties and municipalities.

Notwithstanding any other provision in this Constitution, the Legislature may authorize any county, city, or village to acquire, own, develop, and lease or finance real and personal property, other than property used or to be used for sectarian instruction or study or as a place for devotional activities or religious worship, to be used, during the term of any revenue bonds issued, only by nonprofit enterprises as determined by law and to issue revenue bonds for the purpose of defraying the cost of acquiring and developing or financing such property by construction, purchase, or otherwise. Such bonds shall not become general obligation bonds of the governmental subdivision by which such bonds are issued, and such governmental subdivision shall have no authority to impose taxes for the payment of such bonds. Notwithstanding the provisions of Article VIII, section 2, of this Constitution, the acquisition, ownership, development, use, or financing of any real or personal property pursuant to the provisions of this section shall not affect the imposition of any taxes or the exemption therefrom by the Legislature pursuant to this Constitution. The acquiring, owning, developing, and leasing or financing of such property shall be deemed for a public purpose, but the governmental subdivision shall not have the right to acquire such property for the purposes specified in this section by condemnation. The principal of and interest on any bonds issued may be secured by a pledge of the lease and the revenue therefrom and by mortgage upon such property. No such governmental subdivision shall have the power to operate any such property as a business or in any manner except as the lessor thereof.

Source: Neb. Const. art. XIII, sec. 4 (2010); Adopted 2010, Laws 2010, LR295CA, sec. 1.

CHAPTER 1
ACCOUNTANTS

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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.

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 proprietorship, partnership, corporation, or limited liability company engaged in the practice of public accountancy in this state entitled to register with the board;

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

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

(6) 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;

(7) 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

(8) 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.

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 his or her actual and necessary 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 204, § 1; Laws 1981, LB 92, § 3; Laws 1997, LB 114, § 8; Laws 2009, LB31, § 4.

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.
Effective date November 21, 2009.

Cross References

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

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.

1-116 Certified public accountant; examination; eligibility.

Prior to January 1, 1998, a person shall be eligible to take the examination described in section 1-114 if he or she meets the requirements of subdivision (1)(a) of section 1-114.

Any person making initial application on or after January 1, 1998, 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 the North Central Association of Colleges and Universities 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 within sixty days following when the examination is held shall be eligible to take such examination, but such person shall not receive any credit for such examination 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 ninety days following when the examination is held. 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.

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 in one sitting 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.

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 initial 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.

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.

1-122 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.

1-125 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 revoca-

tion 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.

1-133 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.

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 public accounting experience satisfactory to the board, in any state, (i) in practice as a certified public accountant, (ii) in employment as a staff accountant by anyone engaging in the practice of public accountancy, or (iii) in any combination of either of such types of experience;

(b) Three years of auditing experience satisfactory to the board in the office of the Auditor of Public Accounts or in the Department of Revenue; or

(c) Experience gained through employment by the federal government as a special agent or an internal revenue agent in the Internal Revenue Service, a degree from a college or university of recognized standing, and certification by a District Director of Internal Revenue that such person has had at least three and one-half years of field experience as a special agent or internal revenue agent.

(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, has had at least two years' experience in the practice of public accountancy as a sole proprietor or as a staff accountant.

Source: Laws 1977, LB 290, § 3; Laws 1993, LB 41, § 2; Laws 1997, LB 114, § 29; Laws 2007, LB24, § 2; Laws 2009, LB31, § 19.

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 taken 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 in practice as a certified public accountant or as a public accountant or in any state 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.

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.

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.

1-148 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 subdivisions (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.

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 abbreviation 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 Repealed. Laws 2009, LB 31, § 43.

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.

1-161 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.

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

(1) Such persons shall not exceed forty-nine percent of the total number of owners of such firm;

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

(3) Such persons shall not hold themselves out as certified public accountants;

(4) Such 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;

(5) Such 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;

(6) Such persons shall not be owners of a firm engaged in the practice of public accountancy without board approval if such persons (a) have been convicted of any felony under the laws of any state, of the United States, or of any other jurisdiction, (b) 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, (c) 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 (d) 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; and

(7) Such persons, regardless of where located, shall actively participate in the business of the firm.

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.

Cross References

Nebraska Professional Corporation Act, see section 21-2201.

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

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.

1-167 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.

1-170 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.

CHAPTER 2
AGRICULTURE

Article.
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10. Plant Diseases, Insect Pests, and Animal Pests.
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12. Horseracing. 2-1201 to 2-1219.
15. Nebraska Natural Resources Commission.
   (a) General Provisions. 2-1503.01.
   (b) Nebraska Soil and Water Conservation Act. 2-1577.
   (c) Nebraska Resources Development Fund. 2-1587, 2-1588.
   (g) Natural Resources Water Quality Fund. 2-15,122.
26. Pesticides. 2-2622 to 2-2659.
32. Natural Resources. 2-3225 to 2-32,115.
42. Conservation Corporation. 2-4214.
48. Farm Mediation. 2-4801, 2-4816.
49. Climate Assessment. 2-4901.
51. Buffer Strip Act. 2-5106, 2-5109.
54. Agricultural Opportunities and Value-Added Partnerships Act. 2-5413 to 2-5420.

ARTICLE 1
NEBRASKA STATE FAIR BOARD

Section
2-101. Nebraska State Fair Board; purpose; meetings; state fair; location; plan to relocate.
2-101.01. Legislative findings.
2-103. Membership; term.
2-104. Repealed. Laws 2008, LB 1116, § 14.
2-104.01. Repealed. Laws 2008, LB 1116, § 14.
2-106. Repealed. Laws 2008, LB 1116, § 14.
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.
2-131. 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.

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.

2-103 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.

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

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 enhancements 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 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.

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.

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

ARTICLE 2

STATE AND COUNTY FAIRS

(f) COUNTY AGRICULTURAL SOCIETY ACT

Section
2-258. Use of tax money.

(f) COUNTY AGRICULTURAL SOCIETY ACT

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.

ARTICLE 9

NOXIOUS WEED CONTROL

Section
2-954. Act; enforcement; director, control authorities, and superintendents; powers and duties; expenses.
2-955. Notice; kinds; effect; failure to comply; powers of control authority.
2-958.01. Noxious Weed and Invasive Plant Species Assistance Fund; created; use; investment.
2-958.02. Grant program; applications; selection; considerations; priority; section, how construed; director; duties.
2-959. Control authorities; equipment and machinery; purchase; use; record.
2-967. Riparian Vegetation Management Task Force; created; members.
2-968. Riparian Vegetation Management Task Force; duties; meetings; final report; expenses.

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) cooperate 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.
Effective date July 15, 2010.

Cross References

Administrative Procedure Act, see section 84-920.

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 three hundred thousand or more inhabitants, 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. Effective date July 15, 2010.

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;

(g) The extent to which the project will reduce the total population or area of infestation of a noxious weed;

(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 created pursuant to section 2-968. Beginning in fiscal year 2009-10, it is the intent of the Legislature to appropriate two million dollars annually for the management of vegetation within the banks of a natural stream or within one hundred feet of the banks of a channel of any 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 one or more fully appropriated or overappropriated river basins as designated by the Department of Natural Resources with priority given to fully appropriated 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. This subsection terminates on June 30, 2013.

(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)(a) The director shall apply for a grant from the Nebraska Environmental Trust Fund prior to the application deadline in September of 2009 for grants to be awarded and funded in April of 2010.

(b) The director shall apply for a grant from the Natural Resources Conservation Service of the United States Department of Agriculture prior to July 31, 2009.

Source: Laws 2004, LB 869, § 5; Laws 2007, LB701, § 4; Laws 2009, LB98, § 2.

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.
Effective date July 15, 2010.

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

The Riparian Vegetation Management Task Force is created. The Governor shall appoint the members of the task force. The members shall include one surface water project representative from each river basin that has been determined to be fully appropriated pursuant to section 46-714 or 46-720 or designated as overappropriated pursuant to section 46-713 by the Department of Natural Resources; one representative from the Department of Agriculture, the Department of Environmental Quality, the Department of Natural Resources, the office of the Governor, the office of the State Forester, the Game and Parks Commission, and the University of Nebraska; two representatives nominated by the Nebraska Association of Resources Districts; two representatives nominated by the Nebraska Weed Control Association; one riparian landowner from each of the state's congressional districts; and one representative from the Nebraska Environmental Trust. In addition to such members, any member of the Legislature may serve as a member of the task force at his or her option. For administrative and budgetary purposes only, the task force shall be housed within the Department of Agriculture. This section terminates on June 30, 2013.

Source: Laws 2007, LB701, § 1; Laws 2009, LB98, § 3.
Termination date June 30, 2013.

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

The Riparian Vegetation Management Task Force, in consultation with appropriate federal agencies, shall develop and prioritize vegetation management goals and objectives, analyze the cost-effectiveness of available vegetation

treatment, and develop plans and policies to achieve such goals and objectives. Any plan shall utilize the principles of integrated vegetation management and sound science. The task force shall convene within thirty days after the appointment of the members is complete to elect a chairperson and conduct such other business as deemed necessary. The efforts of the task force shall be initially directed toward river basins designated by the Department of Natural Resources as fully appropriated or overappropriated. Task force meetings shall be held in communities within the Republican River and Platte River basins with a final report due to the Governor and the Legislature prior to June 30, 2013. It is the intent of the Legislature that expenses of the task force not exceed twenty-five thousand dollars per fiscal year. This section terminates on June 30, 2013.

Source: Laws 2007, LB701, § 2; Laws 2009, LB98, § 4.
Termination date June 30, 2013.

ARTICLE 10

PLANT DISEASES, INSECT PESTS, AND ANIMAL PESTS

(k) PLANT PROTECTION AND PLANT PEST ACT

Section
2-1072. Act, how cited.
2-1074. Definitions, where found.
2-1075.02. Certified seed potatoes, defined.
2-10,116. Rules and regulations.

(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.

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.

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.

2-10,116 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; and

(11) The planting of certified seed potatoes in the state.

Source: Laws 1988, LB 874, § 45; Laws 1993, LB 406, § 31; Laws 2008, LB791, § 4.

ARTICLE 12

HORSERACING

Section

2-1201. State Racing Commission; creation; members; terms; qualifications; bond or insurance.
2-1208.01. Parimutuel wagering; tax; rates; return.
2-1219. State Racing Commission; members; employees; activities prohibited; conflict of interest; penalty.

2-1201 State Racing Commission; creation; members; terms; qualifications; bond or insurance.

(1) There hereby is created a State Racing Commission.

(2) Until July 15, 2010, the commission shall consist of three 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. One member shall be appointed each year for a term of three years. The members shall serve until their successors are appointed and qualified.

(3) On and after July 15, 2010, the commission shall consist of five 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. One member of the commission shall be appointed from each congressional district, as such districts existed on January 1, 2010, and two 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; and

(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.

(4) Not more than three members of the commission shall belong to the same political party. No more than two 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 members shall serve without compensation but shall be reimbursed for their actual 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.

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.
Effective date July 15, 2010.

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.

2-1219 State Racing Commission; members; employees; activities prohibited; conflict of interest; penalty.

(1) When any matter comes before the State Racing 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 secretary 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 employee of the State Racing Commission has any interest shall be raced at any meet under the jurisdiction of the commission.

(3) No employee of the State Racing 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 employee of the State Racing 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 employee of the State Racing 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.

(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.
Effective date July 15, 2010.

ARTICLE 15

NEBRASKA NATURAL RESOURCES COMMISSION

(a) GENERAL PROVISIONS

Section
2-1503.01. Small Watersheds Flood Control Fund; created; use; investment.

(b) NEBRASKA SOIL AND WATER CONSERVATION ACT

2-1577. Nebraska Soil and Water Conservation Fund; created; investment.

(c) NEBRASKA RESOURCES DEVELOPMENT FUND

2-1587. Nebraska Resources Development Fund; created; reserve fund; administration; investment.
2-1588. Fund; allocation; report; projects; costs.

(g) NATURAL RESOURCES WATER QUALITY FUND

2-15,122. Natural Resources Water Quality Fund; created; use; investment.

(a) GENERAL PROVISIONS

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.
Effective date November 21, 2009.

Cross References

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

(b) NEBRASKA SOIL AND WATER CONSERVATION ACT

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.
Effective date November 21, 2009.

Cross References

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

(c) NEBRASKA RESOURCES DEVELOPMENT FUND

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 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. Effective date November 21, 2009.

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) Any money in the Nebraska Resources Development Fund may be allocated 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. Such money 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 shall include a complete financial statement. Each member of the Legislature shall receive a 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.

(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.
Effective date November 21, 2009.

Cross References

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

ARTICLE 26
PESTICIDES

Section
2-2622. Act, how cited.
2-2626. Department; powers and duties.
2-2629. Registration; application; contents; department; powers; confidentiality; agent for service of process.
2-2636. Pesticide applicators; restrictions; department; duties; reciprocity.
2-2638. Commercial applicator license; when required; application; denial, when; fee; resident agent for service of process.
2-2639. Noncommercial applicator license; application; denial, when; resident agent for service of process.
2-2641. Private applicator; qualifications; application for license; requirements; fee.
2-2645. Violation of act; claim of damages; inspection; failure to file report or cooperate with department; effect.
2-2646. Prohibited acts.
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.
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.

2-2622 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.
Operative date May 1, 2010.

2-2626 Department; powers and duties.

The department shall have the following powers, functions, and duties:

(1) To administer, implement, and enforce the Pesticide Act and serve as the lead state agency for the regulation of pesticides. The department shall involve the natural resources districts and other state agencies, including the Department of Environmental Quality, the Department of Natural Resources, or the Department of Health and Human Services, in matters relating to water quality. Nothing in the act shall be interpreted in any way to affect the powers of any other state agency or of any natural resources district to regulate for ground water quality or surface water quality as otherwise provided by law;

(2) To be responsible for the development and implementation of a state management plan and pesticide management plans. The Department of Environmental Quality shall be responsible for the adoption of standards for pesticides in surface water and ground water, and the Department of Health and Human Services shall be responsible for the adoption of standards for pesticides in drinking water. These standards shall be established as action levels in the state management plan and pesticide management plans at which prevention and mitigation measures are implemented. Such action levels may be set at or below the maximum contaminant level set for any product as set by the federal agency under the federal Safe Drinking Water Act, 42 U.S.C. 300f et seq., as the act existed on January 1, 2006. The Department of Agriculture shall cooperate with and use existing expertise in other state agencies when developing the state management plan and pesticide management plans and shall not hire a hydrologist within the department for such purpose;

(3) After notice and public hearing, to adopt and promulgate rules and regulations providing lists of state-limited-use pesticides for the entire state or for a designated area within the state, subject to the following:

(a) A pesticide shall be included on a list of state-limited-use pesticides if:

(i) The Department of Agriculture determines that the pesticide, when used in accordance with its directions for use, warnings, and cautions and for uses for which it is registered, may without additional regulatory restrictions cause unreasonable adverse effects on humans or the environment, including injury to the applicator or other persons because of acute dermal or inhalation toxicity of the pesticides;

(ii) The water quality standards set by the Department of Environmental Quality or the Department of Health and Human Services pursuant to this section are exceeded; or

(iii) The Department of Agriculture determines that the pesticide requires additional restrictions to meet the requirements of the Pesticide Act, the federal act, or any plan adopted under the Pesticide Act or the federal act;

(b) The Department of Agriculture may regulate the time and conditions of use of a state-limited-use pesticide and may require that it be purchased or possessed only:

(i) With permission of the department;

(ii) Under direct supervision of the department or its designee in certain areas and under certain conditions;

(iii) In specified quantities and concentrations or at specified times; or

(iv) According to such other restrictions as the department may set by regulation;

(c) The Department of Agriculture may require a person authorized to distribute or use a state-limited-use pesticide to maintain records of the per-

son's distribution or use and may require that the records be kept separate from other business records;

(d) The state management plan and pesticide management plans shall be coordinated with the Department of Agriculture and other state agency plans and with other state agencies and with natural resources districts;

(e) The state management plan and pesticide management plans may impose progressively more rigorous pesticide management practices as pesticides are detected in ground water or surface water at increasing fractions of the standards adopted by the Department of Environmental Quality or the Department of Health and Human Services; and

(f) A pesticide management plan may impose progressively more rigorous pesticide management practices to address any unreasonable adverse effect of pesticides on humans or the environment. When appropriate, a pesticide management plan may establish action levels for imposition of such progressively more rigorous management practices based upon measurable indicators of the adverse effect on humans or the environment;

(4) To adopt and promulgate such rules and regulations as are necessary for the enforcement and administration of the Pesticide Act. The regulations shall include, but not be limited to, regulations providing for:

(a) The collection of samples, examination of records, and reporting of information by persons subject to the act;

(b) The safe handling, transportation, storage, display, distribution, use, and disposal of pesticides and their containers;

(c) Labeling requirements of all pesticides required to be registered under provisions of the act, except that such regulations shall not impose any requirements for federally registered labels contrary to those required pursuant to the federal act;

(d) Classes of devices which shall be subject to the Pesticide Act;

(e) Reporting and record-keeping requirements for persons distributing or using pesticide products made available under section 136p of the federal act and for persons required to keep records under the Pesticide Act;

(f) Methods to be used in the application of pesticides when the Department of Agriculture finds that such regulations are necessary to carry out the purpose and intent of the Pesticide Act. Such regulations may include methods to be used in the application of a restricted-use pesticide, may relate to the time, place, manner, methods, materials, amounts, and concentrations in connection with the use of the pesticide, may restrict or prohibit use of the pesticides in designated areas during specified periods of time, and may provide specific examples and technical interpretations of subdivision (4) of section 2-2646. The regulations shall encompass all reasonable factors which the department deems necessary to prevent damage or injury by drift or misapplication to (i) plants, including forage plants, or adjacent or nearby property, (ii) wildlife in the adjoining or nearby areas, (iii) fish and other aquatic life in waters in reasonable proximity to the area to be treated, (iv) surface water or ground water, and (v) humans, animals, or beneficial insects. In adopting and promulgating such regulations, the department shall give consideration to pertinent research findings and recommendations of other agencies of the state, the federal government, or other reliable sources. The department may, by regulation, require that notice of a proposed use of a pesticide be given to landowners

whose property is adjacent to the property to be treated or in the immediate vicinity thereof if the department finds that such notice is necessary to carry out the purpose of the act;

(g) State-limited-use pesticides for the state or for designated areas in the state;

(h) Establishment of the amount of any fee or fine as directed by the act;

(i) Establishment of the components of any state management plan or pesticide management plan;

(j) Establishment of categories for licensed pesticide applicators in addition to those established in 40 C.F.R. 171, as the regulation existed on January 1, 2006; and

(k) Establishment of a process for the issuance of permits for emergency-use pesticides made available under section 136p of the federal act;

(5) To enter any public or private premises at any reasonable time to:

(a) Inspect and sample any equipment authorized or required to be inspected under the Pesticide Act or to inspect the premises on which the equipment is kept or stored;

(b) Inspect or sample any area exposed or reported to be exposed to a pesticide or where a pesticide use has occurred;

(c) Inspect and sample any area where a pesticide is disposed of or stored;

(d) Observe the use and application of and sample any pesticide;

(e) Inspect and copy any records relating to the distribution or use of any pesticide or the issuance of any license, permit, or registration under the act; or

(f) Inspect, examine, or take samples from any application equipment, building, or place owned, controlled, or operated by any person engaging in an activity regulated by the act if, from probable cause, it appears that the application equipment, building, or place contains a pesticide;

(6) To sample, inspect, make analysis of, and test any pesticide found within this state;

(7) To issue and enforce a written or printed order to stop the sale, removal, or use of a pesticide if the Department of Agriculture has reason to believe that the pesticide is in violation of any provision of the act. The department shall present the order to the owner or custodian of the pesticide. The person who receives the order shall not distribute, remove, or use the pesticide until the department determines that the pesticide is in compliance with the act. This subdivision shall not limit the right of the department to proceed as authorized by any other provision of the act;

(8)(a) To sue in the name of the director to enjoin any violation of the act. Venue for such action shall be in the county in which the alleged violation occurred, is occurring, or is threatening to occur; and

(b) To request the county attorney or the Attorney General to bring suit to enjoin a violation or threatened violation of the act;

(9) To impose or levy an administrative fine of not more than five thousand dollars on any person who has violated the provisions, requirements, conditions, limitations, or duties imposed by the act or rules and regulations adopted and promulgated pursuant to the act. A violation means any separate activity or day in which an activity takes place;

(10) To cause a violation warning letter to be served upon the alleged violator or violators pursuant to the act;

(11) To take measures necessary to ensure that all fees, fines, and penalties prescribed by the act and the rules or regulations adopted under the act are assessed and collected;

(12) To access, inspect, and copy all books, papers, records, bills of lading, invoices, and other information relating to the use, manufacture, repackaging, and distribution of pesticides necessary for the enforcement of the act;

(13) To seize, for use as evidence, without formal warrant if probable cause exists, any pesticide which is in violation of the act or is not approved by the Department of Agriculture or which is found to be used or distributed in the violation of the act or the rules and regulations adopted and promulgated under it;

(14) To declare as a pest any form of plant or animal life, other than humans and other than bacteria, viruses, and other microorganisms on or in living humans or other living animals, which is injurious to health or the environment;

(15) To adopt classifications of restricted-use pesticides as determined by the federal agency under the federal act. In addition to the restricted-use pesticides classified by the administrator, the Department of Agriculture may also determine state-limited-use pesticides for the state or for designated areas within the state as provided in subdivision (3) of this section;

(16) To receive grants-in-aid from any federal entity, and to enter into cooperative agreements with any federal entity, any agency of this state, any subdivision of this state, any agency of another state, any Indian tribe, or any private person for the purpose of obtaining consistency with or assistance in the implementation of the Pesticide Act. The Department of Agriculture may reimburse any such entity from the Pesticide Administrative Cash Fund for the work performed under the cooperative agreement. The department may delegate its administrative responsibilities under the act to cities of the metropolitan and primary classes if it reasonably believes that such cities can perform the responsibilities in a manner consistent with the act and the rules and regulations adopted and promulgated under it;

(17) To prepare and adopt such plans as are necessary to implement any requirements of the federal agency under the federal act;

(18) To request the assistance of the Attorney General or the county attorney in the county in which a violation of the Pesticide Act has occurred with the prosecution or enforcement of any violation of the act;

(19) To enter into a settlement agreement with any person regarding the disposition of any license, permit, registration, or administrative fine;

(20) To issue a cease and desist order pursuant to section 2-2649;

(21) To deny an application or cancel, suspend, or modify the registration of a pesticide pursuant to section 2-2632;

(22) To issue, cancel, suspend, modify, or place on probation any license or permit issued pursuant to the act; and

(23) To make such reports to the federal agency as are required under the federal act.

Source: Laws 1993, LB 588, § 5; Laws 1996, LB 1044, § 38; Laws 2000, LB 900, § 50; Laws 2002, LB 93, § 1; Laws 2002, LB 436, § 5; Laws 2006, LB 874, § 3; Laws 2007, LB296, § 17; Laws 2010, LB254, § 7.
Operative date May 1, 2010.

2-2629 Registration; application; contents; department; powers; confidentiality; agent for service of process.

(1) The application for registration of a pesticide shall include:

(a) The name and address of the applicant and the name and address of the person whose name shall appear on the pesticide label, if not the applicant's;

(b) The name of the pesticide;

(c) Two complete copies of all labeling to accompany the pesticide and a statement of all claims to be made for it, including the directions for use;

(d) The use classification, whether for restricted or general use, as provided by the federal act;

(e) The use classification proposed by the applicant, including whether the product is a specialty pesticide, if the pesticide is not required by federal law to be registered under a use classification;

(f) A designation of a resident agent for service of process in actions taken in the administration and enforcement of the Pesticide Act. In lieu of designating a resident agent, the applicant may designate in writing the Secretary of State as the recipient of service of process for the applicant in this state; and

(g) Other information required by the department for determining the eligibility for registration.

(2) Application information may be provided in electronic format acceptable to the department.

(3) The department may require the applicant to submit the complete formula for a pesticide, including active and inert ingredients, as a prerequisite to registration.

(4) The department may require additional information including a full description of the tests conducted and the results of the tests on which claims are based, either before or after approving the registration of a pesticide. The department may request that additional tests or field monitoring be conducted in Nebraska ecosystems, or reasonably similar ecosystems, in order to determine the validity of assumptions used to register pesticides under the federal act.

(5) Information collected under subsection (3) or (4) of this section shall not be public records. The department shall not reveal such information to other than representatives of the department, the Attorney General or other legal representative of the department when relevant in any judicial proceeding, or any other officials of another Nebraska agency, the federal government, or other states who are similarly prohibited from revealing this information.

Source: Laws 1993, LB 267, § 33; Laws 1993, LB 588, § 8; Laws 2002, LB 436, § 6; Laws 2006, LB 874, § 5; Laws 2009, LB100, § 1.

2-2636 Pesticide applicators; restrictions; department; duties; reciprocity.

(1) The department shall license pesticide applicators involved in the categories established in 40 C.F.R. 171, as the regulation existed on January 1, 2006, and any other categories established pursuant to rules and regulations necessary to meet the requirements of the state. The department may issue a reciprocal license to a pesticide applicator licensed or certified in another state or by a federal agency. Residents of the State of Nebraska are not eligible for reciprocal certification. The department may waive part or all of any license certification examination requirements for a reciprocal license if the other state or federal agency that licensed or certified the pesticide applicator has substantially the same certification examination standards and procedural requirements as required under the Pesticide Act.

(2) A person shall not use a restricted-use pesticide unless the person is:

(a) Licensed as a commercial or noncommercial applicator and authorized by the license to use the restricted-use pesticide in the category covering the proposed pesticide use;

(b) Licensed as a private applicator; or

(c) At least sixteen years of age and working under the direct supervision of a licensed certified applicator pursuant to subsection (5) of section 2-2642.

(3) A person shall not use lawn care or structural pest control pesticides on the property of another person for hire or compensation unless the person is:

(a) Licensed as a commercial applicator; or

(b) At least sixteen years of age and working under the direct supervision of a licensed certified applicator pursuant to subsection (5) of section 2-2642.

(4) An employee or other person acting on behalf of any political subdivision of the state shall not use pesticides for outdoor vector control unless the applicator is:

(a) Licensed as a commercial applicator or a noncommercial applicator; or

(b) At least sixteen years of age and working under the direct supervision of a licensed certified applicator pursuant to subsection (5) of section 2-2642.

(5) In order to receive a commercial, noncommercial, or private applicator license, a person shall be at least sixteen years of age.

Source: Laws 1993, LB 588, § 15; Laws 2002, LB 436, § 9; Laws 2006, LB 874, § 7; Laws 2009, LB100, § 2.

2-2638 Commercial applicator license; when required; application; denial, when; fee; resident agent for service of process.

(1) An individual who uses restricted-use pesticides on the property of another person in the State of Nebraska for hire or compensation shall meet all certification requirements of the Pesticide Act and shall be a commercial applicator license holder of a license issued for the categories and subcategories in which the pesticide use is to be made.

(2) Any person who uses lawn care or structural pest control pesticides on the property of another person in the State of Nebraska for hire or compensation shall be a commercial applicator license holder, regardless of whether such person uses any restricted-use pesticide.

(3) Application for an original or renewal commercial applicator license shall be made to the department on forms prescribed by the department. The application shall include information as required by the director and be accompanied by a license fee of ninety dollars. If the applicant is an individual, the application shall include the applicant's social security number and date of birth. The fee may be increased by the director by rules and regulations adopted and promulgated pursuant to the act. The fee shall not exceed one hundred fifty dollars per license. All fees collected shall be remitted to the State Treasurer for credit to the Natural Resources Water Quality Fund.

(4) The department may deny a commercial applicator license if it has determined that:

(a) The applicant has had a license as a licensed certified applicator issued by this state or another state revoked within the last two years;

(b) The applicant has been unable to satisfactorily fulfill certification or licensing requirements;

(c) The applicant for any other reason cannot be expected to be able to fulfill the provisions of the Pesticide Act applicable to the category for which application is made; or

(d) An applicant for an original commercial applicator license has not passed an examination under sections 2-2637 and 2-2640.

(5) An individual to whom a commercial applicator license is issued shall be a licensed certified applicator authorized to use restricted-use pesticides in the categories and subcategories in which the individual is licensed.

(6) As a condition to issuance of a commercial applicator license, an applicant located outside this state shall file with the department a written designation of a resident agent for service of process in actions taken in the administration and enforcement of the act. In lieu of designating a resident agent, the applicant may designate in writing the Secretary of State as the recipient of service of process for the applicant in this state.

Source: Laws 1993, LB 588, § 17; Laws 1997, LB 752, § 55; Laws 2001, LB 329, § 6; Laws 2002, LB 436, § 11; Laws 2006, LB 874, § 8; Laws 2009, LB100, § 3.

2-2639 Noncommercial applicator license; application; denial, when; resident agent for service of process.

(1) A noncommercial applicator shall meet all certification requirements of the Pesticide Act and shall be a noncommercial applicator license holder of a license issued for the categories and subcategories in which the pesticide use is to be made.

(2) Application for an original or renewal noncommercial applicator license shall be made to the department on forms prescribed by the department. If the applicant is an individual, the application shall include the applicant's social security number and date of birth. The department shall not charge a noncommercial applicant a license fee.

(3) The director shall not issue an original noncommercial applicator license before the applicant has passed an examination under sections 2-2637 and 2-2640.

(4) A person to whom a noncommercial applicator license is issued shall be a licensed certified applicator authorized to use restricted-use pesticides in the categories and subcategories in which the individual is licensed.

(5) As a condition to issuance of a noncommercial applicator license, an applicant located outside this state shall file with the department a written designation of a resident agent for service of process in actions taken in the administration and enforcement of the Pesticide Act. In lieu of designating a resident agent the applicant may designate the Secretary of State as the recipient of service of process for the applicant in this state.

Source: Laws 1993, LB 588, § 18; Laws 1997, LB 752, § 56; Laws 2002, LB 436, § 13; Laws 2006, LB 874, § 9; Laws 2009, LB100, § 4.

2-2641 Private applicator; qualifications; application for license; requirements; fee.

(1) A person shall be deemed to be a private applicator if the person uses a restricted-use pesticide in the State of Nebraska for the purpose of producing an agricultural commodity:

(a) On property owned or rented by the person or person's employer or under the person's general control; or

(b) On the property of another person if applied without compensation other than the trading of personal services between producers of agricultural commodities.

(2) An employee shall qualify as a private applicator under subdivision (1)(a) of this section only if he or she provides labor for the pesticide use but does not provide the necessary equipment or pesticides.

(3) Every person applying for a license as a private applicator shall meet the certification requirement of (a) undertaking a training session approved by the department or (b) passing an examination showing that the person is properly qualified to perform functions associated with pesticide use to a degree directly related to the nature of the activity and the associated responsibility. The examination shall be approved by the department and monitored by the department or its authorized agent. If the applicant is an individual, the application shall include the applicant's social security number and date of birth.

(4) Application for an original or renewal private applicator license shall be made to the department and accompanied by a license fee of twenty-five dollars. All fees collected shall be remitted to the State Treasurer for credit to the Natural Resources Water Quality Fund.

Source: Laws 1993, LB 588, § 20; Laws 1997, LB 752, § 57; Laws 2001, LB 329, § 7; Laws 2002, LB 436, § 15; Laws 2006, LB 874, § 10; Laws 2009, LB100, § 5.

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 further 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 damages, is outside the scope of the Pesticide Act, or is frivolous or minor. 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 written request.

(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 observe, within reasonable hours, the property alleged to have been damaged.

(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.

2-2646 Prohibited acts.

It shall be unlawful for any person:

(1) To distribute within the state or deliver for transportation or transport in intrastate commerce or between points within this state through a point outside this state, any of the following:

(a) A pesticide that has not been registered or whose registration has been canceled or suspended under the Pesticide Act;

(b) A pesticide that has a claim, a direction for its use, or labeling that differs from the representations made in connection with its registration;

(c) A pesticide that is not in the registrant's or manufacturer's unbroken immediate container and that is not labeled with the information and in the manner required by the act and any regulations adopted under the act;

(d) A pesticide that is adulterated;

(e) A pesticide or device that is misbranded;

(f) A pesticide in a container that is unsafe due to damage;

(g) A pesticide which differs from its composition as registered; or

(h) A pesticide that has not been colored or discolored as required by the Pesticide Act or the federal act;

(2) To detach, alter, deface, or destroy, wholly or in part, any label or labeling provided for by the Pesticide Act or a rule or regulation adopted under the act;

(3) To add any substance to or take any substance from a pesticide in a manner that may defeat the purpose of the act or any rule or regulation adopted and promulgated under the act;

(4) To use or cause to be used a pesticide contrary to the act, to the labeling of the pesticide, or to a rule or regulation of the department limiting the use of the pesticide, except that it shall not be unlawful to:

(a) Use a pesticide at any dosage, concentration, or frequency less than that specified or recommended on the labeling if the labeling does not specifically prohibit deviation from the specified or recommended dosage, concentration, or frequency or, if the pesticide is a termiticide, it is not used at a rate below the minimum concentration specified or recommended on the label for preconstruction treatments;

(b) Use a pesticide against any target pest not specified on the labeling if the use is for the crop, animal, or site specified or recommended on the labeling and the labeling does not specifically state that the pesticide may be used only for the pests specified or recommended on the labeling;

(c) Employ any method of use not prohibited by the labeling if (i) the labeling does not specifically state that the product may be used only by the methods specified or recommended on the labeling, (ii) the method of use is consistent with the method specified on labeling, and (iii) the method of use does not more than minimally increase the exposure of the pesticide to humans or the environment;

(d) Mix a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling if such mixing is consistent with the method of application specified or recommended on the labeling and does not more than minimally increase the exposure of the pesticide to humans or the environment;

(e) Use a pesticide in conformance with section 136c, 136p, or 136v of the federal act or section 2-2626; or

(f) Use a pesticide in a manner that the director determines to be consistent with the purposes of the Pesticide Act;

(5) To use a pesticide at any dosage, concentration, or frequency greater than specified or recommended on the labeling unless the labeling allows the greater dosage, concentration, or frequency;

(6) To handle, transport, store, display, or distribute a pesticide in a manner that violates any provision of the Pesticide Act or a rule or regulation adopted and promulgated under the act;

(7) To use, cause to be used, dispose, discard, or store a pesticide or pesticide container in a manner that the person knows or should know is:

(a) Likely to adversely affect or cause injury to humans, the environment, vegetation, crops, livestock, wildlife, or pollinating insects;

(b) Likely to pollute a water supply or waterway; or

(c) A violation of the Environmental Protection Act or a rule or regulation adopted and promulgated pursuant to the act;

(8) To use for the person's advantage or reveal, other than to a properly designated state or federal official or employee, to a physician, or in an emergency to a pharmacist or other qualified person for the preparation of an antidote, any information relating to pesticide formulas, trade secrets, or

commercial or financial information acquired under the Pesticide Act and marked as privileged or confidential by the registrant;

(9) To commit an act for which a licensed certified applicator's license may be suspended, modified, revoked, or placed on probation under the Pesticide Act whether or not the person committing the act is a licensed certified applicator;

(10) To knowingly or intentionally use, cause to be used, handle, store, or dispose of a pesticide in a manner that causes bodily injury to or the death of a human or that pollutes ground water, surface water, or a water supply;

(11) To fail to obtain a license or to pay all fees and penalties as prescribed by 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.
Operative date May 1, 2010.

Cross References

Environmental Protection Act, see section 81-1532.

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.
Operative date May 1, 2010.

2-2656 Nebraska aerial pesticide business license; application; form; contents; fee; resident agent.

(1) An application for an initial or renewal Nebraska aerial pesticide business license shall be submitted to the department prior to the commencement of aerial spraying operations, and an application for renewal of a Nebraska aerial pesticide business license shall be submitted to the department by January 1 of each year. 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 and social security number. If such applicant is not an individual, the full name of each partner or member or the full name of the principal officers shall be given on the application;

(b) The location of the applicant's principal departure location and any additional departure locations utilized for aerial spraying operations to be conducted within Nebraska identified by one of the following: Global Positioning System coordinates, legal description, local address of the site, or airport identifier;

(c) A copy of the applicant's agricultural aircraft operator certificate issued pursuant to 14 C.F.R. part 137 or evidence the applicant holds such a certificate issued by the Federal Aviation Administration;

(d) The aircraft registration number issued by the Federal Aviation Administration pursuant to 14 C.F.R. part 47 of all aircraft owned, rented, or leased by the applicant to be utilized for aerial pesticide applications and all other aircraft utilized in aerial spraying operations conducted by the applicant;

(e) The Nebraska commercial applicator certificate number and current Federal Aviation Administration commercial pilot certificate number of all persons operating aircraft for the aerial application of pesticides during any aerial spraying operations conducted by the applicant; and

(f) Such other information as deemed necessary by the director to determine the suitability of the applicant for licensure as an aerial pesticide business.

(2) An applicant located outside this state shall file with the department a written designation of a resident agent for service of process in actions taken in the administration and enforcement of the Pesticide Act. In lieu of designating a resident agent, the applicant may designate the Secretary of State as the recipient of service of process for the applicant in this state.

Source: Laws 2010, LB254, § 3.
Operative date May 1, 2010.

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.
Operative date May 1, 2010.

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.
Operative date May 1, 2010.

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.
Operative date May 1, 2010.

ARTICLE 32
NATURAL RESOURCES

Section
2-3225. Districts; tax; levies; limitation; use; collection.
2-3226.01. River-flow enhancement bonds; authorized; natural resources districts; powers and duties; acquisition of water rights by purchase or lease; agreements; contents.
2-3226.05. River-flow enhancement bonds; repayment of financial assistance; costs and expenses of qualified projects; occupation tax authorized; collection; accounting; lien; foreclosure.
2-3226.06. Payment to water rights holders; authorized.
2-3226.07. Water Contingency Cash Fund; created; investment; natural resources district; financial assistance; request to department; compensation to water rights holders.
2-3226.08. Financial assistance; district; repayment; duties.
2-3226.09. Department; State Treasurer; duties.
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.
2-3234. Districts; eminent domain; powers.
2-3234.02. Trails; procedures.
2-3234.03. Trails; terms, defined.
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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.
2-3290.01. Water project; public use; public access; district; duties; conditions.
2-32,101. District; recreation area; enforcement; procedures; expenditure of funds for services or contracts, authorized.
2-32,115. Immediate temporary stay imposed by natural resources district; department; powers and duties.

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 2011-12.

(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 or for the repayment of financial assistance received by the district pursuant to section 2-3226.07. 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.

Cross References

Nebraska Ground Water Management and Protection Act, see section 46-701.

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 a written 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) Beginning on April 1, 2008, 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.
Effective date July 15, 2010.

Cross References

Nebraska Ground Water Management and Protection Act, see section 46-701.

2-3226.05 River-flow enhancement bonds; repayment of financial assistance; costs and expenses of qualified projects; occupation tax authorized; 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, (b) the repayment of financial assistance received by the district pursuant to section 2-3226.07, or (c) 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) Acres classified by the county assessor as irrigated shall be subject to such district's occupation tax unless, on or before July 1, 2007, and on or before March 1 in each subsequent year, the record owner certifies to the district the nonirrigation status of such acres.

(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.
Effective date July 15, 2010.

2-3226.06 Payment to water rights holders; authorized.

The Legislature finds that water rights holders who lease and forego water use to assist in the management, protection, and conservation of the water

resources of river basins must be paid. It is the intent of the Legislature to provide payment to such water rights holders through the financial assistance provided in section 2-3226.07. The Legislature further finds that the financial assistance provided by the state under such section shall be repaid through the authority granted under Laws 2007, LB 701, or such other means as are provided by the Legislature.

Source: Laws 2008, LB1094, § 4.

2-3226.07 Water Contingency Cash Fund; created; investment; natural resources district; financial assistance; request to department; compensation to water rights holders.

(1) The Water Contingency Cash Fund is created. The department shall administer 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.

(2) No later than five days after April 2, 2008, a natural resources 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, and such natural resources district, using authority granted under Laws 2007, LB 701, enters or has entered into agreements, shall submit a request in writing to the department certifying the amount of financial assistance necessary to meet its obligations under section 2-3226.04 by or through obligations of joint entities or joint public agencies formed for the purposes described in section 2-3226.01. Within fifteen days after April 2, 2008, if such a request has been received by the department, the department shall expend from the Water Contingency Cash Fund the amount requested to provide financial assistance to the submitting natural resources district. The natural resources district shall use the financial assistance provided by the state from the Water Contingency Cash Fund to compensate water rights holders who agree or have agreed to lease and forgo the use of water. Any financial assistance provided under this section not used for such purpose by the natural resources district within sixty days after it is received by such district shall be returned to the department for credit to the Water Contingency Cash Fund.

Source: Laws 2008, LB1094, § 5.

Cross References

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

2-3226.08 Financial assistance; district; repayment; duties.

(1) Any district receiving financial assistance pursuant to section 2-3226.07 shall remit to the department the proceeds of the property tax authorized pursuant to subdivision (1)(d) of section 2-3225, the proceeds of the occupation tax authorized pursuant to section 2-3226.05, or both, when such proceeds are available for distribution until the amount of such financial assistance has been repaid. Such proceeds shall be remitted within fifteen days after receipt of the proceeds by the district.

(2) If the district does not receive proceeds described in subsection (1) of this section, the district shall reimburse the Water Contingency Cash Fund by such

means as are provided by the Legislature. Such reimbursement shall be made no later than June 30, 2013.

Source: Laws 2008, LB1094, § 6.

2-3226.09 Department; State Treasurer; duties.

The department shall remit reimbursements received pursuant to section 2-3226.08 to the State Treasurer for credit to the Water Contingency Cash Fund. The department shall calculate the amount of such reimbursements so remitted. After the initial disbursement of financial assistance by the department as authorized in section 2-3226.07, the State Treasurer shall, at the end of each calendar month, transfer the balance of the Water Contingency Cash Fund to the Cash Reserve Fund.

Source: Laws 2008, LB1094, § 7.

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, 2019, 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, 2019, including extension of principal maturities if determined appropriate.

Source: Laws 2009, LB160, § 5.

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.
Effective date April 14, 2010.

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.
Effective date April 14, 2010.

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.
Effective date April 14, 2010.

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.
Effective date April 14, 2010.

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.
Effective date April 14, 2010.

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.
Effective date April 14, 2010.

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.
Effective date April 14, 2010.

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.
Effective date April 14, 2010.

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.
Effective date April 14, 2010.

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.

2-32,101 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.
Effective date July 15, 2010.

Cross References

Interlocal Cooperation Act, see section 13-801.

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 approved 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 42

CONSERVATION CORPORATION

Section
2-4214. Duties; enumerated.

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; obligations 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.

ARTICLE 48

FARM MEDIATION

Section
2-4801. Act, how cited.
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.

2-4816 Repealed. Laws 2009, LB 101, § 3.

ARTICLE 49

CLIMATE ASSESSMENT

Section
2-4901. Climate Assessment Response Committee; created; members; expenses; meetings.

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 actual and necessary 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.

ARTICLE 51

BUFFER STRIP ACT

Section
2-5106. Buffer Strip Incentive Fund; created; use; investment.
2-5109. Contractual agreement; terms; payments; renewal.

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.
Effective date November 21, 2009.

Cross References

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

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.

ARTICLE 54

AGRICULTURAL OPPORTUNITIES AND VALUE-ADDED PARTNERSHIPS ACT

Section
2-5413. Act, how cited.
2-5414. Legislative findings.
2-5416. Purposes of act.
2-5419. Grants; use.
2-5420. Application process; priority; restriction on use of grant funds.

2-5413 Act, how cited.

Sections 2-5413 to 2-5424 shall be known and may be cited as the Agricultural Opportunities and Value-Added Partnerships Act. The act terminates on January 1, 2015.

Source: Laws 2005, LB 90, § 4; Laws 2009, LB164, § 1.
Termination date January 1, 2015.

2-5414 Legislative findings.

(1) The Legislature finds that:

(a) There is a serious economic crisis in the agricultural and rural sectors of Nebraska's economy;

(b) There is a need in such sectors to develop strategies and programs to create genuine economic opportunities that enable people to improve their incomes, avoid poverty, build assets, and develop their capacity to contribute to the betterment of their communities;

(c) Strong communities enable local residents to be more self-sufficient, which contributes to the overall strength and well-being of Nebraska; and

(d) Adding value to agricultural products offers farmers and ranchers the potential to obtain a larger share of food dollars.

(2) The Legislature further finds that there is a need to:

(a) Support self-employment and small-scale entrepreneurship in both agricultural and nonagricultural activities;

(b) Enhance income and opportunities for farming and ranching operations to stem the decline in the number of such operations;

(c) Develop strategies and programs to increase the farming and ranching operations' share of the food-system profit;

(d) Build the capacity of farming and ranching operations and small rural businesses to benefit from the development of electronic commerce, including the implementation of electronic scanners or point-of-sale devices to expand the ability of Nebraskans to utilize federally subsidized food and nutrition program benefits at farmers markets; and

(e) Strengthen value-added enterprises by promoting strategic partnerships and networks through multigroup cooperation.

Source: Laws 2005, LB 90, § 5; Laws 2010, LB986, § 1.
Effective date July 15, 2010.
Termination date January 1, 2015.

2-5416 Purposes of act.

The purposes of the Agricultural Opportunities and Value-Added Partnerships Act are to:

(1) Support small enterprise formation in the agricultural sector of Nebraska's rural economy, including innovative cooperative efforts for value-added enterprises;

(2) Support the development of agricultural communities and economic opportunity through innovative partnerships among farming and ranching operations, rural communities, and businesses for the development of value-added agricultural products;

(3) Encourage collaboration between farming and ranching operations and between farming and ranching operations and communities, government, and businesses as well as between communities and regions;

(4) Strengthen the value-added production industry by promoting strategic partnerships and networks through multigroup cooperation for the creation of employment opportunities in the value-added agriculture industry;

(5) Enhance the income and opportunity for farming and ranching operations in Nebraska in order to stem the decline in their numbers;

(6) Increase the farming and ranching operations' share of the food-system profit;

(7) Enhance opportunities for farming and ranching operations to participate in electronic commerce and new and emerging markets that strengthen rural economic opportunities, including the implementation of electronic scanners or point-of-sale devices to expand the ability of Nebraskans to utilize federally subsidized food and nutrition program benefits at farmers markets; and

(8) Encourage the production and marketing of specialty crops in Nebraska and to support the creation and development of agricultural enterprises and businesses that produce and market specialty crops in Nebraska.

Source: Laws 2005, LB 90, § 7; Laws 2007, LB69, § 2; Laws 2010, LB986, § 2.
Effective date July 15, 2010.
Termination date January 1, 2015.

2-5419 Grants; use.

(1) Grants under the Agricultural Opportunities and Value-Added Partnerships Act shall be used to support projects in the following areas:

(a) Research;

(b) Education and training;

(c) Market development;

(d) Nonadministrative business planning assistance, feasibility and market studies, capitalization plans, and technical assistance;

(e) Development of cooperatives;

(f) Community and multicommunity initiatives;

(g) Creation, retention, and transfer of value-added agricultural business initiatives in rural communities;

(h) Efforts to obtain startup or working capital or other capital expenditures necessary for the development of the project;

(i) Community-based, farmer-owned, or rancher-owned value-added initiatives;

(j) The purchase of electronic scanners or point-of-sale devices to expand the ability of Nebraskans to utilize federally subsidized food and nutrition program benefits at farmers markets, and for the marketing, promotion, and outreach related to such federal programs; and

(k) Other activities that are deemed necessary to fulfill the purposes specified in section 2-5416.

(2) Such projects shall demonstrate the ability to provide private new enterprise formation or expanded incomes and economic opportunities for existing enterprises.

Source: Laws 2005, LB 90, § 10; Laws 2010, LB986, § 3.
Effective date July 15, 2010.
Termination date January 1, 2015.

2-5420 Application process; priority; restriction on use of grant funds.

(1) To be eligible for a grant under the Agricultural Opportunities and Value-Added Partnerships Act, an applicant shall:

(a) Document a matching amount in money or in-kind contributions or a combination of both equal to twenty-five percent of the grant funds requested, except that if the grant funds will be used to acquire or lease a building or equipment to be used in a farming or ranching operation or in a private enterprise, an applicant shall provide a matching amount in money and in-kind contribution of no less than fifty percent of the grant funds requested of which the matching amount in money shall be no less than twenty-five percent of the grant funds requested;

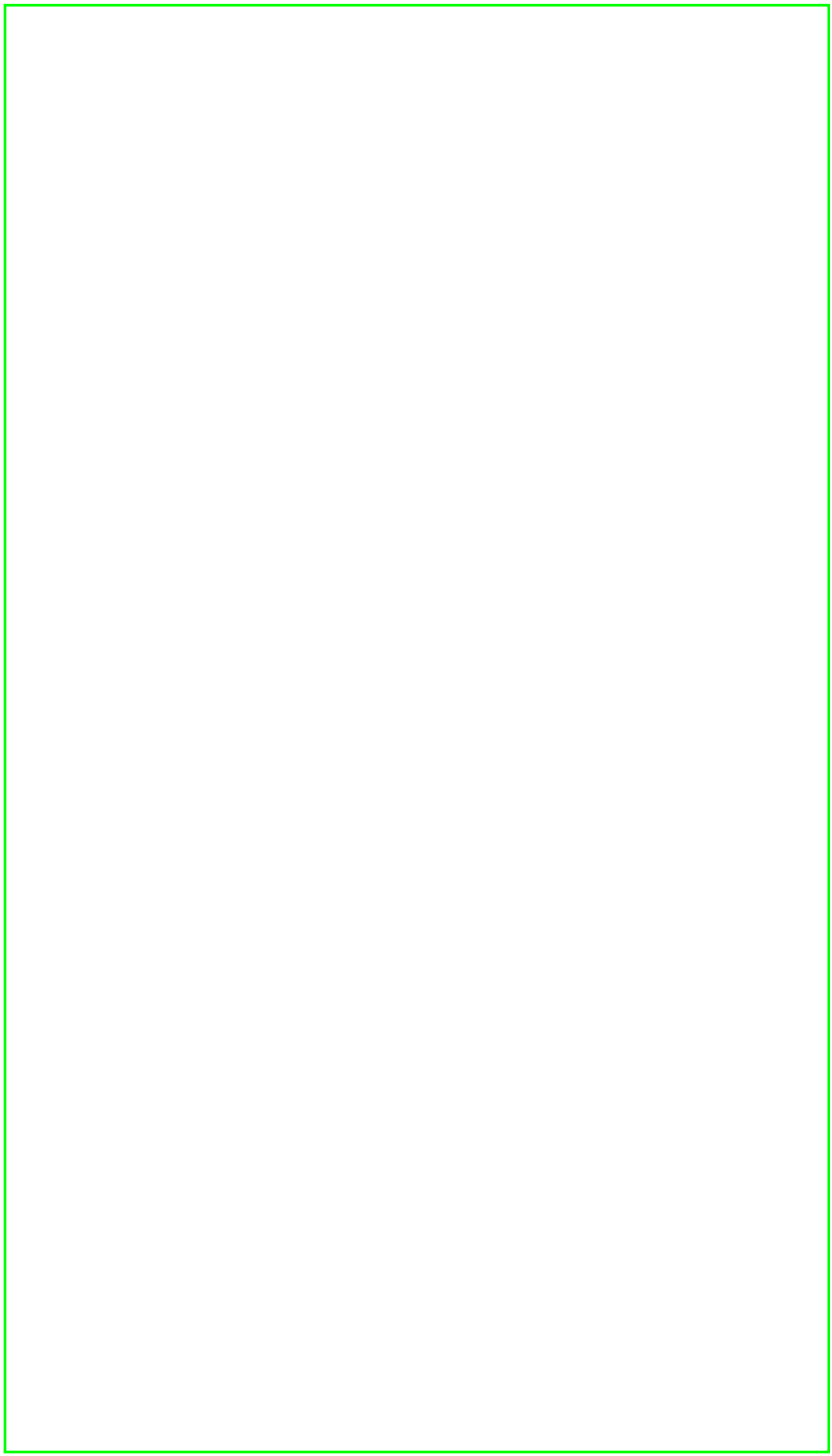
(b) Specify measurable goals and expected outcomes for the project for which the grant funds are requested; and

(c) Specify an evaluation and impact assessment process or procedure for the project for which the grant funds are requested.

(2) Priority for the awarding of grants may be given to applicants that provide a matching amount in money.

(3) Whenever grant funds are used to acquire or lease a building or equipment to be used in a farming or ranching operation or in a private enterprise, any removal from the state or resale of the building or equipment within three years after the date of award of the grant funds without the prior approval of the Department of Economic Development shall be deemed a utilization or diversion of grant funds to a purpose or expenditure not specified or contemplated in the application or terms of the award of the grant for purposes of section 2-5421.

Source: Laws 2005, LB 90, § 11; Laws 2008, LB789, § 1.
Termination date January 1, 2015.



CHAPTER 3
AERONAUTICS

Article.
1. General Provisions. 3-126, 3-129.01.
3. Airport Zoning. 3-303, 3-304.

ARTICLE 1
GENERAL PROVISIONS

Section
3-126. Department of Aeronautics Cash Fund; created; use; investment.
3-129.01. Repealed. Laws 2010, LB 216, § 1.

3-126 Department of Aeronautics Cash Fund; created; use; investment.

The Department of Aeronautics Cash Fund is created. All money received by the department pursuant to the State Aeronautics Department Act shall be remitted to the State Treasurer for credit to the fund. The department 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. 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 Department of 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.

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.
Effective date November 21, 2009.

Cross References

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

3-129.01 Repealed. Laws 2010, LB 216, § 1.

ARTICLE 3
AIRPORT ZONING

Section
3-303. Airport hazard; zoning regulations.
3-304. Zoning board; members; appointment; terms.

3-303 Airport hazard; zoning regulations.

In order to prevent the creation or establishment of airport hazards, every political subdivision that has adopted a comprehensive plan and zoning regulations and 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 hereinafter prescribed, airport zoning regulations for such airport hazard area, which regulations shall meet the minimum regulations as prescribed by the Department of Aeronautics for the airport classifications for each airport and may divide such area into zones and, within such zones, specify the land uses permitted and regulate and restrict the height to which the structures and trees may be erected or allowed to grow.

Source: Laws 1945, c. 233, § 3(1), p. 683; Laws 1961, c. 9, § 1, p. 96; Laws 2010, LB512, § 1.
Effective date July 15, 2010.

3-304 Zoning board; members; appointment; terms.

Where an airport is owned or controlled by a political subdivision and any airport hazard area appertaining to such airport is located outside the area regulated by zoning regulations adopted pursuant to section 3-303, the political subdivision owning or controlling the airport and the political subdivision within which the airport hazard area is located may, by ordinance or resolution duly adopted, create a joint airport zoning board, which board shall have the same power to adopt, administer, and enforce airport zoning regulations applicable to the airport hazard area in question as that vested by section 3-303 in the political subdivision within whose area of zoning jurisdiction such area is located. Each such joint 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, except as otherwise provided in this section. Board members who have served more than two years as of March 1, 1984, shall continue to serve for two more years. Board members who have served less than two years as of March 1, 1984, shall continue to serve for four more years.

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.
Effective date July 15, 2010.

CHAPTER 4
ALIENS

Section
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.
4-111. Public benefits; verification of lawful presence; attestation required.
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.

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 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.

Cross References

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.

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.

Source: Laws 2009, LB403, § 3.

4-111 Public benefits; verification of lawful presence; attestation required.

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:

(1) He or she is a United States citizen; or

(2) 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.

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 this section if such attestation is substantially similar to the format prescribed by the Department of Administrative Services.

Source: Laws 2009, LB403, § 4.

4-112 Public benefits; applicant; eligibility; verification; presumption.

For any applicant who has executed a document described in subdivision (2) 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.

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 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.

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

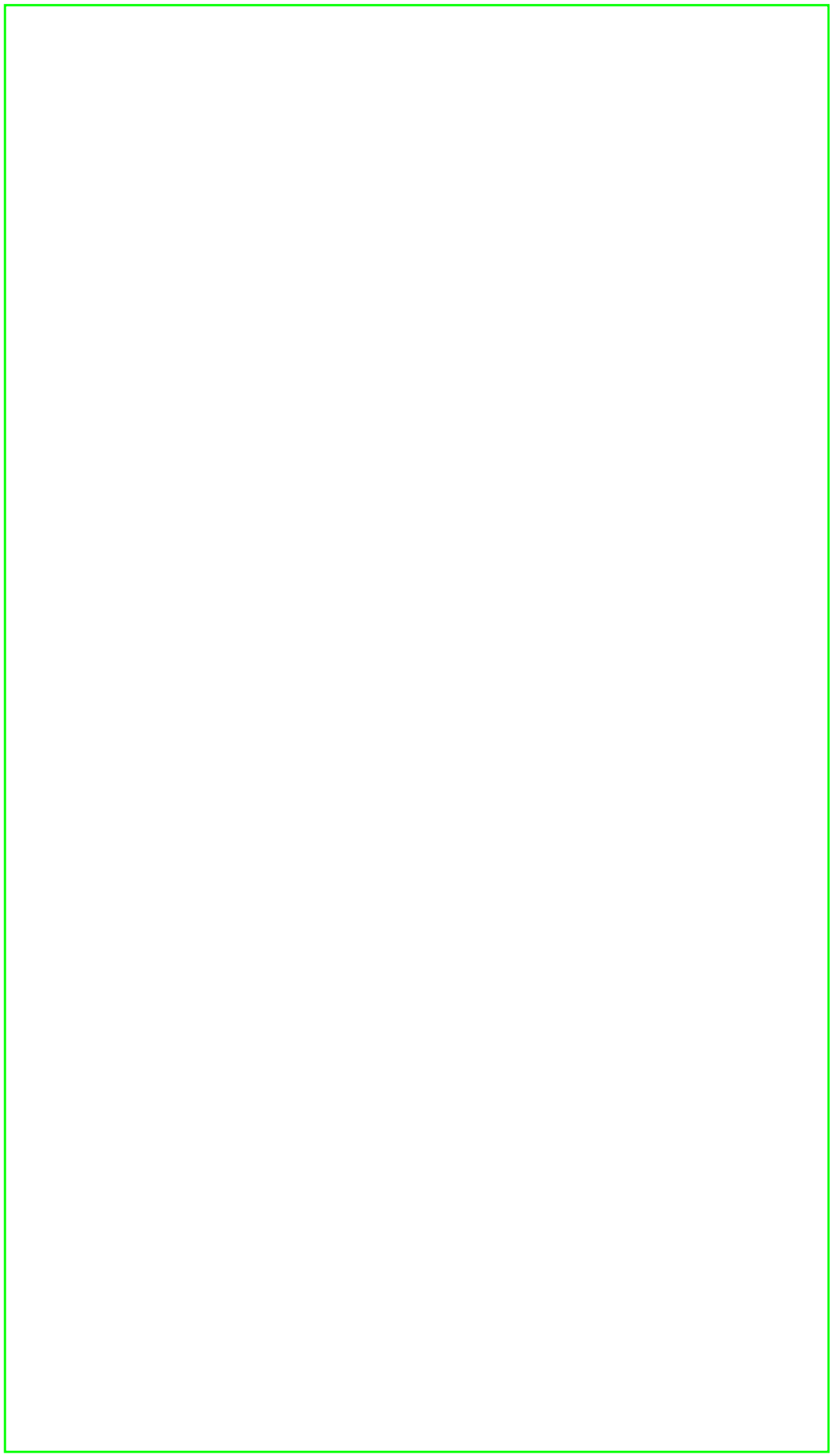
(c) Public employer means any agency or political subdivision of the State of Nebraska.

(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 7
ATTORNEYS AT LAW

Article.
2. Legal Education for Public Service Loan Repayment Act. 7-201 to 7-209.

ARTICLE 2
LEGAL EDUCATION FOR PUBLIC SERVICE LOAN REPAYMENT ACT

Section
7-201. Act, how cited.
7-202. Legislative findings.
7-203. Terms, defined.
7-204. Legal Education for Public Service Loan Repayment Board; created; members.
7-205. Board; chairperson; meetings; expenses.
7-206. Legal education for public service loan repayment 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 Loan Repayment Fund; created; investment.

7-201 Act, how cited.

Sections 7-201 to 7-209 shall be known and may be cited as the Legal Education for Public Service Loan Repayment Act.

Source: Laws 2008, LB1014, § 19.

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. A need exists for public legal service entities to hire competent attorneys. The public is better served by competent and qualified attorneys working in the area of public legal service. Programs providing educational loan forgiveness will encourage law students and other attorneys to seek employment in the area of public legal service and will enable public legal service entities to attract and retain qualified attorneys.

Source: Laws 2008, LB1014, § 20.

7-203 Terms, defined.

For purposes of the Legal Education for Public Service Loan Repayment Act:

(1) Board means the Legal Education for Public Service Loan Repayment Board;

(2) 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

(3) Public legal service means providing legal service to indigent persons while employed by a tax-exempt charitable organization.

Source: Laws 2008, LB1014, § 21.

7-204 Legal Education for Public Service Loan Repayment Board; created; members.

The Legal Education for Public Service Loan Repayment 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, a member of the Nebraska State Bar Association selected by the president of the association, and the chief counsel of the Commission on Public Advocacy.

Source: Laws 2008, LB1014, § 22.

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 their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 2008, LB1014, § 23.

7-206 Legal education for public service loan repayment 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 service loan repayment program. The rules and regulations shall include:

(1) Recipients shall be full-time, salaried attorneys working for a tax-exempt charitable organization and whose primary duties are public legal service;

(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 Loan Repayment 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 attorneys to work in rural areas and attorneys with skills in languages other than English. 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) A general program structure of loan forgiveness shall be established that qualifies for the tax benefits provided in section 108(f) of the Internal Revenue Code, as defined in section 49-801.01; and

(6) Other criteria for loan eligibility, application, payment, and forgiveness necessary to carry out the purposes of the Legal Education for Public Service Loan Repayment Act.

Source: Laws 2008, LB1014, § 24.

7-207 Commission on Public Advocacy; applications; board; recommendations; certification of recipients.

The Commission on Public Advocacy shall accept applications for loan forgiveness 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 Loan Repayment Fund.

Source: Laws 2008, LB1014, § 25.

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 Loan Repayment Act. The donations shall be remitted to the State Treasurer for credit to the Legal Education for Public Service Loan Repayment Fund.

Source: Laws 2008, LB1014, § 26.

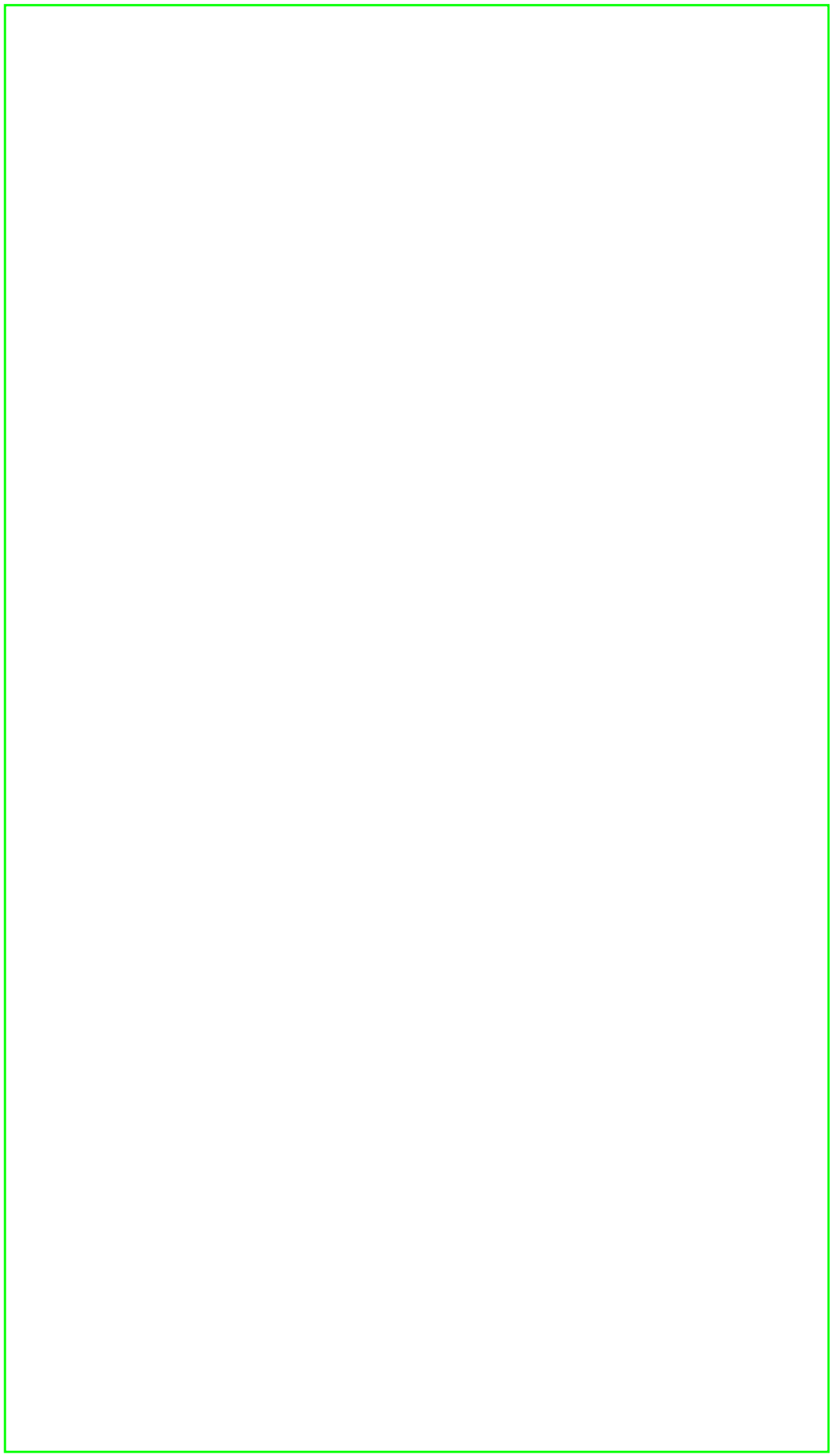
7-209 Legal Education for Public Service Loan Repayment Fund; created; investment.

The Legal Education for Public Service Loan Repayment Fund is created. The fund shall consist of funds donated to the legal education for public service loan repayment program pursuant to section 7-208 and application fees collected under the Legal Education for Public Service Loan Repayment Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2008, LB1014, § 27.

Cross References

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



CHAPTER 8
BANKS AND BANKING

Article.
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ARTICLE 1
GENERAL PROVISIONS

Section
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8-1,140. Federally chartered bank; bank organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.

8-101.01 Act, how cited.

Sections 8-101 to 8-1,140 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.
Effective date March 4, 2010.

8-112 Director of Banking and Finance; records required; list of borrowers; 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 depositor or debtor of any financial institution or other entity regulated by the department or the amount of his or her deposit or debt to anyone, except insofar as may be necessary in the performance of his or her official duty, except that the department may maintain a record of borrowers from the financial institutions in this state and may give information concerning the total liabilities of any such borrowers to any financial institution owning obligations of such borrowers.

(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.

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 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, 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) 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;

(g) 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;

(h) 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

(i) 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 shall be 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.
Effective date March 4, 2010.

Cross References

Residential Mortgage Licensing Act, see section 45-701.

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; 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.
Operative date July 15, 2010.

8-116 Banks; capital stock; amount required.

(1) A charter for a bank hereafter organized shall not be issued unless the corporation applying therefor shall have a surplus of not less than seventy thousand dollars or seventy percent of its paid-up capital stock, whichever is greater, and a paid-up capital stock as follows: In villages or counties of less than one thousand inhabitants, one hundred thousand dollars; in cities, villages, or counties of one thousand or more and less than twenty-five thousand inhabitants, not less than one hundred fifty thousand dollars; in cities or counties of twenty-five thousand or more and less than one hundred thousand inhabitants, not less than two hundred thousand dollars; and in cities or counties of one hundred thousand or more inhabitants, not less than five hundred thousand dollars.

(2) Notwithstanding subsection (1) of this section, the department shall have the authority to determine the minimum amount of paid-up capital stock and surplus required for any corporation applying for a bank charter, which amounts shall not be less than the amounts provided in subsection (1) of this section.

(3) For purposes of this section, population shall be determined by the most recent federal decennial census.

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.

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.

(6) If the department 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 department 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 department to assure itself 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 department.

Source: Laws 2010, LB891, § 2.
Effective date March 4, 2010.

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 certified copy of the 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.

8-122 Issuance of charter to transact business.

(1) After the examination and approval by the department of the application required by section 8-120, if the department upon investigation and after any public hearing on the application held pursuant to section 8-115.01 shall be satisfied that the stockholders 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 department 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.

8-133 Rate of interest; inducements prohibited; penalties; pledge of letters of credit authorized; notice required.

(1) A state-chartered bank may pay interest at any rate on any deposits made or retained in the bank.

(2) Any officer, director, stockholder, or employee of a bank or any other person who directly or indirectly, either personally or for the bank, pays any money, gives any consideration of value, or pledges any assets, except as provided by law, as an inducement, in addition to the legal interest, for making or retaining a deposit in the bank shall be guilty of a Class IV felony. Any depositor who accepts any such inducement shall be guilty of a Class IV felony. Deposits made in violation of this section shall not be entitled to priority of payment from the assets of the bank. In determining the maximum interest that may be paid on deposits, the bank shall consider generally recognized sound banking principles, the financial soundness of banks, competitive conditions, and general economic conditions.

(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. A bank may also 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.

(4) Nothing in this section shall prohibit a bank or any officer, director, stockholder, or employee thereof from providing to a depositor a guaranty bond or 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. Any bank which offers letters of credit for consideration to depositors pursuant to this section shall post a notice in the lobby of each office of such bank stating that letters of credit issued by the Federal Home Loan Bank of Topeka which provide coverage for deposits in excess of the amounts insured by the Federal Deposit Insurance Corporation may be available to depositors of the bank. Provision of a letter of credit issued by the Federal Home Loan Bank of Topeka by a bank to a depositor shall be at the discretion of the bank. The notice required under this section shall be sufficient if made in substantially the following form:

Notice

This bank is a member of the Federal Home Loan Bank of Topeka and offers for consideration Federal Home Loan Bank of Topeka letters of credit which provide coverage for deposits in excess of the amounts insured by the Federal Deposit Insurance Corporation. Please contact a representative of the bank to determine if such a letter of credit is available to you.

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.

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. Operative date July 15, 2010.

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 thereby forfeited. Before such charter shall be declared forfeited, such violation shall be determined and adjudged by a court of competent jurisdiction in a suit brought for that purpose by the Director of Banking and Finance in his or her own name. In case of such violation, every director who participated in or knowingly assented to the same shall be held liable in his or her personal and individual capacity for all damages which the bank, its shareholders, or any other person shall have 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.
Operative date July 15, 2010.

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).

(8) For purposes of this section:

(a) Executive officer shall mean 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 shall include 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 shall mean 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 shall be guilty of a Class IV felony.

(10) The Director of Banking and Finance shall have authority to adopt and promulgate rules and regulations to implement this section, including rules or regulations defining or further defining terms used in this section, consistent with the provisions of 12 U.S.C. 84 and implementing Regulation O.

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.

8-157 Branch banking; Director of Banking and Finance; powers.

(1) Except as otherwise provided in this section and section 8-2104, 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 such bank is located an unlimited number of branches at which all banking transactions allowed by law may be made, except that if 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 three 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 three 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, 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 (a) 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, and (b) give notice of such application to all financial institutions located within the county where the proposed branch or mobile branch 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 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 and mailing required by this section shall be paid by the applicant.

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.
Operative date July 15, 2010.

8-157.01 Financial institution; electronic terminals; use; user financial institution.

(1) Any financial institution which has a main chartered office or approved branch located in the State of Nebraska may establish and maintain any number of automatic teller machines at which all banking transactions, defined as receiving deposits of every kind and nature and crediting such to customer

accounts, cashing checks and cash withdrawals, transfer of funds from checking accounts to savings accounts, transfer of funds from savings accounts to checking accounts, transfer of funds from either checking accounts and savings accounts to accounts of other customers, payment transfers from customer accounts into accounts maintained by other customers of the financial institution or the financial institution, including preauthorized draft authority, preauthorized loans, and credit transactions, receiving payments payable at the financial institution or otherwise, and account balance inquiry, may be conducted. Any other transaction incidental to the business of the financial institution or which will provide a benefit to the financial institution's customers or the general public may be conducted at an automatic teller machine upon thirty days' prior written notice to the director if the director does not object to the proposed other transaction within the thirty-day notice period. Neither such automatic teller machines nor the transactions conducted thereat shall be construed as the establishment of a branch or as branch banking. Such automatic teller machines shall be made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution. It shall not be deemed discrimination if an automatic teller machine does not offer the same transaction services as other automatic teller machines or if there are no fees charged between affiliate financial institutions for the use of automatic teller machines.

(2) Any financial institution may become a user financial institution by agreeing to pay the establishing financial institution its automatic teller machine usage fee. Such agreement shall be implied by the use of such automatic teller machines. Nothing in this subsection shall prohibit a user financial institution from agreeing to responsibilities and benefits which might be contained in a standardized agreement. The establishing financial institution or its designated data processing center shall be responsible for transmitting transactions originating from its automatic teller machine to a switch, but nothing contained in this section shall be construed to require routing of all transactions to a switch. All automatic teller machines must be made available on a nondiscriminating basis, for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution, through methods, fees, and processes that the establishing financial institution has provided for switching transactions. The director, upon notice and after a hearing, may terminate or suspend the use of any automatic teller machine if he or she determines that it is not available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution or that transactions originated by customers of user financial institutions are not being routed to a switch or other data processing centers. Nothing in this section may be construed to prohibit nonbank employees from assisting in transactions originated at the automatic teller machines, and such assistance shall not be deemed to be engaging in the business of banking. Such nonbank employees may be trained in the use of the automatic teller machines by financial institution employees.

(3) An establishing financial institution shall not be deemed to make an automatic teller machine available on a nondiscriminating basis if, through personnel services offered, advertising on or off the automatic teller machine's

premises, or otherwise, it discriminates in the use of the automatic teller machine against any user financial institution which has a main chartered office or approved branch located in the State of Nebraska.

(4)(a) 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, 2004. Such notice shall (i) be posted in a prominent and conspicuous location on or at the automatic teller machine at which the electronic funds transfer is initiated by the consumer and (ii) 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.

(b) Subdivision (a)(ii) of this subsection shall not apply until January 1, 2005, to any automatic teller machine that lacks the technical capability to disclose the notice on the screen or to issue a paper notice after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction.

(5) A point-of-sale terminal may be established at any point within this state. A financial institution may contract with a seller of goods and services or any other third party for the operation of point-of-sale terminals. A point-of-sale terminal shall be made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution. Nothing in this subsection shall prohibit payment of fees to a financial institution which issues an access device used to initiate electronic funds transfer transactions at a point-of-sale terminal.

(6) A seller of goods and services or any other third party on whose premises one or more point-of-sale terminals are established shall not be, solely by virtue of such establishment, a financial institution and shall not be subject to the laws governing, or other requirements imposed on, financial institutions, except for the requirement that it faithfully perform its obligations in connection with any transaction originated at any point-of-sale terminal on its premises. The acquiring financial institution shall be responsible for compliance with all applicable standards, rules, and regulations governing point-of-sale transactions.

(7) Any financial institution, upon a request of the director, shall file with the director a current listing of all point-of-sale terminals established by the financial institution within this state. For purposes of this subsection, point-of-sale terminal shall include a group of one or more of such terminals established at a single business location. Such listing shall contain any reasonable descriptive information pertaining to the point-of-sale terminal as required by the director. Neither the establishment of such point-of-sale terminal nor any transactions conducted thereat shall be construed as the establishment of a branch or as branch banking. Following establishment of a point-of-sale terminal, the director, upon notice and after a hearing, may terminate or suspend the use of such point-of-sale terminal if he or she determines that it is not made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution, that the necessary information is not on file with the director, or that transactions originated by

customers of user financial institutions are not being routed to a switch or other data processing center. Nothing in this section shall be construed to prohibit nonbank employees from assisting in transactions originated at the point-of-sale terminals, and such assistance shall not be deemed to be engaging in the business of banking.

(8) Transactions at point-of-sale terminals may include:

(a) Check guarantees;

(b) Account balance inquiries;

(c) Transfers of funds from a customer's account for payment to a seller's account for goods and services on whose premises the point-of-sale terminal is located in payment for the goods and services;

(d) Cash withdrawals by a customer from the customer's account or accounts;

(e) Transfers between accounts of the same customers at the same financial institution; and

(f) Such other transactions as the director, upon application, notice, and hearing, may approve.

(9)(a) Automatic teller machines may be established and maintained by a financial institution which has a main chartered office or approved branch located in the State of Nebraska, by a group of two or more of such financial institutions, or by a combination of such financial institution or financial institutions and a third party.

(b) Point-of-sale terminals may be established and maintained by a financial institution which has a main chartered office or approved branch located in the State of Nebraska, by a group of two or more of such financial institutions, or by a combination of such financial institutions and a third party. No one, through personnel services offered, advertising on or off the point-of-sale terminal premises, or otherwise, may discriminate in the use of the point-of-sale terminal against any other user financial institution.

(10) All financial institutions shall be given an equal opportunity for the use of and access to a switch, and no discrimination shall exist or preferential treatment be given in either the operation of such switch or the charges for use thereof. The operation of such switch shall be with the approval of the director. Approval of such switch shall be given by the director when he or she determines that its design and operation are such as to provide access thereto and use thereof by any financial institution without discrimination as to access or cost of its use. Any switch established in Nebraska and approved by the director prior to January 1, 1993, shall be deemed to be approved for purposes of this section.

(11) Use of an automatic teller machine or a point-of-sale terminal through access to a switch and use of any switch shall be made available on a nondiscriminating basis to any financial institution. A financial institution shall only be permitted use of the switch if the financial institution conforms to reasonable technical operating standards which have been established by the switch.

(12) To assure maximum safety and security against malfunction, fraud, theft, and other accidents or abuses and to assure that all such access devices will have the capability of activating all automatic teller machines and point-of-sale terminals established in this state, no automatic teller machine or point-of-sale

terminal shall accept an access device which does not conform to such specifications as are generally accepted. No automatic teller machine or point-of-sale terminal shall be established or operated which does not accept an access device which conforms with such specifications.

An automatic teller machine shall bear a logo type or other identification symbol designed to advise customers that the automatic teller machine may be activated by any access device which complies with the generally accepted specifications. A point-of-sale terminal shall either bear or the premises on which the point-of-sale terminal is established shall contain a visible logo type or other identification symbol designed to advise customers that the point-of-sale terminal may be activated by any access device which complies with the generally accepted specifications. An automatic teller machine or point-of-sale terminal may also bear, at the option of the establishing or acquiring financial institution, any of the following:

(a) The names of all individual financial institutions using such automatic teller machines or point-of-sale terminals in alphabetical order, except that the establishing or acquiring financial institution may be listed first, and in a uniform typeface, size, and color; or

(b) The logo type or symbol of any association, corporation, or other entity or organization formed by one or more of the financial institutions using such automatic teller machines or point-of-sale terminals.

(13) If the director, upon notice and hearing, determines at any time that the design or operation of a switch or provision for use thereof does discriminate against any financial institution in providing access thereto and use thereof either through access thereto or by virtue of the cost of its use, he or she may revoke his or her approval of such switch operation and immediately order the discontinuance of the operation of such switch.

(14) If it is determined by the director, after notice and hearing, that discrimination against any financial institution has taken place, that one financial institution has been preferred over another, or that any financial institution or person has not complied with any of the provisions of this section, he or she shall immediately issue a cease and desist order or an order for compliance within ten days after the date of the order, and upon noncompliance with such order, the offending financial institution shall be subject to sections 8-1,134 to 8-1,139 and to having the privileges granted in this section revoked.

(15) For purposes of this section:

(a) Access means the ability to utilize an automatic teller machine or a point-of-sale terminal to conduct permitted banking transactions or purchase goods and services electronically;

(b) Access device means a code, a transaction card, or any other means of access to a customer's account, or any combination thereof, that may be used by a customer for the purpose of initiating an electronic funds transfer at an automatic teller machine or a point-of-sale terminal;

(c) Account means a checking account, a savings account, a share account, or any other customer asset account held by a financial institution. Such an account may also include a line of credit which a financial institution has agreed to extend to its customer;

(d) Acquiring financial institution means any financial institution establishing a point-of-sale terminal;

(e) Affiliate financial institution means any financial institution which is a subsidiary of the same bank holding company;

(f) Electronic funds transfer means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through a point-of-sale terminal, an automatic teller machine, or a personal terminal for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account;

(g) Establishing financial institution means any financial institution establishing an automatic teller machine which has a main chartered office or approved branch located in the State of Nebraska;

(h) Financial institution means a state-chartered or federally chartered bank, savings bank, building and loan association, savings and loan association, or credit union, or a subsidiary of any such entity;

(i) Foreign financial institution means a financial institution located outside the United States;

(j) Personal identification number means a combination of numerals or letters selected for a customer of a financial institution, a merchant, or any other third party which is used in conjunction with an access device to initiate an electronic funds transfer transaction;

(k) Personal terminal means a personal computer and telephone, wherever located, operated by a customer of a financial institution for the purpose of initiating a transaction affecting an account of the customer; and

(l) User financial institution means any financial institution which desires to avail itself of and provide its customers with automatic teller machine or point-of-sale terminal services.

(16) Nothing in this section prohibits ordinary clearinghouse transactions between financial institutions.

(17) Nothing in this section requires any federally chartered establishing financial institution to obtain the approval of the director for the establishment of any automatic teller machine.

(18) Nothing in this section shall prevent any financial institution which has a main chartered office or an approved branch located in the State of Nebraska from participating in a national automatic teller machine program to allow its customers to use automatic teller machines located outside of the State of Nebraska which are established by out-of-state financial institutions or foreign financial institutions or to allow customers of out-of-state financial institutions or foreign financial institutions to use its automatic teller machines located in the State of Nebraska. Such participation and any automatic teller machine usage fees charged or received pursuant to the national automatic teller machine program or usage fees charged for the use of its automatic teller machines by customers of out-of-state financial institutions or foreign financial institutions shall not be considered for purposes of determining if an automatic teller machine located in the State of Nebraska has been made available on a nondiscriminating basis for use by customers of any financial institution which has a main chartered office or approved branch located in the State of Nebraska which becomes a user financial institution.

(19) An agreement to operate or share an automatic teller machine may not prohibit, limit, or restrict the right of the operator or owner of the automatic teller machine to charge a customer conducting a transaction using an account

from a foreign financial institution an access fee or surcharge not otherwise prohibited under state or federal law.

Source: Laws 1987, LB 615, § 3; Laws 1992, LB 470, § 2; Laws 1993, LB 81, § 8; Laws 1993, LB 423, § 2; Laws 1999, LB 396, § 9; Laws 2000, LB 932, § 3; Laws 2002, LB 1089, § 3; Laws 2003, LB 131, § 4; Laws 2004, LB 999, § 2; Laws 2009, LB75, § 1; Laws 2009, LB327, § 4.

8-162.02 State-chartered bank; fiduciary account controlled by trust department; collateral; public funds exempt.

(1) A state-chartered 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 not insured or guaranteed by the Federal Deposit Insurance Corporation, a state-chartered 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.

(3) A state-chartered 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 state-chartered 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 state-chartered bank are not subject to this section.

Source: Laws 2009, LB327, § 2.

8-163 Dividends; withdrawal of capital or surplus prohibited; not made; when.

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 undivided profits on hand, 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 net profits on hand without the written permis-

sion of the director. As used in this section, net profits on hand means the remainder of all earnings from current operations plus actual recoveries on loans and investments and other assets after deducting from the total thereof all current operating expenses, losses, and bad debts, accrued dividends on preferred stock, if any, and federal and state taxes, for the present and two immediately preceding calendar years.

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.

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. part 567, as such part existed on January 1, 2010, except that if at any time the department determines that the capital of such a converted savings association is impaired, the department may require the members to make up the capital impairment.

(4) The director shall have the power to 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.
Operative date July 15, 2010.

8-1,140 Federally chartered bank; bank organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.

Notwithstanding any of the other provisions of the Nebraska Banking Act or any other Nebraska statute, any bank incorporated under the laws of this state and organized under the provisions of the act, or under the laws of this state as they existed prior to May 9, 1933, shall directly, or indirectly through a subsidiary or subsidiaries, have all the rights, powers, privileges, benefits, and immunities which may be exercised as of January 1, 2010, by a federally chartered bank doing business in Nebraska, including the exercise of all powers and activities that are permitted for a financial subsidiary of a federally chartered bank. Such rights, powers, privileges, benefits, and immunities shall

not relieve such bank from payment of state taxes assessed under any applicable laws of this state.

Source: Laws 1999, LB 396, § 5; Laws 2000, LB 932, § 4; Laws 2001, LB 53, § 2; Laws 2002, LB 957, § 7; Laws 2003, LB 217, § 9; Laws 2004, LB 999, § 3; Laws 2005, LB 533, § 11; Laws 2006, LB 876, § 12; Laws 2007, LB124, § 6; Laws 2008, LB851, § 7; Laws 2009, LB327, § 6; Laws 2010, LB890, § 6.
Operative date March 4, 2010.

ARTICLE 2
TRUST COMPANIES

Section
8-209. Pledge of securities with Department of Banking and Finance; amount required.
8-210. Securities; kinds authorized; pledge with Department of Banking and Finance.
8-223. Statements required; when; annual report, defined; penalty.
8-224. Reports; form; publication; trust company; disclosure statement.
8-234. Branch trust offices authorized; procedure.

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 federal savings association authorized by the Director of the Office of Thrift Supervision to act in a fiduciary capacity in this state, any federally chartered trust company, and any out-of-state trust company authorized under the Interstate Trust Company Office Act shall make similar pledges with the department, and all such deposits of national banks 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.

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.

8-223 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 8-101.01.

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 web site, the home page of the web site 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 8-101.01.

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. 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.
Operative date July 15, 2010.

ARTICLE 3

BUILDING AND LOAN ASSOCIATIONS

Section
8-355. Federal savings and loan; associations organized under laws of Nebraska; rights, privileges, benefits, and immunities; exception.
8-374. Department; hearing on application; notice; purpose.

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, 2010, 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.
Operative date March 4, 2010.

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.

Source: Laws 1981, LB 500, § 19; Laws 2008, LB851, § 12; Laws 2010, LB890, § 9.
Operative date July 15, 2010.

ARTICLE 6
ASSESSMENTS AND FEES

Section
8-602. Department of Banking and Finance; services; schedule of fees.

8-602 Department of Banking and Finance; services; schedule of fees.

The Director of Banking and Finance shall charge and collect fees for certain services rendered by the Department of Banking and Finance according to the following schedule:

(1) For filing and examining articles of incorporation, articles of association, and bylaws, except credit unions, one hundred dollars, and for credit unions, fifty dollars;

(2) For filing and examining an amendment to articles of incorporation, articles of association, and bylaws, except credit unions, fifty dollars, and for credit unions, fifteen dollars;

(3) For issuing to banks, credit card banks, trust companies, and building and loan associations a charter, authority, or license to do business in this state, a sum which shall be determined on the basis of one dollar and fifty cents for each one thousand dollars of authorized capital, except that the minimum fee in each case shall be two hundred twenty-five dollars;

(4) For issuing an executive officer's or loan officer's license, fifty dollars at the time of the initial license and fifteen dollars on or before January 15 each year thereafter, except credit unions for which the fee shall be twenty-five dollars at the time of the initial license and fifteen dollars on or before January 15 each year thereafter;

(5) For affixing certificate and seal, five dollars;

(6) For making substitution of securities held by it and issuing a receipt, fifteen dollars;

(7) For issuing a certificate of approval to a credit union, ten dollars;

(8) For investigating the applications required by sections 8-117, 8-120, and 8-331 and the documents required by section 8-201, the cost of such examination, investigation, and inspection, including all legal expenses and the cost of any hearing transcript, with a minimum fee under (a) sections 8-117, 8-120, and 8-2402 of two thousand five hundred dollars, (b) section 8-331 of two thousand dollars, and (c) section 8-201 of one thousand dollars. The department may require the applicant to procure and give a surety bond in such principal amount as the department may determine and conditioned for the payment of the fees provided in this subdivision;

(9) For registering a statement of intention to engage in the business of making personal loans pursuant to section 8-816, fifty dollars;

(10) For the handling of pledged securities as provided in sections 8-210 and 8-1006, 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 company, national bank, federal savings association, federally chartered trust company, out-of-state trust company authorized under the Interstate Trust Company Office Act, or state-chartered bank 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 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 or a merger of a state bank and a national bank in which the state bank is the surviving entity, five hundred dollars;

(17) For investigating an application or a notice to establish a branch trust office, five hundred dollars;

(18) For investigating an application or a notice to establish a representative trust office, five hundred dollars;

(19) For investigating an application to establish a credit union branch under section 21-1725.01, two hundred fifty dollars;

(20) For investigating an applicant under section 8-1513, five thousand dollars; and

(21) For investigating a request to extend a conditional bank charter under section 8-117, one thousand dollars.

Source: Laws 1937, c. 20, § 2, p. 129; C.S.Supp.,1941, § 8-702; R.S.1943, § 8-602; Laws 1957, c. 10, § 5, p. 132; Laws 1961, c. 15, § 8, p. 113; Laws 1967, c. 23, § 2, p. 127; Laws 1969, c. 43, § 1, p. 252; Laws 1972, LB 1194, § 1; Laws 1973, LB 164, § 21; Laws 1976, LB 561, § 3; Laws 1987, LB 642, § 1; Laws 1992, LB 470, § 5; Laws 1992, LB 757, § 11; Laws 1993, LB 81, § 54; Laws 1995, LB 599, § 4; Laws 1998, LB 1321, § 68; Laws 1999, LB 396, § 13; Laws 2000, LB 932, § 17; Laws 2002, LB 1089, § 7; Laws 2002, LB 1094, § 7; Laws 2003, LB 131, § 8; Laws 2003, LB 217, § 14; Laws 2004, LB 999, § 5; Laws 2005, LB 533, § 20; Laws 2007, LB124, § 9; Laws 2009, LB327, § 10; Laws 2010, LB891, § 3.
Effective date March 4, 2010.

Cross References

Interstate Trust Company Office Act, see section 8-2301.

ARTICLE 7
STATE-FEDERAL COOPERATION ACTS; CAPITAL NOTES

(a) FEDERAL BANKING ACT OF 1933

Section
8-702. Banking institutions; maintain insurance or provide notice; notice requirements; violation; penalty; proof of compliance filed with Department of Banking and Finance; employment of mortgage loan originators; requirements; automatic forfeiture of charter.

(a) FEDERAL BANKING ACT OF 1933

8-702 Banking institutions; maintain insurance or provide notice; notice requirements; violation; penalty; proof of compliance filed with Department of

Banking and Finance; employment of mortgage loan originators; requirements; automatic forfeiture of charter.

(1) Except as provided in subsection (2) of this section, any banking institution organized under the laws of this state shall, before a charter may be issued, enter into such contracts, incur such obligations, and generally do and perform any and all such acts and things whatsoever as may be necessary or appropriate in order to obtain membership in the Federal Deposit Insurance Corporation and provide for insurance of deposits in the banking institution. Any banking institution may take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights, or privileges which may at any time be available or inure to banking institutions or to their depositors, creditors, stockholders, conservators, receivers, or liquidators by virtue of those provisions of section 8 of the Federal Banking Act of 1933 (section 12B of the Federal Reserve Act, as amended) which establish the Federal Deposit Insurance Corporation and provide for the insurance of deposits or of any other provisions of that or of any other act or resolution of Congress to aid, regulate, or safeguard banking institutions and their depositors, including any amendments of the same or any substitutions therefor. Any banking institution may also subscribe for and acquire any stock, debentures, bonds, or other types of securities of the Federal Deposit Insurance Corporation and comply with the lawful regulations and requirements from time to time issued or made by such corporation.

(2)(a) A banking institution which has not complied with subsection (1) of this section and which was in operation on September 4, 2005, may continue to operate if it provides notice to depositors and holders of savings certificates, certificates of indebtedness, or other similar instruments that such deposits or instruments are not insured. Such notice shall be given (i) on the date any such deposit, savings certificate, certificate of indebtedness, or similar instrument is created for deposits made and instruments created on or after October 1, 1984, and (ii) annually on October 1 thereafter as follows: AS PROVIDED BY THE LAWS OF THE STATE OF NEBRASKA YOU ARE HEREBY NOTIFIED THAT YOUR DEPOSIT, SAVINGS CERTIFICATE, CERTIFICATE OF INDEBTEDNESS, OR OTHER SIMILAR INSTRUMENT IS NOT INSURED. Any advertising conducted by such banking institution shall in each case state: THE DEPOSITS, SAVINGS CERTIFICATES, CERTIFICATES OF INDEBTEDNESS, OR SIMILAR INSTRUMENTS OF THIS INSTITUTION ARE NOT INSURED. The banking institution shall also display such notice in one or more prominent places in all facilities in which the institution operates. All such notices and statements shall be given in large or contrasting type in such a manner that such notices shall be conspicuous. Each willful failure to give the notice prescribed in subdivision (2)(a) of this section shall constitute a Class II misdemeanor. All officers and directors of any such banking institution shall be jointly and severally responsible for the issuance of the notices described in subdivision (2)(a) of this section in the form and manner described. The banking institution shall annually by November 1 file proof of compliance with subdivision (2)(a) of this section with the Department of Banking and Finance.

(b) Effective July 31, 2010, or within sixty days after the Nationwide Mortgage Licensing System and Registry is capable of accepting such registrations, whichever occurs later, any banking institution described in subdivision (a) of this subsection that employs mortgage loan originators, as defined in section 45-702, shall register such employees with the Nationwide Mortgage Licensing

System and Registry, as defined in section 45-702, by furnishing the following information concerning the employees' identities to the Nationwide Mortgage Licensing System and Registry:

(i) Fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information, for a state and national criminal history background check; and

(ii) Personal history and experience, including authorization for the Nationwide Mortgage Licensing System and Registry to obtain information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(3) The charter of any banking institution which fails to comply with the provisions of this section shall be automatically forfeited and such banking institution shall be liquidated and dissolved, either voluntarily by its board of directors under the supervision of the department or involuntarily by the department as in cases of insolvency, except that such charter shall not be automatically forfeited for failure to comply with subdivision (2)(b) of this section if the banking institution cures such violation within sixty days after receipt of notice of such violation from the Department of Banking and Finance. Any banking institution whose charter is automatically forfeited under the provisions of this subsection which continues to engage in the business for which it had been chartered after such forfeiture, as well as the directors and officers thereof, shall be subject to the penalties provided by law for illegally engaging in the business of banking.

Source: Laws 1935, c. 8, § 2, p. 73; C.S.Supp.,1941, § 8-402; R.S.1943, § 8-702; Laws 1963, c. 31, § 2, p. 190; Laws 1983, LB 252, § 5; Laws 1984, LB 899, § 3; Laws 2005, LB 533, § 22; Laws 2009, LB328, § 2; Laws 2010, LB892, § 1.
Effective date March 4, 2010.

ARTICLE 9

BANK HOLDING COMPANIES

Section
8-908. Act, how cited.
8-910. Unlawful acts; authorized ownership or control of banks; limitation.
8-918. Unsafe or unauthorized activities; powers of department.

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.
Operative date July 15, 2010.

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 8-101.01.

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.
Operative date July 15, 2010.

ARTICLE 10

NEBRASKA SALE OF CHECKS AND FUNDS TRANSMISSION ACT

Section
8-1001. Terms, defined.
8-1001.01. Act, how cited.
8-1018. Acquisition of control of licensee; notice to director; disapproval; conditions; notice; hearing; order.
8-1019. Licensee; material change in application; notice; report; when required.

8-1001 Terms, defined.

For purposes of the Nebraska Sale of Checks and Funds Transmission Act, unless the context otherwise requires:

(1) Person means any individual, partnership, limited liability company, association, joint-stock association, trust, or corporation, but does not include the United States Government or the government of the State of Nebraska;

(2) Licensee means any person duly licensed pursuant to the act;

(3) Check means any check, draft, money order, personal money order, or other instrument, order, or instruction for the transmission or payment of money;

(4) Personal money order means any instrument for the transmission or payment of money in relation to which the purchaser or remitter appoints or

purports to appoint the seller thereof as his or her agent for the receipt, transmission, or handling of money, whether such instrument is signed by the seller, by the purchaser or remitter, or by some other person;

(5) Director means the Director of Banking and Finance;

(6) Financial institution has the same meaning as in section 8-101;

(7) Transmission means a transfer by oral, written, or electronic means or instruction; and

(8) 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 (a) 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, (b) directly or indirectly has the right to vote ten percent or more of a class of voting security or has the power to sell or direct the sale of ten percent or more of a class of voting securities, (c) in the case of a limited liability company, is a managing member, or (d) in the case of a partnership, has the right to receive, upon dissolution, or has contributed, ten percent or more of the capital, is presumed to control that licensee.

Source: Laws 1965, c. 26, § 1, p. 192; Laws 1993, LB 121, § 94; Laws 2001, LB 53, § 8; Laws 2003, LB 217, § 18; Laws 2004, LB 999, § 7; Laws 2009, LB327, § 11.

8-1001.01 Act, how cited.

Sections 8-1001 to 8-1019 shall be known and may be cited as the Nebraska Sale of Checks and Funds Transmission Act.

Source: Laws 1965, c. 26, § 16, p. 198; Laws 2001, LB 53, § 18; R.S.Supp.,2002, § 8-1015; Laws 2003, LB 217, § 19; Laws 2006, LB 876, § 14; Laws 2009, LB327, § 12.

8-1018 Acquisition of control of licensee; notice to director; disapproval; conditions; notice; hearing; order.

(1) No person acting personally or as an agent shall acquire control of any licensee under the Nebraska Sale of Checks and Funds Transmission 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 it within thirty days, and unless he or she disapproves the proposed acquisition within that period of time, the acquisition shall become effective on the thirty-first day after receipt without the director's approval, except that the director may extend the thirty-day period an additional thirty days if, in his or her judgment, any material information submitted is substantially inaccurate or the acquiring 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 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. The director may require that any acquiring person comply with the application requirements of section 8-1005.

(b) 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.

(c) Within fifteen business days after receipt of written notice of disapproval, the acquiring person may request a hearing on the proposed acquisition in accordance with the Administrative Procedure Act and rules and regulations of the Department of Banking and Finance. 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 2009, LB327, § 13.

Cross References

Administrative Procedure Act, see section 84-920.

8-1019 Licensee; material change in application; notice; report; when required.

(1) A licensee shall file notice with the director within thirty calendar days of any material changes 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 bankruptcy 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 commencement of a proceeding 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 person in control of, the licensee for a felony; or

(f) A charge or conviction of an authorized agent for a felony.

Source: Laws 2009, LB327, § 14.

ARTICLE 11

SECURITIES ACT OF NEBRASKA

Section
8-1110. Securities exempt from registration.

Section
8-1111. Transactions exempt from registration.
8-1115.01. Investigation or other proceeding; prohibited acts.
8-1116. Violations; injunction; receiver; appointment; additional court orders authorized.
8-1123. Act, how cited.

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) A registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act; (b) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or (c) 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 security listed on the Chicago Stock Exchange, the Chicago Board Options Exchange, Tier I of the Pacific Stock Exchange, Tier I of the Philadelphia Stock Exchange, or any other stock exchange or market system approved by the director, if, in each case, quotations have been available and public trading has taken place for such class of security prior to the offer or sale of that security in reliance on the exemption; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing or to any security listed on the New York Stock Exchange, the American Stock Exchange, or the NASDAQ Global Market.

(b) The issuer of any security which has been approved for listing or designation on notice of issuance on such exchanges or market systems, and for which no quotations have been available and no public trading has taken place for any of such issuer's securities, may rely upon the exemption stated in subdivision (5)(a) of this section, if a notice is filed with the director, together with a filing fee of two hundred dollars, prior to first use of a disclosure document covering such securities in this state, except that failure to file such notice in a timely manner may be cured by the director in his or her discretion.

(c) The director may adopt and promulgate rules and regulations which, after notice to such exchange or market system and an opportunity to be heard,

remove any such exchange or market system from the exemption stated in subdivision (5)(a) of this section if the director finds that the listing requirements or market surveillance of such exchange or market system is such that the continued availability of such exemption for such exchange or market system is not in the public interest and that removal is necessary for the protection of investors;

(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.

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 and Retrieval System (EDGAR) contains:

(A) A description of the business and operations of the issuer;

(B) The names of the issuer's officers and the names of the issuer's directors, if any, or, in the case of a non-United-States issuer, the corporate equivalents of such persons in the issuer's country of domicile;

(C) An audited balance sheet of the issuer as of a date within eighteen months or, in the case of a reorganization or merger when parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; and

(D) An audited income statement for each of the issuer's immediately preceding two fiscal years, or for the period of existence of the issuer if in existence for less than two years, or, in the case of a reorganization or merger when the parties to the reorganization or merger had such audited income statement, a pro forma income statement; and

(v) The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System (NASDAQ), unless:

(A) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;

(B) The issuer of the security has been engaged in continuous business, including predecessors, for at least three years; or

(C) The issuer of the security has total assets of at least two million dollars based on an audited balance sheet as of a date within eighteen months or, in the case of a reorganization or merger when parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; or

(b) Any nonissuer transaction in a security by a registered agent of a registered broker-dealer if:

(i) The issuer of the security is actually engaged in business and not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons; and

(ii) The security is senior in rank to the common stock of the issuer both as to payment of dividends or interest and upon dissolution or liquidation of the issuer and such security has been outstanding at least three years and the issuer or any predecessor has not defaulted within the current fiscal year or the three immediately preceding fiscal years in the payment of any dividend, interest, principal, or sinking fund installment on the security when due and payable;

(3) Any nonissuer transaction effected by or through a registered agent of a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the director may by rule or regulation require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each such form be preserved by the broker-dealer for a specified period;

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust or by an agreement for the sale of real estate or chattels if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, are offered and sold as a unit. Such exemption shall not apply to any transaction in a bond or other evidence of indebtedness secured by a real estate mortgage or deed of trust or by an agreement for the sale of real estate if the real estate securing the evidences of indebtedness are parcels of real estate the sale of which requires the subdivision in which the parcels are located to be registered under the Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701 et seq., as the act existed on July 20, 2002;

(6) Any transaction by an executor, personal representative, administrator, sheriff, marshal, receiver, guardian, or conservator;

(7) Any transaction executed by a bona fide pledgee without any purpose of evading the Securities Act of Nebraska;

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, to an individual accredited investor, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity. For purposes of this subdivision, the term ''individual accredited investor'' means (a) any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer, (b) any manager of a limited liability company that is the issuer of the securities being offered or sold, (c) any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his or her purchase, exceeds one million dollars, or (d) any natural person who had an individual income in excess of two hundred thousand dollars in each of the two most recent years or joint income with that person's spouse in excess of three hundred thousand dollars in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(9)(a) Any transaction pursuant to an offering in which sales are made to not more than fifteen persons, other than those designated in subdivisions (8), (11), and (17) of this section, in this state during any period of twelve consecutive months if (i) the seller reasonably believes that all the buyers are purchasing for investment, (ii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer except to a registered agent of a registered broker-dealer, (iii) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, and (iv) no general or public advertisements or solicitations are made.

(b) If a seller (i) makes sales pursuant to this subdivision for five consecutive twelve-month periods or (ii) makes sales of at least one million dollars from an offering or offerings pursuant to this subdivision, the seller shall, within ninety days after the earlier of either such occurrence, file with the director audited financial statements and a sales report which lists the names and addresses of all purchasers and holders of the seller's securities and the amount of securities held by such persons. Subsequent thereto, such seller shall file audited financial statements and sales reports with the director each time an additional one million dollars in securities is sold pursuant to this subdivision or after the elapse of each additional sixty-month period during which sales are made pursuant to this subdivision;

(10) Any offer or sale of a preorganization certificate or subscription if (a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (b) the number of subscribers does not exceed ten, and (c) no payment is made by any subscriber;

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of

convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, if (a) no commission or other remuneration, other than a standby commission, is paid or given directly or indirectly for soliciting any security holder in this state or (b) the issuer first files a notice specifying the terms of the offer and the director does not by order disallow the exemption within the next five full business days;

(12) Any offer, but not a sale, of a security for which registration statements have been filed under both the Securities Act of Nebraska and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either the Securities Act of Nebraska or the Securities Act of 1933;

(13) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by the stockholders for the distribution other than the surrender of a right to a cash dividend when the stockholder can elect to take a dividend in cash or stock;

(14) Any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

(15) Any transaction involving the issuance for cash of any evidence of ownership interest or indebtedness by an agricultural cooperative formed as a corporation under section 21-1301 or 21-1401 if the issuer has first filed a notice of intention to issue with the director and the director has not by order, mailed to the issuer by certified or registered mail within ten business days after receipt thereof, disallowed the exemption;

(16) Any transaction in this state not involving a public offering when (a) there is no general or public advertising or solicitation, (b) no commission or remuneration is paid directly or indirectly for soliciting any prospective buyer, except to a registered agent of a registered broker-dealer or registered issuer-dealer, (c) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, (d) a filing fee of two hundred dollars is paid at the time of filing the notice, and (e) any such transaction is effected in accordance with rules and regulations adopted and promulgated by the director relating to this section when the director finds in adopting and promulgating such rules and regulations that the applicability of sections 8-1104 to 8-1107 is not necessary or appropriate in the public interest or for the protection of investors. For purposes of this subdivision, not involving a public offering means any offering in which the seller has reason to believe that the securities purchased are taken for investment and in which each offeree, by reason of his or her knowledge about the affairs of the issuer or otherwise, does not require the protections afforded by registration under sections 8-1104 to 8-1107 in order to make a reasonably informed judgment with respect to such investment;

(17) The issuance of any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan if no commission or other remuneration is paid or given directly or

indirectly for soliciting any prospective buyer except to a registered agent of a registered broker-dealer;

(18) Any interest in a common trust fund or similar fund maintained by a bank or trust company organized and supervised under the laws of any state or a bank organized under the laws of the United States for the collective investment and reinvestment of funds contributed to such common trust fund or similar fund by the bank or trust company in its capacity as trustee, personal representative, administrator, or guardian and any interest in a collective investment fund or similar fund maintained by the bank or trust company for the collective investment of funds contributed to such collective investment fund or similar fund by the bank or trust company in its capacity as trustee or agent which interest is issued in connection with an employee's savings, pension, profit-sharing, or similar benefit plan or a self-employed person's retirement plan, if a notice generally describing the terms of the collective investment fund or similar fund is filed by the bank or trust company with the director within thirty days after the establishment of the fund. Failure to give the notice may be cured by an order issued by the director in his or her discretion;

(19) Any transaction in which a United States Series EE Savings Bond is given or delivered with or as a bonus on account of any purchase of any item or thing;

(20) Any transaction in this state not involving a public offering by a Nebraska issuer selling solely to Nebraska residents, when (a) any such transaction is effected in accordance with rules and regulations adopted and promulgated by the director relating to this section when the director finds in adopting and promulgating such rules and regulations that the applicability of sections 8-1104 to 8-1107 is not necessary or appropriate in the public interest or for the protection of investors, (b) no commission or remuneration is paid directly or indirectly for soliciting any prospective buyer, except to a registered agent of a registered broker-dealer or registered issuer-dealer, (c) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director no later than twenty days prior to any sales for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, (d) a filing fee of two hundred dollars is paid at the time of filing the notice, and (e) there is no general or public advertising or solicitation;

(21) Any transaction by a person who is an organization described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01 involving an offering of interests in a fund described in section 3(c)(10)(B) of the Investment Company Act of 1940 solely to persons who are organizations described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01 when (a) there is no general or public advertising or solicitation, (b) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, and (c) any such transaction is effected by a trustee, director, officer, employee, or volunteer of the seller who is either a volunteer or is engaged in the overall fundraising activities of a charitable organization and receives no commission or other

special compensation based on the number or the value of interests sold in the fund; or

(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) 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) of this section; or

(iv) An organization described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01, or a corporation, Massachusetts or similar business trust, or partnership with total assets in excess of five million dollars according to its most recent audited financial statements;

(b) The amount of the investment of any purchaser, except a purchaser described in subdivision (a)(ii) of this subdivision, does not exceed five percent of the net worth, as determined by this subdivision, of that purchaser;

(c) Each purchaser represents that the purchaser is purchasing for the purchaser's own account or trust account, if the purchaser is a trustee, and not with a view to or for sale in connection with a distribution of the security;

(d)(i) Each purchaser receives, on or before the date the purchaser remits consideration pursuant to the purchase agreement, the following information in writing:

(A) The name, principal business and mailing addresses, and telephone number of the issuer;

(B) The suitability standards for prospective purchasers as set forth in subdivision (a) of this subdivision;

(C) A description of the issuer's type of business organization and the state in which the issuer is organized or incorporated;

(D) A brief description of the business of the issuer;

(E) If the issuer retains ownership or becomes the beneficiary of the insurance policy, an audit report from an independent certified public accountant together with a balance sheet and related statements of income, retained earnings, and cash flows that reflect the issuer's financial position, the results of the issuer's operations, and the issuer's cash flows as of a date within fifteen months before the date of the initial issuance of the securities described in this subdivision. The financial statements shall be prepared in conformity with

generally accepted accounting principles. If the date of the audit report is more than one hundred twenty days before the date of the initial issuance of the securities described in this subdivision, the issuer shall provide unaudited interim financial statements;

(F) The names of all directors, officers, partners, members, or trustees of the issuer;

(G) A description of any order, judgment, or decree that is final as to the issuing entity of any state, federal, or foreign governmental agency or administrator, or of any state, federal, or foreign court of competent jurisdiction (I) revoking, suspending, denying, or censuring for cause any license, permit, or other authority of the issuer or of any director, officer, partner, member, trustee, or person owning or controlling, directly or indirectly, ten percent or more of the outstanding interest or equity securities of the issuer, to engage in the securities, commodities, franchise, insurance, real estate, or lending business or in the offer or sale of securities, commodities, franchises, insurance, real estate, or loans, (II) permanently restraining, enjoining, barring, suspending, or censuring any such person from engaging in or continuing any conduct, practice, or employment in connection with the offer or sale of securities, commodities, franchises, insurance, real estate, or loans, (III) convicting any such person of, or pleading nolo contendere by any such person to, any felony or misdemeanor involving a security, commodity, franchise, insurance, real estate, or loan, or any aspect of the securities, commodities, franchise, insurance, real estate, or lending business, or involving dishonesty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property, or (IV) holding any such person liable in a civil action involving breach of a fiduciary duty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property. This subdivision does not apply to any order, judgment, or decree that has been vacated or overturned or is more than ten years old;

(H) Notice of the purchaser's right to rescind or cancel the investment and receive a refund;

(I) A statement to the effect that any projected rate of return to the purchaser from the purchase of a viatical settlement contract or any fractionalized or pooled interest therein is based on an estimated life expectancy for the person insured under the life insurance policy; that the return on the purchase may vary substantially from the expected rate of return based upon the actual life expectancy of the insured that may be less than, may be equal to, or may greatly exceed the estimated life expectancy; and that the rate of return would be higher if the actual life expectancy were less than, and lower if the actual life expectancy were greater than, the estimated life expectancy of the insured at the time the viatical settlement contract was closed;

(J) A statement that the purchaser should consult with his or her tax advisor regarding the tax consequences of the purchase of the viatical settlement contract or any fractionalized or pooled interest therein; and

(K) Any other information as may be prescribed by rule of the director; and

(ii) The purchaser receives in writing at least five business days prior to closing the transaction:

(A) The name, address, and telephone number of the issuing insurance company and the name, address, and telephone number of the state or foreign country regulator of the insurance company;

(B) The total face value of the insurance policy and the percentage of the insurance policy the purchaser will own;

(C) The insurance policy number, issue date, and type;

(D) If a group insurance policy, the name, address, and telephone number of the group and, if applicable, the material terms and conditions of converting the policy to an individual policy, including the amount of increased premiums;

(E) If a term insurance policy, the term and the name, address, and telephone number of the person who will be responsible for renewing the policy if necessary;

(F) That the insurance policy is beyond the state statute for contestability and the reason therefor;

(G) The insurance policy premiums and terms of premium payments;

(H) The amount of the purchaser's money that will be set aside to pay premiums;

(I) The name, address, and telephone number of the person who will be the insurance policyowner and the person who will be responsible for paying premiums;

(J) The date on which the purchaser will be required to pay premiums and the amount of the premium, if known; and

(K) Any other information as may be prescribed by rule of the director;

(e) The purchaser may rescind or cancel the purchase for any reason by giving written notice of rescission or cancellation to the issuer or the issuer's agent within (i) fifteen calendar days after the date the purchaser remits the required consideration or receives the disclosure required under subdivision (d)(i) of this subdivision and (ii) five business days after the date the purchaser receives the disclosure required by subdivision (d)(ii) of this subdivision. No specific form is required for the rescission or cancellation. The notice is effective when personally delivered, deposited in the United States mail, or deposited with a commercial courier or delivery service. The issuer shall refund all the purchaser's money within seven calendar days after receiving the notice of rescission or cancellation;

(f) A notice of the issuer's intent to sell securities pursuant to this subdivision, signed by a duly authorized officer of the issuer and notarized, together with a filing fee of two hundred dollars, is filed with the Department of Banking and Finance before any offers or sales of securities are made under this subdivision. Such notice shall include:

(i) The issuer's name, the issuer's type of organization, the state in which the issuer is organized, the date the issuer intends to begin selling securities within or from this state, and the issuer's principal business;

(ii) A consent to service of process; and

(iii) An audit report of an independent certified public accountant together with a balance sheet and related statements of income, retained earnings and cash flows that reflect the issuer's financial position, the results of the issuer's operations, and the issuer's cash flows as of a date within fifteen months before the date of the notice prescribed in this subdivision. The financial statements shall be prepared in conformity with generally accepted accounting principles and shall be examined according to generally accepted auditing standards. If the date of the audit report is more than one hundred twenty days before the

date of the notice prescribed in this subdivision, the issuer shall provide unaudited interim financial statements;

(g) No commission or remuneration is paid directly or indirectly for soliciting any prospective purchaser, except to a registered agent of a registered broker-dealer or registered issuer-dealer; and

(h) At least ten days before use within this state, the issuer files with the department all advertising and sales materials that will be published, exhibited, broadcast, or otherwise used, directly or indirectly, in the offer or sale of a viatical settlement contract in this state.

The director may by order deny or revoke the exemption specified in subdivision (2) of this section with respect to a specific security. Upon the entry of such an order, the director shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within fifteen business days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing to all interested persons, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order. No such order may operate retroactively. No person may be considered to have violated the provisions of the Securities Act of Nebraska by reason of any offer or sale effected after the entry of any such order if he or she sustains the burden of proof that he or she did not know and in the exercise of reasonable care could not have known of the order. In any proceeding under the act, the burden of proving an exemption from a definition shall be upon the person claiming it.

Source: Laws 1965, c. 549, § 11, p. 1787; Laws 1973, LB 167, § 6; Laws 1977, LB 263, § 5; Laws 1978, LB 760, § 2; Laws 1980, LB 496, § 1; Laws 1986, LB 909, § 11; Laws 1987, LB 93, § 1; Laws 1989, LB 60, § 3; Laws 1990, LB 956, § 10; Laws 1991, LB 305, § 5; Laws 1992, LB 758, § 2; Laws 1993, LB 216, § 7; Laws 1994, LB 1241, § 1; Laws 1995, LB 96, § 1; Laws 1996, LB 1053, § 9; Laws 1997, LB 335, § 7; Laws 2000, LB 932, § 20; Laws 2001, LB 52, § 44; Laws 2002, LB 957, § 9; Laws 2006, LB 876, § 20; Laws 2010, LB814, § 1.
Effective date July 15, 2010.

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 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 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, any rule and regulation adopted and promulgated under the act, or any order of the director issued thereunder. The director may not be required to post a bond.

Source: Laws 1965, c. 549, § 16, p. 1792; Laws 1998, LB 894, § 3; Laws 2009, LB113, § 3.

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.

ARTICLE 15

ACQUISITION OR MERGER OF FINANCIAL INSTITUTIONS

(a) STATE-CHARTERED BANKS AND INDUSTRIAL LOAN AND INVESTMENT COMPANIES

Section
8-1502. Acquisition; notice required; exception; Director of Banking and Finance; duties.

(c) CROSS-INDUSTRY ACQUISITION OR MERGER OF FINANCIAL INSTITUTION

8-1510. Cross-industry acquisition or merger; application; notice; hearing.

(a) STATE-CHARTERED BANKS AND INDUSTRIAL LOAN AND INVESTMENT COMPANIES

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 ten 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.
Operative date July 15, 2010.

(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.

(4) The expense of any publication and mailing required by this section shall be paid by the applicant.

Source: Laws 1983, LB 241, § 5; Laws 1990, LB 956, § 16; Laws 2003, LB 217, § 27; Laws 2008, LB851, § 14.

ARTICLE 21

INTERSTATE BRANCHING BY MERGER ACT OF 1997

Section
8-2102. Terms, defined.
8-2106. Interstate merger transaction; when prohibited.

8-2102 Terms, defined.

For purposes of the Interstate Branching By Merger Act of 1997, unless the context otherwise requires:

(1) Bank means a bank as defined in 12 U.S.C. 1813, as such section existed on March 20, 2008;

(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 By Merger Act of 1997; 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.

Cross References

Nebraska Banking Act, see section 8-101.01.

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 fourteen 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 calendar-year-end reports, except as provided in subsection (4), (5), or (6) of section 8-910.

Source: Laws 1997, LB 351, § 6; Laws 2008, LB851, § 16.

ARTICLE 26

CREDIT REPORT PROTECTION ACT

Section
8-2602. Terms, defined.
8-2607. Security freeze; duration; consumer reporting agency; place hold on file; release; notice; temporarily lift security freeze; removal of freeze; request from consumer.
8-2609. Consumer reporting agency; fee authorized; exceptions.

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) File, when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored;

(3) Minor means a person who is under nineteen years of age;

(4) Security freeze means 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; and

(5) Victim of identity theft means a consumer who has a copy of an official police report evidencing that the consumer has alleged to be a victim of identity theft.

Source: Laws 2007, LB674, § 2; Laws 2009, LB177, § 1.

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.

8-2609 Consumer reporting agency; fee authorized; exceptions.

(1) A consumer reporting agency may charge a fee of three dollars for placing, temporarily lifting, or removing a security freeze unless:

(a) The consumer is a minor; or

(b)(i) The consumer is a victim of identity theft; and

(ii) The consumer provides the consumer reporting agency with a copy of an official police report documenting the identity theft.

(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.

CHAPTER 9
BINGO AND OTHER GAMBLING

Article.
1. General Provisions. 9-1,101.
2. Bingo. 9-255.04.
3. Pickle Cards. 9-347, 9-347.01.
6. County and City Lotteries. 9-614, 9-647.
8. State Lottery. 9-812 to 9-836.01.

ARTICLE 1
GENERAL PROVISIONS

Section
9-1,101. Department of Revenue; Charitable Gaming Division; created; duties; Charitable Gaming Operations Fund; created; use; investment; investigators; powers; fees authorized.

9-1,101 Department of Revenue; Charitable Gaming Division; created; duties; Charitable Gaming Operations Fund; created; use; investment; investigators; powers; fees authorized.

(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.

(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. The remaining sixty percent shall be transferred to the General Fund. Any portion of the forty percent not used by the division in the administration and enforcement of such acts and section shall be distributed as provided in this subsection.

(b) On or before November 1 each year, the State Treasurer shall transfer fifty thousand dollars from the Charitable Gaming Operations Fund to the Compulsive Gamblers Assistance Fund, except that no transfer shall occur if the Charitable Gaming Operations Fund contains less than fifty thousand dollars.

(c) Any money remaining in the Charitable Gaming Operations Fund after the transfer pursuant to subdivision (b) of this subsection not used by the Charitable Gaming Division in its administration and enforcement duties pursuant to

this section may be transferred to the General Fund at the direction of the Legislature.

(4) The Tax Commissioner shall employ investigators who shall be vested with the authority and power of a law enforcement officer to carry out the laws of this state administered by the Tax Commissioner or the Department of Revenue and to enforce sections 28-1101 to 28-1117 relating to possession of a gambling device. For purposes of enforcing sections 28-1101 to 28-1117, the authority of the investigators shall be limited to investigating possession of a gambling device, notifying local law enforcement authorities, and reporting suspected violations to the county attorney for prosecution.

(5) The Charitable Gaming Division may charge a fee for publications and listings it produces. The fee shall not exceed the cost of publication and distribution of such items. The division may also charge a fee for making a copy of any record in its possession equal to the actual cost per page. The division shall remit the fees to the State Treasurer for credit to the Charitable Gaming Operations Fund.

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.
Operative date July 1, 2010.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Small Lottery and Raffle Act, see section 9-501.
Nebraska State Funds Investment Act, see section 72-1260.
State Athletic Commissioner, office and duties, see section 81-8,128.

ARTICLE 2
BINGO

Section
9-255.04. Expenses; limitations; allocation; payment of workers; expenses; how paid.

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.

ARTICLE 3
PICKLE CARDS

Section
9-347. Gross proceeds; definite profit; use; restrictions; allocation of expenses.
9-347.01. Definite profit; distribution; net profit; use.

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.

ARTICLE 6

COUNTY AND CITY LOTTERIES

Section
9-614. Lottery operator, defined.
9-647. Lottery; time limitation.

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 Limited Liability Company Act or the Nebraska Uniform Limited Liability Company Act, or incorporated under the Business Corporation Act.

Source: Laws 1989, LB 767, § 55; Laws 1990, LB 1055, § 6; Laws 1993, LB 121, § 114; Laws 1995, LB 109, § 194; Laws 2010, LB888, § 98.
Operative date January 1, 2011.

Cross References

Business Corporation Act, see section 21-2001.
Limited Liability Company Act, see section 21-2601.
Nebraska Uniform Limited Liability Company Act, see section 21-101.

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.
Effective date July 15, 2010.

ARTICLE 8

STATE LOTTERY

Section
9-812. State Lottery Operation Trust Fund; State Lottery Operation Cash Fund; State Lottery Prize Trust Fund; created; transfers; Education Innovation Fund; created; use; investment; unclaimed prize money; use.
9-823. Rules and regulations; enumerated; Tax Commissioner; duties.
9-836.01. Division; sale of tangible personal property; distribution of profits.

9-812 State Lottery Operation Trust Fund; State Lottery Operation Cash Fund; State Lottery Prize Trust Fund; created; transfers; Education Innovation Fund; created; use; investment; 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) Beginning October 1, 2003, 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 Environmental Trust Fund, the Nebraska State Fair Board, and the Compulsive Gamblers Assistance Fund. 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 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 71-817;

(b) Nineteen and three-fourths percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Education Innovation Fund;

(c) Twenty-four and three-fourths percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Opportunity Grant Fund;

(d) 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;

(e) 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

(f) 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 71-817.

(4)(a) The Education Innovation Fund is created. At least seventy-five percent of the lottery proceeds allocated to the Education Innovation Fund shall be available for disbursement.

(b) For fiscal year 2005-06, the Education Innovation Fund shall be allocated as follows: The first one million dollars shall be transferred to the School District Reorganization Fund, and the remaining amount shall be allocated to the General Fund after operating expenses for the Excellence in Education Council are deducted.

(c) For fiscal year 2006-07, the Education Innovation Fund shall be allocated as follows: The first two hundred fifty thousand dollars shall be transferred to the Attracting Excellence to Teaching Program Cash Fund to fund the Attracting Excellence to Teaching Program Act, the next one million dollars shall be transferred to the School District Reorganization Fund, and the amount remaining in the Education Innovation Fund shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337.

(d) For fiscal year 2007-08, the Education Innovation Fund shall be allocated as follows: The first five hundred thousand dollars shall be transferred to the Attracting Excellence to Teaching Program Cash Fund to fund the Attracting Excellence to Teaching Program Act, and the amount remaining in the Education Innovation Fund shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337.

(e) For fiscal year 2008-09, the Education Innovation Fund shall be allocated as follows: The first seven hundred fifty thousand dollars shall be transferred to the Attracting Excellence to Teaching Program Cash Fund to fund the Attracting Excellence to Teaching Program Act, and the amount remaining in the Education Innovation Fund shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337.

(f) For fiscal year 2009-10, the Education Innovation Fund shall be allocated as follows: Any amounts transferred to the Education Innovation Fund from the School District Reorganization Fund shall be returned to the School District Reorganization Fund first, the next one million dollars shall be transferred to the Excellence in Teaching Cash Fund to fund the Excellence in Teaching Act, and the amount remaining in the Education Innovation Fund shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337.

(g) For fiscal years 2010-11 through 2015-16, the Education Innovation Fund shall be allocated as follows: The first one million dollars shall be transferred to the Excellence in Teaching Cash Fund to fund the Excellence in Teaching Act, and the amount remaining in the Education Innovation Fund shall be allocated, after administrative expenses, for distance education equipment and incentives pursuant to sections 79-1336 and 79-1337.

(h) For fiscal year 2016-17 and each fiscal year thereafter, the Education Innovation Fund shall be allocated, after administrative expenses, for education purposes as provided by the Legislature.

(i) The State Treasurer shall transfer ten million dollars from the Education Innovation Fund to the University Cash Fund on or before December 31, 2009, as directed by the budget administrator of the budget division of the Department of Administrative Services.

(5) Any money in the State Lottery Operation Trust Fund, the State Lottery Operation Cash Fund, the State Lottery Prize Trust Fund, or the Education

Innovation Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(6) 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 563, § 24; Laws 1993, LB 138, § 28; 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. Operative date July 1, 2010.

Cross References

Excellence in Teaching Act, see section 79-8,132.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska Environmental Trust Act, see section 81-15,167.
Nebraska State Funds Investment Act, see section 72-1260.

9-823 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 on-line 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 establish-

ment 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) The form and type of marketing of informational and educational material;

(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.
Effective date July 15, 2010.

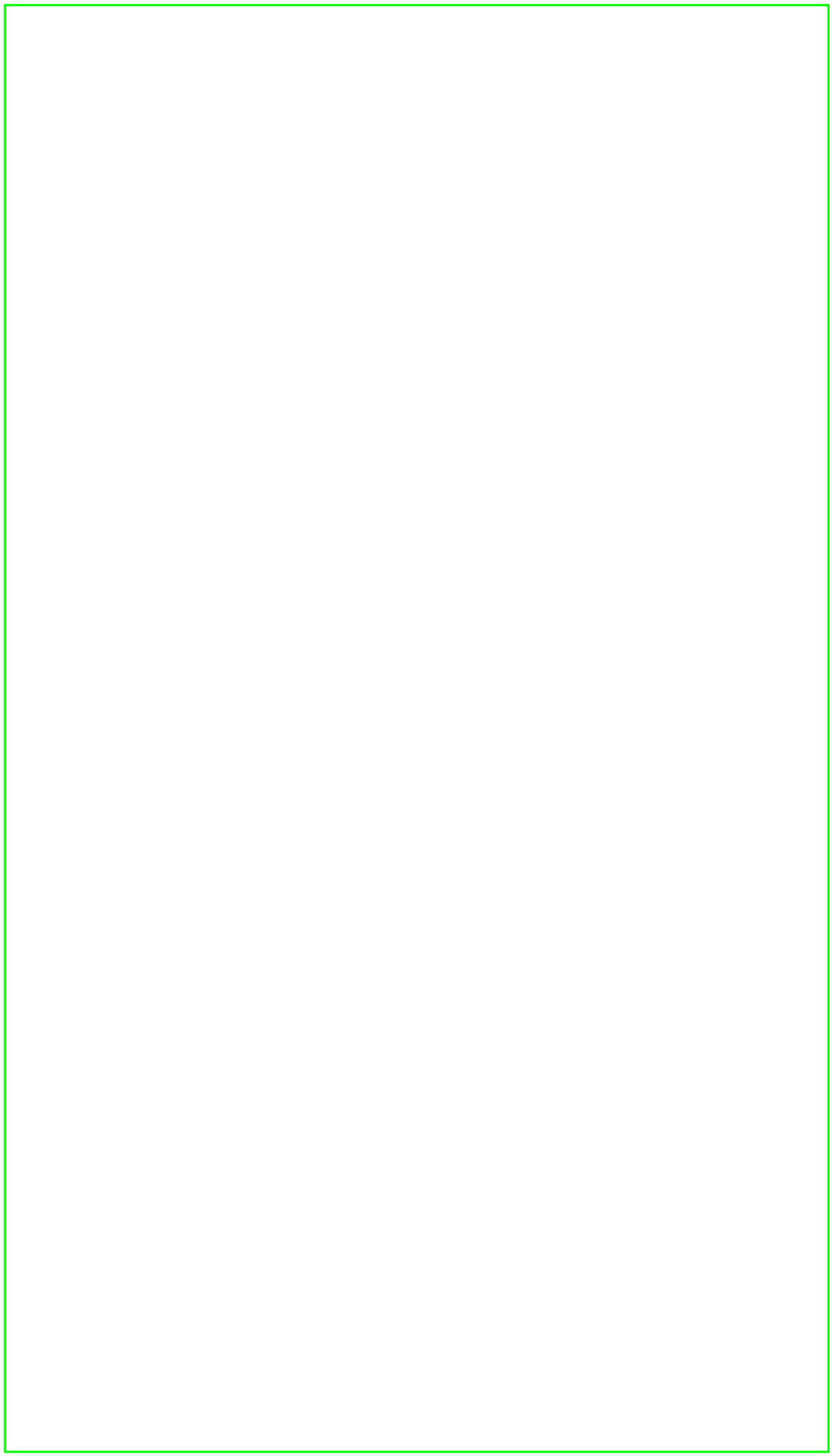
Cross References

Nebraska Uniform Transfers to Minors Act, see section 43-2701.

9-836.01 Division; sale of tangible personal property; distribution of profits.

The division may endorse and sell for profit tangible personal property related to the lottery. Any money received as profit by the division pursuant to this section shall be remitted to the State Treasurer for credit to the State Lottery Operation Trust Fund to be distributed to the Education Innovation Fund, the Nebraska Opportunity Grant Fund, the Nebraska 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.
Operative date July 1, 2010.



CHAPTER 10
BONDS

Article.
12. Nebraska Governmental Unit Credit Facility Act. 10-1201 to 10-1206.

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.

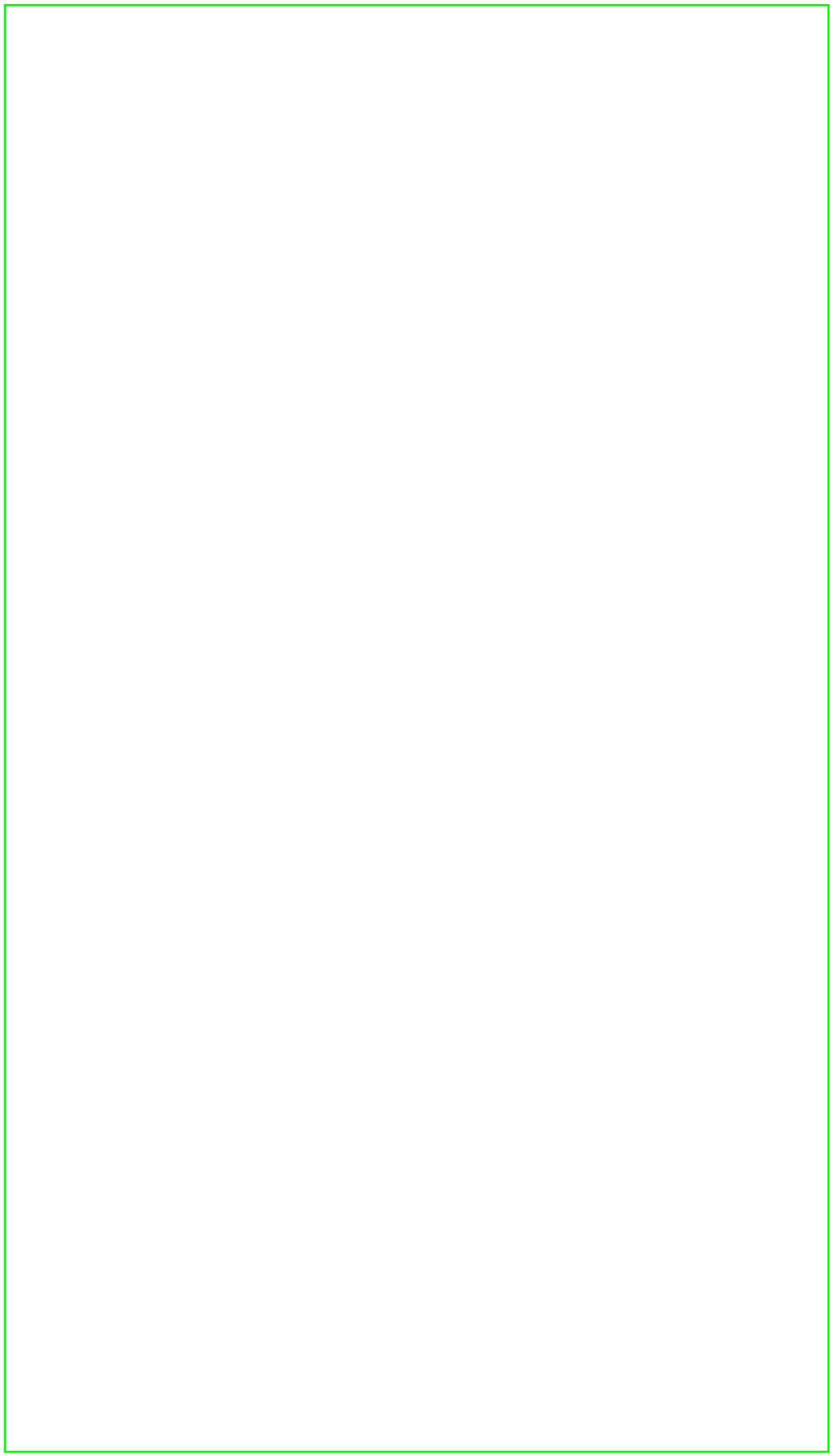
Any credit facility or related agreement may provide for payment of amounts owing by the governmental unit from any resources of the governmental unit as may be deemed appropriate by the governing body, including taxes and other revenue. Any amounts required to reimburse the provider of a credit facility 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. 11-119.
2. State Bond Approval. 11-201.

ARTICLE 1
OFFICIAL BONDS AND OATHS

Section
11-119. Bonds; officers; penal sums.

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.

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 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, 48-721, 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, 81-8,128, 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.
Effective date July 15, 2010.

CHAPTER 12
CEMETERIES

Article.
1. Wyuka Cemetery. 12-101, 12-101.01.
4. Cemeteries in Cities of Less than 25,000 Population and Villages. 12-401, 12-402.
8. Maintenance and Improvement of Cemeteries. 12-805 to 12-810.
11. Burial Pre-Need Sales. 12-1102 to 12-1116.
12. Unmarked Human Burial Sites. 12-1202, 12-1204.
13. State Veteran Cemetery System. 12-1301.
14. Statewide Cemetery Registry. 12-1401.

ARTICLE 1
WYUKA CEMETERY

Section
12-101. Wyuka Cemetery; declared a public charitable corporation; powers; trustees; appointment; terms; vacancies; reports.
12-101.01. Trustee; potential conflict of interest; actions required.

12-101 Wyuka Cemetery; declared a public charitable corporation; powers; trustees; appointment; terms; vacancies; reports.

(1) The cemetery in Lincoln, Nebraska, known as Wyuka Cemetery, is hereby declared to be a public charitable corporation. The general control and management of the affairs of such cemetery shall be vested in a board of three trustees until July 1, 2009, and thereafter shall be vested in a board of five trustees. The trustees shall serve without compensation and shall be a body corporate to be known as Wyuka Cemetery, with power to sue and be sued, to contract and to be contracted with, and to acquire, hold, and convey both real and personal property for all purposes consistent with the provisions of sections 12-101 to 12-105, and shall have the power of eminent domain to be exercised in the manner provided in section 12-201.

(2) The trustees of Wyuka Cemetery shall have the power, by resolution duly adopted by a majority vote, to authorize one of their number to sign a petition for paving, repaving, curbing, recurbing, grading, changing grading, guttering, resurfacing, relaying existing pavement, or otherwise improving any street, streets, alley, alleys, or public ways or grounds abutting cemetery property. When such improvements have been ordered, the trustees shall pay, from funds of the cemetery, such special taxes or assessments as may be properly determined.

(3) The trustees of Wyuka Cemetery shall be appointed by the Governor of the State of Nebraska at the expiration of each trustee's term of office. The two trustees appointed for their initial terms of office beginning July 1, 2009, shall be appointed by the Governor to serve a five-year term and a six-year term, respectively. Thereafter, each of the five trustees shall be appointed by the Governor for a term of six years. In the event of a vacancy occurring among the members of the board, the vacancy shall be filled by appointment by the Governor, and such appointment shall continue for the unexpired term.

(4) The board of trustees of Wyuka Cemetery shall file with the Secretary of State, on or before the second Tuesday in March of each year, an itemized report of all the receipts and expenditures in connection with its management and control of the cemetery.

(5) The trustees of Wyuka Cemetery shall have the power to provide, in their discretion, retirement benefits for present and future employees of the cemetery, and to establish, participate in, and administer plans for the benefit of its employees or its employees and their dependents, which may provide disability, hospitalization, medical, surgical, accident, sickness and life insurance coverage, or any one or more coverages, and which shall be purchased from a corporation or corporations authorized and licensed by the Department of Insurance.

(6)(a) Beginning December 31, 1998, and each December 31 thereafter, the trustees 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 members of the Nebraska Retirement Systems Committee of the Legislature. 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 trustees 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.

(b) Beginning December 31, 1998, and every four years thereafter, if such retirement plan is a defined benefit plan, the trustees shall cause to be prepared a quadrennial report and shall file the same with the Public Employees Retirement Board and submit to the members of the Nebraska Retirement Systems Committee of the Legislature a copy of such report. 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.

Source: Laws 1927, c. 197, § 1, p. 560; C.S.1929, § 13-101; R.S.1943, § 12-101; Laws 1953, c. 15, § 1, p. 81; Laws 1959, c. 28, § 1, p. 179; Laws 1967, c. 38, § 1, p. 167; Laws 1998, LB 1191, § 3; Laws 1999, LB 795, § 2; Laws 2009, LB498, § 1.

12-101.01 Trustee; potential conflict of interest; actions required.

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

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

(2) Deliver a copy of the statement to the person in charge of keeping records for the board of trustees of Wyuka Cemetery who shall enter the statement onto the public records of the board of trustees; and

(3) Abstain from participating or voting on the matter in which the trustee has a conflict of interest.

Source: Laws 2009, LB498, § 2.

ARTICLE 4

CEMETERIES IN CITIES OF LESS THAN 25,000 POPULATION AND VILLAGES

Section
12-401. Cemetery board; members; appointment; terms; vacancies.
12-402. Cemetery fund; disbursement; tax levy; limit; collection; perpetual fund; use authorized.

12-401 Cemetery board; members; appointment; terms; vacancies.

The mayor of any city having fewer than twenty-five thousand inhabitants, by and with the consent of the council or a majority thereof, and the chairperson of the board of trustees of any village, by and with the consent of the village board or a majority thereof, may appoint a board of not fewer than three nor more than six members, to be known as the cemetery board, from among the citizens at large of such city or village, who shall serve without pay and shall have entire control and management of any cemetery belonging to such city or village. Neither the mayor nor any member of the council nor the chairperson nor any member of the village board of trustees may be a member of the cemetery board. At the time of establishing such cemetery board, approximately one-third of the members shall be appointed for a term of one year, one-third for a term of two years, and one-third for a term of three years, and thereafter members shall be appointed for terms of three years. Vacancies in the membership of the board other than through the expiration of a term shall be filled for the unexpired portion of the term.

Source: Laws 1917, c. 207, § 1, p. 496; C.S.1922, § 4492; C.S.1929, § 13-401; R.S.1943, § 12-401; Laws 2008, LB995, § 1.

12-402 Cemetery fund; disbursement; tax levy; limit; collection; perpetual fund; use authorized.

(1) The mayor and council or the board of trustees, for the purpose of defraying the cost of the care, management, improvement, beautifying, and welfare of such cemeteries and the inhabitants thereof, may each year levy a tax not exceeding five and two-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such city or village subject to taxation for general purposes. The tax shall be collected and paid to the city or village as taxes for general purposes are collected and paid to the city or village. All taxes collected for this purpose shall constitute and be known as the cemetery fund and shall be used for the general care, management, improvement, beautifying, and welfare of such cemetery and the inhabitants thereof. Warrants upon this fund shall be drawn by the cemetery board and shall be paid by the city or village treasurer. The city council or the board of trustees may issue a warrant from the cemetery fund if a payment is due and the cemetery board is not scheduled to meet prior to such due date to authorize the warrant.

(2) The mayor and council or the board of trustees may set aside the proceeds of the sale of lots as a perpetual fund to be invested as provided by ordinance. The income from the fund may be used for the general care, management, maintenance, improvement, beautifying, and welfare of the cemetery. The principal of the perpetual fund may be used for the general care, management, maintenance, improvement, beautifying, and welfare of the cemetery as long as no more than twenty percent of the principal is so used in any fiscal year and no more than forty percent of the principal is so used in any period of ten consecutive fiscal years. The principal of the perpetual fund may also be used for the purchase and development of additional land to be used for cemetery purposes as long as no more than twenty-five percent of the principal is so used in any fiscal year and no more than thirty-five percent of the principal is so used in any period of ten consecutive fiscal years.

(3) The mayor and council or the board of trustees may receive money by donation, bequest, or otherwise for credit to the perpetual fund to be invested as provided by ordinance or as conditioned by the donor. The income therefrom may be used for the general care, management, maintenance, improvement, beautifying, and welfare of the cemetery as the donor may designate. The principal therefrom may be used for the general care, management, maintenance, improvement, beautifying, and welfare of the cemetery as the donor may designate as long as no more than twenty percent of the principal is so used in any fiscal year and no more than forty percent of the principal is so used in any period of ten consecutive fiscal years. The principal therefrom may also be used for the purchase and development of additional land to be used for cemetery purposes as the donor may designate as long as no more than twenty-five percent of the principal is so used in any fiscal year and no more than thirty-five percent of the principal is so used in any period of ten consecutive fiscal years.

(4) This section does not limit the use of any money that comes to the city or village by donation, bequest, or otherwise that is not designated to be credited

to the perpetual fund or that allows greater use for purchase or development of additional land to be used for cemetery purposes.

Source: Laws 1917, c. 207, § 2, p. 496; C.S.1922, § 4493; C.S.1929, § 13-402; R.S.1943, § 12-402; Laws 1953, c. 17, § 1, p. 84; Laws 1979, LB 187, § 26; Laws 1992, LB 719A, § 24; Laws 2005, LB 262, § 1; Laws 2008, LB995, § 2; Laws 2009, LB500, § 1.

ARTICLE 8

MAINTENANCE AND IMPROVEMENT OF CEMETERIES

Section
12-805. Abandoned or neglected cemeteries; care and maintenance.
12-806. Abandoned or neglected cemeteries; care; item in county budget.
12-806.01. Repealed. Laws 2008, LB 995, § 12.
12-807. Abandoned or neglected pioneer cemeteries; preservation.
12-808. Abandoned or neglected pioneer cemetery, defined.
12-810. Abandoned or neglected pioneer cemeteries; mowing; historical and directional markers.

12-805 Abandoned or neglected cemeteries; care and maintenance.

The county board shall expend money from the general fund of the county for the care and maintenance of each abandoned or neglected cemetery. Such amount shall not exceed one thousand dollars per cemetery in a calendar year. Such care and maintenance may include the repair or building of fences and annual spraying for the control of weeds and brush.

Source: Laws 1931, c. 40, § 1, p. 135; Laws 1933, c. 36, § 1, p. 237; Laws 1939, c. 28, § 5, p. 146; Laws 1941, c. 48, § 2, p. 236; C.S.Supp.,1941, § 26-105; Laws 1943, c. 57, § 1(9), p. 226; R.S. 1943, § 23-113; Laws 1949, c. 35, § 1, p. 128; Laws 1973, LB 277, § 1; Laws 1974, LB 608, § 1; C.S.Supp.,1974, § 23-113; Laws 2001, LB 280, § 1; Laws 2008, LB995, § 3.

12-806 Abandoned or neglected cemeteries; care; item in county budget.

The county board may include in the budget for the next fiscal year an item for care of abandoned or neglected cemeteries as provided in section 12-805.

Source: Laws 1949, c. 35, § 2, p. 128; R.S.1943, (1974), § 23-113.01; Laws 2008, LB995, § 4.

12-806.01 Repealed. Laws 2008, LB 995, § 12.

12-807 Abandoned or neglected pioneer cemeteries; preservation.

The county board shall expend money from the general fund of the county for the continuous preservation and maintenance, including mowing, of an abandoned or neglected pioneer cemetery when petitioned to do so by thirty-five adult residents of the county. The county board shall publish notice of such petition in one issue of the official newspaper published and of general circulation in the county at least ten days prior to the day when the matter will be heard by the county board.

Source: Laws 1975, LB 129, § 1; Laws 2008, LB995, § 5.

12-808 Abandoned or neglected pioneer cemetery, defined.

For purposes of sections 12-807 to 12-810, an abandoned or neglected pioneer cemetery shall be defined according to the following criteria:

(1) Such cemetery was founded or the land upon which such cemetery is situated was given, granted, donated, sold, or deeded to the founders of the cemetery prior to January 1, 1900;

(2) Such cemetery contains the grave or graves of a person or persons who were homesteaders, immigrants from a foreign nation, prairie farmers, pioneers, sodbusters, first generation Nebraskans, or Civil War veterans; and

(3) Such cemetery has been generally abandoned or neglected for a period of at least five consecutive years.

Source: Laws 1975, LB 129, § 2; Laws 1996, LB 932, § 1; Laws 2008, LB995, § 6.

12-810 Abandoned or neglected pioneer cemeteries; mowing; historical and directional markers.

Any county affected by sections 12-807 to 12-810 shall provide for at least one mowing annually of such cemetery each year, and one of such mowings shall occur within a period of two weeks prior to Memorial Day. Additional mowings shall be at the discretion of the county board, and each additional mowing may be subject to a public hearing at which the need for the additional mowing shall be presented to the county board. Within five years after maintenance and preservation of such cemetery is commenced by such county, a historical marker giving the date of the establishment of the cemetery and a short history of the cemetery may be placed at the site of such cemetery. One directional marker showing the way to such cemetery may be placed on the nearest state highway to such cemetery.

Source: Laws 1975, LB 129, § 4; Laws 1996, LB 932, § 4; Laws 2008, LB995, § 7.

ARTICLE 11

BURIAL PRE-NEED SALES

Section
12-1102. Terms, defined.
12-1107. Trustees; acceptance of funds; conditions; powers.
12-1116. Licenses; disciplinary actions; grounds; notice; administrative fine.

12-1102 Terms, defined.

For purposes of the Burial Pre-Need Sale Act, unless the context otherwise requires:

(1) Agent shall mean any person who acts for or on behalf of a pre-need seller in making pre-need sales;

(2) Burial or funeral merchandise or services shall mean all items of real or personal property or a combination of both or services, sold or offered for sale to the general public by any pre-need seller, which may be used in any manner in connection with a funeral or the interment, entombment, inurnment, or other alternate disposition of human remains. Such term shall not include a lot or grave space or a crypt or niche located in a mausoleum, columbarium, or lawn crypt upon which construction has been substantially completed;

(3) Columbarium shall mean an aboveground structure or building which is used or intended to be used for the inurnment of human remains in a niche. A columbarium may be combined with a mausoleum;

(4) Crypt or niche shall mean a chamber in a lawn crypt, columbarium, or mausoleum of sufficient size to inter or entomb cremated or noncremated human remains;

(5) Delivery shall mean the act of performing the service required by or the act of placing the item purchased in the physical possession of the pre-need purchaser, including, but not limited to, the installing or depositing of the item sold on or in real property owned by or designated by the person entitled to receive such item, except that (a) the pre-need burial of a vault shall constitute delivery only if the burial is with the consent of the pre-need purchaser and the pre-need seller has made other pre-need vault burials prior to January 1, 1986, and (b) delivery of a crypt or niche in a mausoleum, lawn crypt, or columbarium or a marker or monument may be accomplished by delivery of a document of title;

(6) Department shall mean the Department of Insurance;

(7) Director shall mean the Director of Insurance;

(8) Document of title shall mean a deed, bill of sale, warehouse receipt, or any other document which meets the following requirements:

(a) The effect of the document is to immediately vest the ownership of the item described in the person purchasing the item;

(b) The document states the exact location of such item; and

(c) The document gives assurances that the item described exists in substantially completed form and is subject to delivery upon request;

(9) Human remains shall mean the body of a deceased person;

(10) Lawn crypt shall mean an inground burial receptacle of single or multiple depth, installed in multiples of ten or more in a large mass excavation, usually constructed of concrete and installed on gravel or other drainage underlayment and which acts as an outer container for the interment of human remains;

(11) Letter of credit shall mean an irrevocable undertaking issued by any financial institution which qualifies as a trustee under the Burial Pre-Need Sale Act, given to a pre-need seller and naming the director as the beneficiary, in which the issuer agrees to honor drafts or other demands for payment by the beneficiary up to a specified amount;

(12) Lot or grave space shall mean a space in a cemetery intended to be used for the inground interment of human remains;

(13) Marker, monument, or lettering shall mean an object or method used to memorialize, locate, and identify human remains;

(14) Master trust agreement shall mean an agreement between a pre-need seller and a trustee, a copy of which has been filed with the department, under which proceeds from pre-need sales may be deposited by the pre-need seller;

(15) Mausoleum shall mean an aboveground structure or building which is used or intended to be used for the entombment of human remains in a crypt. A mausoleum may be combined with a columbarium;

(16) Pre-need purchaser shall mean a member of the general public purchasing burial or funeral merchandise or services or a marker, monument, or lettering from a pre-need seller for personal use;

(17) Pre-need sale shall mean any sale by any pre-need seller to a pre-need purchaser of:

(a) Any items of burial or funeral merchandise or services which are not purchased for the immediate use in a funeral or burial of human remains;

(b) Any unspecified items of burial or funeral merchandise or services which items will be specified either at death or at a later date; or

(c) A marker, monument, or lettering which will not be delivered within six months of the date of the sale;

(18) Pre-need seller shall mean any person, partnership, limited liability company, corporation, or association on whose behalf pre-need sales are made to the general public;

(19) Substantially completed shall mean that time when the mausoleum, columbarium, or lawn crypt being constructed is then ready for the interment, entombment, or inurnment of human remains;

(20) Surety bond shall mean an undertaking given by an incorporated surety company naming the director as the beneficiary and conditioned upon the faithful performance of a contract for the construction of a mausoleum, columbarium, or lawn crypt by a pre-need seller;

(21) Trust account shall mean either a separate trust account established pursuant to the Burial Pre-Need Sale Act for a specific pre-need purchaser by a pre-need seller or multiple accounts held under a master trust agreement when it is required by the act that all or some portion of the proceeds of such pre-need sale be placed in trust by the pre-need seller;

(22) Trustee shall mean a bank, trust company, building and loan association, or credit union within the state whose deposits or accounts are insured or guaranteed by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund;

(23) Trust principal shall mean all deposits, including amounts retained as required by section 12-1114, made to a trust account by a pre-need seller less all withdrawals occasioned by delivery or cancellation; and

(24) Vault shall mean an item of burial or funeral merchandise or services which is an inground burial receptacle installed individually, as opposed to lawn crypts, which is constructed of concrete, steel, or any other material, and which acts as an outer container for the interment of human remains.

Source: Laws 1986, LB 643, § 2; Laws 1992, LB 757, § 13; Laws 1993, LB 121, § 126; Laws 1999, LB 107, § 1; Laws 2003, LB 131, § 19; Laws 2009, LB259, § 2.

12-1107 Trustees; acceptance of funds; conditions; powers.

(1) Banks which do not have a separate trust department and building and loan associations and credit unions acting as trustees under the Burial Pre-Need Sale Act shall accept trust funds only to the extent that the full amount of all of such funds is insured or guaranteed by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.

(2) Banks with a separate trust department and trust companies acting as trustees under the Burial Pre-Need Sale Act when investing or reinvesting trust funds shall have the power to deal with such funds as a prudent trustee would deal with the funds and shall have all of the powers granted to a trustee by the Nebraska Uniform Trust Code, but the Uniform Principal and Income Act shall not be applicable and all income, whether from interest, dividends, capital gains, or any other source, shall be considered as income.

Source: Laws 1986, LB 643, § 7; Laws 1992, LB 757, § 14; Laws 1999, LB 107, § 2; Laws 2001, LB 56, § 35; Laws 2003, LB 130, § 112; Laws 2003, LB 131, § 20; Laws 2009, LB259, § 3.

Cross References

Nebraska Uniform Trust Code, see section 30-3801.
Uniform Principal and Income Act, see section 30-3116.

12-1116 Licenses; disciplinary actions; grounds; notice; administrative fine.

(1) The director may deny, revoke, or suspend any license of any pre-need seller or agent or may levy an administrative fine in accordance with subsection (3) of this section if the director finds that:

(a) The licensee has failed to pay the license fee prescribed for such license;

(b) The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any of the provisions of the Burial Pre-Need Sale Act or any rule or regulation adopted and promulgated by the director pursuant to such act;

(c) An act or condition exists which, if it had existed at the time of the original application of such licensee, would have resulted in the director refusing to issue such license; or

(d) The licensee, upon receipt of a written inquiry from the department, has failed to respond to such inquiry or has failed to request an additional reasonable amount of time to respond to such inquiry within fifteen business days after such receipt.

(2) Written notification shall be provided to the licensee upon the director's making such determination, and the notice shall be mailed by the director to the last address on file for the licensee by certified or registered mail, return receipt requested. The notice shall state the specific action contemplated by the director and the specific grounds for such action. The notice shall allow the licensee receiving such notice twenty days from the date of actual receipt to:

(a) Voluntarily surrender his or her license; or

(b) File a written notice of protest of the proposed action of the director. If a written notice of protest is filed by the licensee, the Administrative Procedure Act shall govern the hearing process and procedure, including all appeals. Failure to file a notice of protest within the twenty-day period shall be equivalent to a voluntary surrender of the licensee's license, and the licensee shall surrender the license to the director.

(3) In addition to or in lieu of any applicable denial, suspension, or revocation of a license, any person violating the Burial Pre-Need Sale Act may, after notice and hearing, be subject to an administrative fine of not more than one thousand dollars per violation. Such fine may be enforced in the same manner as civil judgments. Any person charged with a violation of the act may waive his or her right to a hearing and consent to such discipline as the director

determines is appropriate. The Administrative Procedure Act shall govern all hearings held pursuant to the Burial Pre-Need Sale Act.

Source: Laws 1986, LB 643, § 16; Laws 1987, LB 93, § 3; Laws 2005, LB 119, § 4; Laws 2009, LB192, § 1.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 12
UNMARKED HUMAN BURIAL SITES

Section
12-1202. Legislative findings and declarations.
12-1204. Terms, defined.

12-1202 Legislative findings and declarations.

The Legislature hereby finds and declares that:

(1) Human burial sites which do not presently resemble well-tended and well-marked cemeteries are subject to a higher degree of vandalism and inadvertent destruction than well-tended and well-marked cemeteries;

(2) Although existing law prohibits removal, concealment, or abandonment of any dead human body and provides for the care and maintenance of abandoned or neglected cemeteries and pioneer cemeteries, additional statutory guidelines and protections are in the public interest;

(3) Existing law on cemeteries reflects the value placed on preserving human burial sites but does not clearly provide equal and adequate protection or incentives to assure preservation of all human burial sites in this state;

(4) An unknown number of unmarked human burial sites containing the remains of pioneers, settlers, and Indians are scattered throughout the state;

(5) No adequate procedure regarding the treatment and disposition of human skeletal remains from unmarked graves exists to protect the interests of relatives or other interested persons; and

(6) There are scientific, educational, religious, and cultural interests in the remains of our ancestors and those interests, whenever possible, should be served.

Source: Laws 1989, LB 340, § 2; Laws 2008, LB995, § 8.

12-1204 Terms, defined.

For purposes of the Unmarked Human Burial Sites and Skeletal Remains Protection Act:

(1) Burial goods shall mean any item or items reasonably believed to have been intentionally placed with the human skeletal remains of an individual at the time of burial and which can be traced with a reasonable degree of certainty to the specific human skeletal remains with which it or they were buried;

(2) Human burial site shall mean the specific place where any human skeletal remains are buried and the immediately surrounding area;

(3) Human skeletal remains shall mean the body or any part of the body of a deceased human in any stage of decomposition;

(4) Indian tribe shall mean any federally recognized or state-recognized Indian tribe, band, or community;

(5) Professional archaeologist shall mean a person having a postgraduate degree in archaeology, anthropology, history, or a related field with a specialization in archaeology and with demonstrated ability to design and execute an archaeological study and to present the written results and interpretations of such a study in a thorough, scientific, and timely manner;

(6) Reasonably identified and reasonably identifiable shall mean identifiable, by a preponderance of the evidence, as to familial or tribal origin based on any available archaeological, historical, ethnological, or other direct or circumstantial evidence or expert opinion;

(7) Society shall mean the Nebraska State Historical Society; and

(8) Unmarked human burial shall mean any interment by whatever means of human skeletal remains for which there exists no grave marker, including burials located in abandoned or neglected cemeteries.

Source: Laws 1989, LB 340, § 4; Laws 2008, LB995, § 9.

ARTICLE 13

STATE VETERAN CEMETERY SYSTEM

Section
12-1301. Director of Veterans' Affairs; powers and duties; Veteran Cemetery Construction Fund; Nebraska Veteran Cemetery System Endowment Fund; Nebraska Veteran Cemetery System Operation Fund; created; investment.

12-1301 Director of Veterans' Affairs; powers and duties; Veteran Cemetery Construction Fund; Nebraska Veteran Cemetery System Endowment Fund; Nebraska Veteran Cemetery System Operation Fund; created; investment.

(1) The Director of Veterans' Affairs may establish and operate a state veteran cemetery system consisting of a facility in Box Butte County, a facility in Sarpy County, and the Nebraska Veterans' Memorial Cemetery in Hall County. The director may seek and expend private, state, and federal funds for the establishment, construction, maintenance, administration, and operation of the cemetery system as provided in this section. Any gift, bequest, or devise of real property for the cemetery system shall be subject to the approval requirements of section 81-1108.33 notwithstanding the value of the real property. All funds received for the construction of the cemetery system shall be remitted to the State Treasurer for credit to the Veteran Cemetery Construction Fund. Any funds remaining in the Veteran Cemetery Construction Fund following the completion of construction of the three facilities comprising the state veteran cemetery system shall upon such completion be transferred to the Nebraska Veteran Cemetery System Endowment Fund, and the Veteran Cemetery Construction Fund shall thereafter terminate.

(2)(a) A trust fund to be known as the Nebraska Veteran Cemetery System Endowment Fund is hereby created. The fund shall consist of:

(i) Gifts, bequests, grants, or contributions from private or public sources designated for the maintenance, administration, or operation of the state veteran cemetery system;

(ii) Any funds transferred from the Veteran Cemetery Construction Fund following the completion of construction of the three facilities comprising the state veteran cemetery system; and

(iii) Following the termination of the Veteran Cemetery Construction Fund, any funds received by the state from any source for the state veteran cemetery system.

(b) No revenue from the General Fund shall be remitted to the Nebraska Veteran Cemetery System Endowment Fund. The Legislature shall not appropriate or transfer money from the Nebraska Veteran Cemetery System Endowment Fund for any purpose other than as provided in this section. Any money in the Nebraska Veteran Cemetery System Endowment Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. No portion of the principal of the Nebraska Veteran Cemetery System Endowment Fund shall be expended for any purpose except investment pursuant to this subdivision. All investment earnings from the Nebraska Veteran Cemetery System Endowment Fund shall be credited on a quarterly basis to the Nebraska Veteran Cemetery System Operation Fund.

(3) There is hereby created the Nebraska Veteran Cemetery System Operation Fund. Money in the fund shall be used for the operation, administration, and maintenance of the state veteran cemetery system. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(4) The director may make formal application to the federal government regarding federal financial assistance for the construction of any of the facilities comprising the state veteran cemetery system which is located in a county with a population of less than one hundred thousand persons when he or she determines that the requirements for such assistance have been met.

(5) The director may make formal application to the federal government regarding financial assistance for the construction of any facility comprising a portion of the state veteran cemetery system located in a county with a population of more than one hundred thousand persons when sufficient funds have been remitted to the Nebraska Veteran Cemetery System Endowment Fund such that (a) the projected annual earnings from such fund available for transfer to the Nebraska Veteran Cemetery System Operation Fund plus (b) the projected annual value of formal agreements that have been entered into between the state and any political subdivisions or private entities to subsidize or undertake the operation, administration, or maintenance of any of the facilities within the state veteran cemetery system, has a value that is sufficient to fund the operation, administration, and maintenance of any cemetery created pursuant to this subsection.

(6) The director may expend such funds as may be available for any of the purposes authorized in this section.

(7) The director, with the approval of the Governor, may enter into agreements for cemetery construction, administration, operation, or maintenance with qualified persons, political subdivisions, or business entities. The director shall provide lots in the cemetery system for the interment of deceased veterans as defined by the National Cemetery Administration of the United States Department of Veterans Affairs. The director shall provide lots for the interment of those veterans' spouses, minor children, and unmarried adult children who were physically or mentally disabled and incapable of self-support. Section 12-501 does not apply to the state veteran cemetery system.

(8) The Veteran Cemetery Construction Fund is created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(9) The director may adopt and promulgate rules and regulations to carry out this section. The rules and regulations shall include requirements for proof of residency, cost of burial if any, and standards for cemeteries, including decorations and headstones.

Source: Laws 1999, LB 84, § 1; Laws 2004, LB 1231, § 1; Laws 2005, LB 54, § 2; Laws 2005, LB 227, § 1; Laws 2006, LB 996, § 1; Laws 2009, LB154, § 1.

Cross References

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

ARTICLE 14

STATEWIDE CEMETERY REGISTRY

Section
12-1401. Statewide Cemetery Registry; established and maintained.

12-1401 Statewide Cemetery Registry; established and maintained.

(1) The Nebraska State Historical Society shall establish and maintain the Statewide Cemetery Registry. The registry shall be located in the office of the Nebraska State Historical Society and shall be made available to the public. The purpose of the registry is to provide a central data bank of accurate and current information regarding the location of cemeteries, burial grounds, mausoleums, and columbaria in the state.

(2)(a) Each city, village, township, county, church, fraternal and benevolent society, cemetery district, cemetery association, mausoleum association, and any other person owning, operating, or maintaining a cemetery, pioneer cemetery, abandoned or neglected cemetery, mausoleum, or columbarium shall register with the Statewide Cemetery Registry.

(b) Except as provided in subdivision (c) of this subsection, the registration shall include the following:

(i) The location or address of the cemetery, mausoleum, or columbarium;

(ii) A plat of the cemetery, mausoleum, or columbarium grounds, including any lots, graves, niches, or crypts, if available;

(iii) The name and address of the person or persons representing the entity owning, operating, or maintaining the cemetery, mausoleum, or columbarium;

(iv) The inception date of the cemetery, mausoleum, or columbarium, if available; and

(v) If the cemetery, mausoleum, or columbarium is abandoned, the abandonment date, if available.

(c) The information required in subdivision (b) of this subsection regarding the operation and maintenance of a cemetery, mausoleum, or columbarium prior to January 1, 2006, shall be required only if such information is reasonably available to the registering entity.

(d) The entity owning, operating, or maintaining the cemetery, mausoleum, or columbarium may include information regarding the history of the operation of the cemetery, mausoleum, or columbarium.

(3) The entity owning, operating, or maintaining a registered cemetery, mausoleum, or columbarium shall update its entry in the registry every ten years following the initial registration by the entity.

Source: Laws 2005, LB 211, § 11; Laws 2008, LB995, § 10.

CHAPTER 13
CITIES, COUNTIES, AND OTHER POLITICAL SUBDIVISIONS

Article.
2. Community Development. 13-206.
5. Budgets.
(a) Nebraska Budget Act. 13-503 to 13-509.
(d) Budget Limitations. 13-518 to 13-520.
8. Interlocal Cooperation Act. 13-824.01.
9. Political Subdivisions Tort Claims Act. 13-903.
12. Nebraska Public Transportation Act. 13-1210.
16. Self-Funding Benefits. 13-1622.
20. Integrated Solid Waste Management. 13-2001 to 13-2042.01.
22. Local Government Miscellaneous Expenditures. 13-2202.
26. Convention Center Facility Financing Assistance Act. 13-2601 to 13-2613.
27. Local Civic, Cultural, and Convention Center Financing Act. 13-2704 to 13-2706.
29. Political Subdivisions Construction Alternatives Act. 13-2901 to 13-2914.
30. Peace Officers. 13-3001 to 13-3005.
31. Sports Arena Facility Financing Assistance Act. 13-3101 to 13-3109.

ARTICLE 2
COMMUNITY DEVELOPMENT

Section
13-206. Director; adopt rules and regulations; tax credits.

13-206 Director; adopt rules and regulations; tax credits.

(1) The director shall adopt and promulgate rules and regulations for the approval or disapproval of the program proposals submitted pursuant to section 13-205 taking into account the economic need level and the geographic distribution of the population of the community development area. The director shall also adopt and promulgate rules and regulations concerning the amount of the tax credit for which a program shall be certified. The tax credits shall be available for contributions to a certified program which may qualify as a charitable contribution deduction on the federal income tax return filed by the business firm or individual making such contribution. The decision of the department to approve or disapprove all or any portion of a proposal shall be in writing. If the proposal is approved, the maximum tax credit allowance for the certified program shall be stated along with the approval. The maximum tax credit allowance approved by the department shall be final for the fiscal year in which the program is certified. A copy of all decisions shall be transmitted to the Tax Commissioner. A copy of all credits allowed to business firms under sections 44-150 and 77-908 shall be transmitted to the Director of Insurance.

(2) For all business firms and individuals eligible for the credit allowed by section 13-207, except for insurance companies paying premium and related retaliatory taxes in this state pursuant to section 44-150 or 77-908, the Tax Commissioner shall provide for the manner in which the credit allowed by section 13-207 shall be taken and the forms on which such credit shall be allowed. The Tax Commissioner shall adopt and promulgate rules and regula-

tions for the method of providing tax credits. The Director of Insurance shall provide for the manner in which the credit allowed by section 13-207 to insurance companies paying premium and related retaliatory taxes in this state pursuant to sections 44-150 and 77-908 shall be taken and the forms on which such credit shall be allowed. The Director of Insurance may adopt and promulgate rules and regulations for the method of providing the tax credit. The Tax Commissioner shall allow against any income tax due from the insurance companies paying premium and related retaliatory taxes in this state pursuant to section 44-150 or 77-908 a credit for the credit provided by section 13-207 and allowed by the Director of Insurance.

Source: Laws 1984, LB 372, § 6; Laws 1986, LB 1114, § 2; Laws 1987, LB 302, § 2; Laws 1990, LB 1241, § 2; Laws 2001, LB 300, § 3; Laws 2005, LB 334, § 3; Laws 2008, LB855, § 1.

ARTICLE 5

BUDGETS

(a) NEBRASKA BUDGET ACT

Section
13-503. Terms, defined.
13-508. Adopted budget statement; certified taxable valuation; levy.
13-509. County assessor; certify taxable value; when.

(d) BUDGET LIMITATIONS

13-518. Terms, defined.
13-519. Governmental unit; adoption of budget; limitations; additional increases authorized; procedure.
13-520. Limitations; not applicable to certain restricted funds.

(a) NEBRASKA BUDGET ACT

13-503 Terms, defined.

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

(1) Governing body shall mean the governing body of any county agricultural society, elected county fair board, joint airport authority formed under the Joint Airport Authorities Act, city or county airport authority, bridge commission created pursuant to section 39-868, cemetery district, city, village, municipal county, community college, community redevelopment authority, county, drainage or levee district, educational service unit, rural or suburban fire protection district, historical society, hospital district, irrigation district, learning community, natural resources district, nonprofit county historical association or society for which a tax is levied under subsection (1) of section 23-355.01, public building commission, railroad transportation safety district, reclamation district, road improvement district, rural water district, school district, sanitary and improvement district, township, offstreet parking district, transit authority, metropolitan utilities district, Educational Service Unit Coordinating Council, and political subdivision with the authority to have a property tax request, with the authority to levy a toll, or that receives state aid;

(2) Levying board shall mean any governing body which has the power or duty to levy a tax;

(3) Fiscal year shall mean the twelve-month period used by each governing body in determining and carrying on its financial and taxing affairs;

(4) Tax shall mean any general or special tax levied against persons, property, or business for public purposes as provided by law but shall not include any special assessment;

(5) Auditor shall mean the Auditor of Public Accounts;

(6) Cash reserve shall mean funds required for the period before revenue would become available for expenditure but shall not include funds held in any special reserve fund;

(7) Public funds shall mean all money, including nontax money, used in the operation and functions of governing bodies. For purposes of a county, city, or village which has a lottery established under the Nebraska County and City Lottery Act, only those net proceeds which are actually received by the county, city, or village from a licensed lottery operator shall be considered public funds, and public funds shall not include amounts awarded as prizes;

(8) Adopted budget statement shall mean a proposed budget statement which has been adopted or amended and adopted as provided in section 13-506. Such term shall include additions, if any, to an adopted budget statement made by a revised budget which has been adopted as provided in section 13-511;

(9) Special reserve fund shall mean any special fund set aside by the governing body for a particular purpose and not available for expenditure for any other purpose. Funds created for (a) the retirement of bonded indebtedness, (b) the funding of employee pension plans, (c) the purposes of the Political Subdivisions Self-Funding Benefits Act, (d) the purposes of the Local Option Municipal Economic Development Act, (e) voter-approved sinking funds, or (f) statutorily authorized sinking funds shall be considered special reserve funds;

(10) Biennial period shall mean the two fiscal years comprising a biennium commencing in odd-numbered or even-numbered years used by a city in determining and carrying on its financial and taxing affairs; and

(11) Biennial budget shall mean a budget by a city of the primary or metropolitan class that adopts a charter provision providing for a biennial period to determine and carry on the city's financial and taxing affairs.

Source: Laws 1969, c. 145, § 2, p. 669; Laws 1972, LB 537, § 1; Laws 1977, LB 510, § 6; R.S.1943, (1987), § 23-922; Laws 1988, LB 802, § 2; Laws 1992, LB 1063, § 3; Laws 1992, Second Spec. Sess., LB 1, § 3; Laws 1993, LB 734, § 17; Laws 1994, LB 1257, § 3; Laws 1996, LB 299, § 10; Laws 1997, LB 250, § 2; Laws 1999, LB 437, § 25; Laws 2000, LB 968, § 4; Laws 2000, LB 1116, § 6; Laws 2001, LB 142, § 25; Laws 2003, LB 607, § 1; Laws 2006, LB 1024, § 1; Laws 2007, LB603, § 1; Laws 2009, LB392, § 2; Laws 2010, LB779, § 1.
Operative date July 1, 2010.

Cross References

Joint Airport Authorities Act, see section 3-716.
Local Option Municipal Economic Development Act, see section 18-2701.
Nebraska County and City Lottery Act, see section 9-601.
Political Subdivisions Self-Funding Benefits Act, see section 13-1601.

13-508 Adopted budget statement; certified taxable valuation; levy.

(1) After publication and hearing thereon and within the time prescribed by law, each governing body, except as provided in subsection (3) of this section, shall file with and certify to the levying board or boards on or before September

20 of each year and file with the auditor a copy of the adopted budget statement which complies with sections 13-518 to 13-522 or 79-1023 to 79-1030, together with the amount of the tax required to fund the adopted budget, setting out separately (a) the amount to be levied for the payment of principal or interest on bonds issued by the governing body and (b) the amount to be levied for all other purposes. Proof of publication shall be attached to the statements. Learning communities shall also file a copy of such adopted budget statement with member school districts on or before September 1 of each year. The governing body, in certifying the amount required, may make allowance for delinquent taxes not exceeding five percent of the amount required plus the actual percentage of delinquent taxes for the preceding tax year and for the amount of estimated tax loss from any pending or anticipated litigation which involves taxation and in which tax collections have been or can be withheld or escrowed by court order. For purposes of this section, anticipated litigation shall be limited to the anticipation of an action being filed by a taxpayer who or which filed a similar action for the preceding year which is still pending. Except for such allowances, a governing body shall not certify an amount of tax more than one percent greater or lesser than the amount determined under section 13-505.

(2) Each governing body shall use the certified taxable values as provided by the county assessor pursuant to section 13-509 for the current year in setting or certifying the levy. Each governing body may designate one of its members to perform any duty or responsibility required of such body by this section.

(3)(a) A Class I school district shall do the filing and certification required by subsection (1) of this section on or before August 1 of each year.

(b) A learning community shall do such filing and certification on or before September 1 of each year.

Source: Laws 1969, c. 145, § 7, p. 672; Laws 1971, LB 129, § 3; Laws 1977, LB 391, § 1; Laws 1979, LB 178, § 1; R.S.1943, (1983), § 23-927; Laws 1989, LB 643, § 1; Laws 1992, LB 1063, § 4; Laws 1992, Second Spec. Sess., LB 1, § 4; Laws 1993, LB 310, § 6; Laws 1993, LB 734, § 19; Laws 1995, LB 452, § 2; Laws 1996, LB 299, § 11; Laws 1996, LB 900, § 1018; Laws 1996, LB 1362, § 3; Laws 1997, LB 269, § 10; Laws 1998, LB 306, § 2; Laws 1998, Spec. Sess., LB 1, § 1; Laws 1999, LB 86, § 5; Laws 2002, LB 568, § 4; Laws 2006, LB 1024, § 2; Laws 2008, LB1154, § 1; Laws 2009, LB166, § 1.

13-509 County assessor; certify taxable value; when.

(1) On or before August 20 of each year, the county assessor shall certify to each governing body or board empowered to levy or certify a tax levy the current taxable value of the taxable real and personal property subject to the applicable levy. Current taxable value for real property shall mean the value established by the county assessor and equalized by the county board of equalization and the Tax Equalization and Review Commission. Current taxable value for tangible personal property shall mean the net book value reported by the taxpayer and certified by the county assessor.

(2) The valuation of any real and personal property annexed by a political subdivision on or after August 1 shall be considered in the taxable valuation of the annexing political subdivision the following year.

Source: Laws 1977, LB 391, § 3; Laws 1979, LB 187, § 256; Laws 1984, LB 835, § 1; R.S.Supp.,1986, § 23-927.01; Laws 1991, LB 829, § 1; Laws 1992, LB 1063, § 5; Laws 1992, Second Spec. Sess., LB 1, § 5; Laws 1993, LB 734, § 20; Laws 1994, LB 902, § 12; Laws 1995, LB 452, § 3; Laws 1997, LB 271, § 12; Laws 1997, LB 397, § 2; Laws 1998, LB 306, § 3; Laws 1999, LB 194, § 1; Laws 1999, LB 813, § 1; Laws 2005, LB 261, § 1; Laws 2009, LB166, § 2; Laws 2010, LB1071, § 1.
Operative date July 15, 2010.

(d) BUDGET LIMITATIONS

13-518 Terms, defined.

For purposes of sections 13-518 to 13-522:

(1) Allowable growth means (a) for governmental units other than community colleges, the percentage increase in taxable valuation in excess of the base limitation established under section 77-3446, if any, due to improvements to real property as a result of new construction, additions to existing buildings, any improvements to real property which increase the value of such property, and any increase in valuation due to annexation and any personal property valuation over the prior year and (b) for community colleges, (i) for fiscal years prior to fiscal year 2003-04, for fiscal years after fiscal year 2004-05 until fiscal year 2007-08, and for fiscal year 2010-11 and each fiscal year thereafter, the percentage increase in excess of the base limitation, if any, in full-time equivalent students from the second year to the first year preceding the year for which the budget is being determined, (ii) for fiscal year 2003-04 and fiscal year 2004-05, the percentage increase in full-time equivalent students from the second year to the first year preceding the year for which the budget is being determined, and (iii) for fiscal year 2007-08 through fiscal year 2009-10, community college areas may exceed the base limitation to equal base revenue need calculated pursuant to section 85-2223;

(2) Capital improvements means (a) acquisition of real property or (b) acquisition, construction, or extension of any improvements on real property;

(3) Governing body has the same meaning as in section 13-503;

(4) Governmental unit means every political subdivision which has authority to levy a property tax or authority to request levy authority under section 77-3443 except sanitary and improvement districts which have been in existence for five years or less and school districts;

(5) Qualified sinking fund means a fund or funds maintained separately from the general fund to pay for acquisition or replacement of tangible personal property with a useful life of five years or more which is to be undertaken in the future but is to be paid for in part or in total in advance using periodic payments into the fund. The term includes sinking funds under subdivision (13) of section 35-508 for firefighting and rescue equipment or apparatus;

(6) Restricted funds means (a) property tax, excluding any amounts refunded to taxpayers, (b) payments in lieu of property taxes, (c) local option sales taxes, (d) motor vehicle taxes, (e) state aid, (f) transfers of surpluses from any user fee,

permit fee, or regulatory fee if the fee surplus is transferred to fund a service or function not directly related to the fee and the costs of the activity funded from the fee, (g) any funds excluded from restricted funds for the prior year because they were budgeted for capital improvements but which were not spent and are not expected to be spent for capital improvements, (h) the tax provided in sections 77-27,223 to 77-27,227 beginning in the second fiscal year in which the county will receive a full year of receipts, and (i) any excess tax collections returned to the county under section 77-1776. Funds received pursuant to the nameplate capacity tax levied under section 77-6203 for the first five years after a wind energy generation facility has been commissioned are nonrestricted funds; and

(7) State aid means:

(a) For all governmental units, state aid paid pursuant to sections 60-3,202 and 77-3523;

(b) For municipalities, state aid to municipalities paid pursuant to sections 18-2605, 39-2501 to 39-2520, 60-3,190, 77-27,136, and 77-27,139.04 and insurance premium tax paid to municipalities;

(c) For counties, (i) until July 1, 2011, state aid to counties paid pursuant to sections 39-2501 to 39-2520, 47-119.01, 60-3,184 to 60-3,190, 77-27,136, and 77-3618, insurance premium tax paid to counties, and reimbursements to counties from funds appropriated pursuant to section 29-3933, and (ii) beginning on July 1, 2011, state aid to counties paid pursuant to sections 39-2501 to 39-2520, 60-3,184 to 60-3,190, and 77-27,137.03, insurance premium tax paid to counties, and reimbursements to counties from funds appropriated pursuant to section 29-3933;

(d) For community colleges, state aid to community colleges paid pursuant to the Community College Foundation and Equalization Aid Act or, for fiscal year 2010-11, pursuant to section 90-517;

(e) For natural resources districts, state aid to natural resources districts paid pursuant to section 77-27,136;

(f) For educational service units, state aid appropriated under sections 79-1241.01 to 79-1241.03; and

(g) For local public health departments as defined in section 71-1626, state aid as distributed under section 71-1628.08.

Source: Laws 1996, LB 299, § 1; Laws 1997, LB 269, § 11; Laws 1998, LB 989, § 1; Laws 1998, LB 1104, § 4; Laws 1999, LB 36, § 2; Laws 1999, LB 86, § 7; Laws 1999, LB 881, § 6; Laws 2001, LB 335, § 1; Laws 2002, LB 259, § 6; Laws 2002, LB 876, § 3; Laws 2003, LB 540, § 1; Laws 2003, LB 563, § 16; Laws 2004, LB 1005, § 1; Laws 2005, LB 274, § 222; Laws 2007, LB342, § 30; Laws 2009, LB218, § 1; Laws 2009, LB549, § 1; Laws 2010, LB1048, § 1; Laws 2010, LB1072, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB1048, section 1, with LB1072, section 1, to reflect all amendments.

Note: Changes made by LB1072 became effective April 15, 2010. Changes made by LB1048 became effective July 15, 2010.

Cross References

Community College Foundation and Equalization Aid Act, see section 85-2201.

13-519 Governmental unit; adoption of budget; limitations; additional increases authorized; procedure.

(1)(a) Subject to subdivision (1)(b) of this section, for all fiscal years beginning on or after July 1, 1998, no governmental unit shall adopt a budget containing a total of budgeted restricted funds more than the last prior year's total of budgeted restricted funds plus allowable growth plus the basic allowable growth percentage of the base limitation established under section 77-3446. For the second fiscal year in which a county will receive a full year of receipts from the tax imposed in sections 77-27,223 to 77-27,227, the prior year's total of restricted funds shall be the prior year's total of restricted funds plus the total receipts from the tax imposed in sections 77-27,223 to 77-27,227 in the prior year. For fiscal years 2010-11 through 2013-14 in which a county will reassume the assessment function pursuant to section 77-1340 or 77-1340.04, the prior year's total of restricted funds shall be the prior year's total of restricted funds plus the total budgeted for the reassumption of the assessment function. If a governmental unit transfers the financial responsibility of providing a service financed in whole or in part with restricted funds to another governmental unit or the state, the amount of restricted funds associated with providing the service shall be subtracted from the last prior year's total of budgeted restricted funds for the previous provider and may be added to the last prior year's total of restricted funds for the new provider. For governmental units that have consolidated, the calculations made under this section for consolidating units shall be made based on the combined total of restricted funds, population, or full-time equivalent students of each governmental unit.

(b) For all fiscal years beginning on or after July 1, 2008, educational service units may exceed the limitations of subdivision (1)(a) of this section to the extent that one hundred ten percent of the needs for the educational service unit calculated pursuant to section 79-1241.03 exceeds the budgeted restricted funds allowed pursuant to subdivision (1)(a) of this section.

(2) A governmental unit may exceed the limit provided in subdivision (1)(a) of this section for a fiscal year by up to an additional one percent upon the affirmative vote of at least seventy-five percent of the governing body.

(3) A governmental unit may exceed the applicable allowable growth percentage otherwise prescribed in this section by an amount approved by a majority of legal voters voting on the issue at a special election called for such purpose upon the recommendation of the governing body or upon the receipt by the county clerk or election commissioner of a petition requesting an election signed by at least five percent of the legal voters of the governmental unit. The recommendation of the governing body or the petition of the legal voters shall include the amount and percentage by which the governing body would increase its budgeted restricted funds for the ensuing year over and above the current year's budgeted restricted funds. The county clerk or election commissioner shall call for a special election on the issue within thirty days after the receipt of such governing body recommendation or legal voter petition. The election shall be held pursuant to the Election Act, and all costs shall be paid by the governing body. The issue may be approved on the same question as a vote to exceed the levy limits provided in section 77-3444.

(4) In lieu of the election procedures in subsection (3) of this section, any governmental unit may exceed the allowable growth percentage otherwise prescribed in this section by an amount approved by a majority of legal voters voting at a meeting of the residents of the governmental unit, called after notice is published in a newspaper of general circulation in the governmental unit at least twenty days prior to the meeting. At least ten percent of the registered

voters residing in the governmental unit shall constitute a quorum for purposes of taking action to exceed the allowable growth percentage. If a majority of the registered voters present at the meeting vote in favor of exceeding the allowable growth percentage, a copy of the record of that action shall be forwarded to the Auditor of Public Accounts along with the budget documents. The issue to exceed the allowable growth percentage may be approved at the same meeting as a vote to exceed the limits or final levy allocation provided in section 77-3444.

Source: Laws 1996, LB 299, § 2; Laws 1998, LB 989, § 2; Laws 2001, LB 329, § 9; Laws 2002, LB 259, § 7; Laws 2003, LB 9, § 1; Laws 2005, LB 38, § 1; Laws 2008, LB1154, § 2; Laws 2009, LB121, § 1; Laws 2009, LB501, § 1; Laws 2010, LB1072, § 2.
Effective date April 15, 2010.

Cross References

Election Act, see section 32-101.

13-520 Limitations; not applicable to certain restricted funds.

The limitations in section 13-519 shall not apply to (1) restricted funds budgeted for capital improvements, (2) restricted funds expended from a qualified sinking fund for acquisition or replacement of tangible personal property with a useful life of five years or more, (3) restricted funds pledged to retire bonded indebtedness, used by a public airport to retire interest-free loans from the Department of Aeronautics in lieu of bonded indebtedness at a lower cost to the public airport, or used to pay other financial instruments that are approved and agreed to before July 1, 1999, in the same manner as bonds by a governing body created under section 35-501, (4) restricted funds budgeted in support of a service which is the subject of an agreement or a modification of an existing agreement whether operated by one of the parties to the agreement or by an independent joint entity or joint public agency, (5) restricted funds budgeted to pay for repairs to infrastructure damaged by a natural disaster which is declared a disaster emergency pursuant to the Emergency Management Act, (6) restricted funds budgeted to pay for judgments, except judgments or orders from the Commission of Industrial Relations, obtained against a governmental unit which require or obligate a governmental unit to pay such judgment, to the extent such judgment is not paid by liability insurance coverage of a governmental unit, (7) the dollar amount by which restricted funds budgeted by a natural resources district 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, or (8) restricted funds budgeted to pay for the reassumption of the assessment function pursuant to section 77-1340 or 77-1340.04 in fiscal years 2010-11 through 2013-14.

Source: Laws 1996, LB 299, § 3; Laws 1998, LB 989, § 3; Laws 1999, LB 86, § 8; Laws 1999, LB 87, § 54; Laws 1999, LB 141, § 1; Laws 2004, LB 962, § 4; Laws 2009, LB121, § 2.

Cross References

Emergency Management Act, see section 81-829.36.
Nebraska Ground Water Management and Protection Act, see section 46-701.

ARTICLE 8
INTERLOCAL COOPERATION ACT

Section
13-824.01. Contracts relating to electric generating facility and related facilities; estimated cost; bid procedure; advertising; purchases authorized without advertising or sealed bidding.

13-824.01 Contracts relating to electric generating facility and related facilities; estimated cost; bid procedure; advertising; purchases authorized without advertising or sealed bidding.

(1) A joint entity shall cause estimates of the costs to be made by some competent engineer or engineers before the joint entity enters into any contract for the construction, management, operation, ownership, maintenance, or purchase of an electric generating facility and related facilities.

(2) If the estimated cost exceeds the sum of one hundred thousand dollars, no such contract shall be entered into without advertising for sealed bids.

(3)(a) The provisions of subsection (2) of this section and sections 13-824.02 and 13-824.03 relating to sealed bids shall not apply to contracts entered into by a joint entity in the exercise of its rights and powers relating to equipment or supplemental labor procurement from an electric utility or from or through an electric utility alliance if:

(i) The engineer or engineers certify that, by reason of the nature of the subject matter of the contract, compliance with subsection (2) of this section would be impractical or not in the public interest;

(ii) The engineer's certification is approved by a two-thirds vote of the governing body of the joint entity; and

(iii) The joint entity advertises notice of its intention to enter into such contract, the general nature of the proposed work, and the name of the person to be contacted for additional information by anyone interested in contracting for such work.

(b) Any contract for which the governing body has approved an engineer's certificate described in subdivision (a) of this subsection shall be advertised in three issues, not less than seven days between issues, in one or more newspapers of general circulation in the municipality or county where the principal office or place of business of the joint entity is located, or if no newspaper is so published then in a newspaper qualified to carry legal notices having general circulation therein, and in such additional newspapers or trade or technical periodicals as may be selected by the governing body in order to give proper notice of its intention to enter into such contract, and any such contract shall not be entered into prior to twenty days after the last advertisement.

(4) The provisions of subsection (2) of this section and sections 13-824.02 and 13-824.03 shall not apply to contracts in excess of one hundred thousand dollars entered into for the purchase of any materials, machinery, or apparatus to be used in facilities described in subsection (1) of this section if, after advertising for sealed bids:

(a) No responsive bids are received; or

(b) The governing body of the joint entity determines that all bids received are in excess of the fair market value of the subject matter of such bids.

(5) Notwithstanding any other provision of subsection (2) of this section or sections 13-824.02 and 13-824.03, a joint entity may, without advertising or sealed bidding, purchase replacement parts or services relating to such replacement parts for any generating unit, transformer, or other transmission and distribution equipment from the original manufacturer of such equipment upon certification by an engineer or engineers that such manufacturer is the only available source of supply for such replacement parts or services and that such purchase is in compliance with standards established by the governing body of the joint entity. A written statement containing such certification and a description of the resulting purchase of replacement parts or services from the original manufacturer shall be submitted to the joint entity by the engineer or engineers certifying the purchase for the governing body's approval. After such certification, but not necessarily before the governing body's review, notice of any such purchase shall be published once a week for at least three consecutive weeks in one or more newspapers of general circulation in the municipality or county where the principal office or place of business of the joint entity is located and published in such additional newspapers or trade or technical periodicals as may be selected by the governing body in order to give proper notice of such purchase.

(6) Notwithstanding any other provision of subsection (2) of this section or sections 13-824.02 and 13-824.03, a joint entity may, without advertising or sealed bidding, purchase used equipment and materials on a negotiated basis upon certification by an engineer that such equipment is or such materials are in compliance with standards established by the governing body. A written statement containing such certification shall be submitted to the joint entity by the engineer for the governing body's approval.

Source: Laws 2007, LB636, § 2; Laws 2008, LB939, § 1.

ARTICLE 9

POLITICAL SUBDIVISIONS TORT CLAIMS ACT

Section
13-903. Terms, defined.

13-903 Terms, defined.

For purposes of the Political Subdivisions Tort Claims Act and sections 16-727, 16-728, 23-175, 39-809, and 79-610, unless the context otherwise requires:

(1) Political subdivision shall include villages, cities of all classes, counties, school districts, learning communities, public power districts, and all other units of local government, including entities created pursuant to the Interlocal Cooperation Act or Joint Public Agency Act. Political subdivision shall not be construed to include any contractor with a political subdivision;

(2) Governing body shall mean the village board of a village, the city council of a city, the board of commissioners or board of supervisors of a county, the board of directors of a public power district, the governing board or other governing body of an entity created pursuant to the Interlocal Cooperation Act or Joint Public Agency Act, and any duly elected or appointed body holding the power and authority to determine the appropriations and expenditures of any other unit of local government;

(3) Employee of a political subdivision shall mean any one or more officers or employees of the political subdivision or any agency of the subdivision and shall include members of the governing body, duly appointed members of boards or commissions when they are acting in their official capacity, volunteer firefighters, and volunteer rescue squad personnel. Employee shall not be construed to include any contractor with a political subdivision; and

(4) Tort claim shall mean any claim against a political subdivision for money only on account of damage to or loss of property or on account of personal injury or death, caused by the negligent or wrongful act or omission of any employee of the political subdivision, while acting within the scope of his or her office or employment, under circumstances in which the political subdivision, if a private person, would be liable to the claimant for such damage, loss, injury, or death but shall not include any claim accruing before January 1, 1970.

Source: Laws 1969, c. 138, § 2, p. 628; Laws 1987, LB 258, § 4; R.S.Supp.,1987, § 23-2402; Laws 1991, LB 81, § 2; Laws 1996, LB 900, § 1019; Laws 1999, LB 87, § 55; Laws 2009, LB392, § 3.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

ARTICLE 12
NEBRASKA PUBLIC TRANSPORTATION ACT

Section
13-1210. Assistance program; Department of Roads; certify funding; report.

13-1210 Assistance program; Department of Roads; certify funding; report.

(1) The Department of Roads shall annually certify the amount of operating costs eligible for funding under the public transportation assistance program established under section 13-1209.

(2) The department shall submit an annual report to the chairperson of the Appropriations Committee of the Legislature on or before December 1 of each year regarding funds requested by each applicant for eligible operating costs in the current fiscal year pursuant to subsection (2) of section 13-1209 and the total amount of state grants projected to be awarded in the current fiscal year pursuant to the public transportation assistance program. The report shall separate into two categories the requests and grants awarded for handicapped vans, otherwise known as paratransit vehicles, and requests and grants awarded for handicapped-accessible fixed-route bus systems.

Source: Laws 1980, LB 722, § 12; Laws 1986, LB 599, § 3; R.S.Supp.,1986, § 19-3909.01; Laws 2004, LB 1144, § 1; Laws 2008, LB1068, § 1.

ARTICLE 16
SELF-FUNDING BENEFITS

Section
13-1622. Plan sponsor; obtain excess insurance; when.

13-1622 Plan sponsor; obtain excess insurance; when.

(1) Except as provided in subsection (4) of this section, the plan sponsor shall obtain excess insurance which will limit the plan sponsor's total claims liability for each plan year to not more than one hundred twenty-five percent of the expected claims liability as projected by an independent actuary or insurer.

(2) If the expected claims liability of the self-funded portion of the employee benefit plan is exceeded, the plan sponsor shall fund such additional liability by (a) allocating necessary funds from the operating fund of the general fund, (b) setting up an additional reserve in the operating fund of the general fund, or (c) setting up the monthly accruals at a level to fund claims in excess of the expected claims liability.

(3) An insurer shall pay claims for which it is obligated under excess insurance within three months of the time the claims are paid by the plan sponsor.

(4) A city of the metropolitan or primary class or a county with a population of more than two hundred thousand may provide an employee benefit plan without excess insurance if the city or county obtains a determination from an independent actuary or insurer that excess insurance is not necessary to preserve the safety and soundness of the employee benefit plan.

Source: Laws 1991, LB 167, § 22; Laws 2008, LB734, § 1.

ARTICLE 20

INTEGRATED SOLID WASTE MANAGEMENT

Section

13-2001. Act, how cited.
13-2020.01. Imposition of lien for nonpayment of rates and charges; vote required.
13-2042. Landfill disposal fee; payment; interest; use; grants; department; powers; council; duties.
13-2042.01. Landfill disposal fee; rebate to municipality or county; application; Department of Environmental Quality; materiel division of Department of Administrative Services; municipality; county; duties; suspension or denial of rebate; appeal; rules and regulations.

13-2001 Act, how cited.

Sections 13-2001 to 13-2043 shall be known and may be cited as the Integrated Solid Waste Management Act.

Source: Laws 1992, LB 1257, § 1; Laws 1994, LB 1207, § 1; Laws 2003, LB 143, § 1; Laws 2008, LB202, § 1.

13-2020.01 Imposition of lien for nonpayment of rates and charges; vote required.

(1) For purposes of this section, elected official means a mayor or a member of a city council, village board of trustees, or county board.

(2) Beginning August 1, 2008, only elected officials who are members or alternate members of the governing body of a joint entity or joint public agency created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act that provides services under the Integrated Solid Waste Management Act are authorized to vote on whether a lien should be imposed on real property for nonpayment of rates and charges under subsection (4) of section 13-2020. Notwithstanding any other requirements for action by the governing body, a

vote in favor of imposing such a lien by a majority of the members eligible to vote on whether a lien should be imposed is required to impose such a lien.

Source: Laws 2008, LB202, § 2.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

13-2042 Landfill disposal fee; payment; interest; use; grants; department; powers; council; duties.

(1) A disposal fee of one dollar and twenty-five cents is imposed for each six cubic yards of uncompacted solid waste, one dollar and twenty-five cents for each three cubic yards of compacted solid waste, or one dollar and twenty-five cents per ton of solid waste (a) disposed of at landfills regulated by the department or (b) transported for disposal out of state from a solid waste processing facility holding a permit under the Integrated Solid Waste Management Act. Each operator of a landfill or solid waste processing facility shall make the fee payment quarterly. The fee shall be paid quarterly to the department on or before the forty-fifth day following the end of each quarter. For purposes of this section, landfill has the same definition as municipal solid waste landfill unit in 40 C.F.R. 258.2.

(2) Each fee payment shall be accompanied by a form prepared and furnished by the department and completed by the permitholder. The form shall state the total volume of solid waste disposed of at the landfill or transported for disposal out of state from the solid waste processing facility during the payment period and shall provide any other information deemed necessary by the department. The form shall be signed by the permitholder.

(3) If a permitholder fails to make a timely payment of the fee, he or she shall pay interest on the unpaid amount at the rate specified in section 45-104.02, as such rate may from time to time be adjusted.

(4) This section shall not apply to a site used solely for the reclamation of land through the introduction of landscaping rubble or inert material.

(5) Fifty percent of the total of such fees collected in each quarter shall be remitted to the State Treasurer for credit to the Integrated Solid Waste Management Cash Fund and shall be used by the department to cover the direct and indirect costs of responding to spills or other environmental emergencies, of regulating, investigating, remediating, and monitoring facilities during and after operation of facilities, or of performance of regulated activities under the Integrated Solid Waste Management Act, the Livestock Waste Management Act, the Nebraska Litter Reduction and Recycling Act, and the Waste Reduction and Recycling Incentive Act. The department may seek recovery of expenses paid from the fund for responding to spills or other environmental emergencies or for investigation, remediation, and monitoring of a facility from any person who owned, operated, or used the facility in violation of the Integrated Solid Waste Management Act, the Livestock Waste Management Act, the Nebraska Litter Reduction and Recycling Act, and the Waste Reduction and Recycling Incentive Act in a civil action filed in the district court of Lancaster County. Of the amount credited to the Integrated Solid Waste Management Cash Fund, the department may disburse amounts to political subdivisions for costs incurred in response to and remediation of any solid waste disposed of or abandoned at dump sites or discrete locations along public roadways or ditches

and on any contiguous area affected by such disposal or abandonment. Such reimbursement shall be by application to the department on forms prescribed by the department. The department shall prepare and make available a schedule of eligible costs and application procedures which may include a requirement of a demonstration of preventive measures to be taken to discourage future dumping. The department may not disburse to political subdivisions an amount which in the aggregate exceeds five percent of total revenue from the disposal fees collected pursuant to this section in the preceding fiscal year. These disbursements shall be made on a fiscal-year basis, and applications received after funds for this purpose have been exhausted may be eligible during the next fiscal year but are not an obligation of the state. Any eligible costs incurred by a political subdivision which are not funded due to a lack of funds shall not be considered an obligation of the state. In disbursing funds under this section, the director shall make efforts to ensure equal geographic distribution throughout the state and may deny reimbursements in order to accomplish this goal.

(6) The remaining fifty percent of the total of such fees collected per quarter shall be remitted to the State Treasurer for credit to the Waste Reduction and Recycling Incentive Fund. For purposes of determining the total fees collected, any amount of fees rebated pursuant to section 13-2042.01 shall be included as if the fees had not been rebated, and the amount of the fees rebated pursuant to such section shall be deducted from the amount to be credited to the Waste Reduction and Recycling Incentive Fund.

(7) The council shall adopt and promulgate rules and regulations for the distribution of grants under subsection (6) of this section from the proceeds of the fees imposed by this section to counties, municipalities, and agencies for the purposes of planning and implementing facilities and systems to further the goals of the Integrated Solid Waste Management Act. The fees collected pursuant to this section shall not be used as grant proceeds to fund landfill closure site assessments, closure, monitoring, or investigative or corrective action costs for existing landfills or landfills already closed prior to July 15, 1992. The rules and regulations shall base the awarding of grants on a project's reflection of the integrated solid waste management policy and hierarchy established in section 13-2018, the proposed amount of local matching funds, and community need.

Source: Laws 1992, LB 1257, § 42; Laws 1994, LB 1207, § 11; Laws 1997, LB 495, § 2; Laws 1999, LB 592, § 1; Laws 2001, LB 128, § 1; Laws 2003, LB 143, § 8; Laws 2004, LB 916, § 1; Laws 2010, LB696, § 1.
Effective date July 15, 2010.

Cross References

Livestock Waste Management Act, see section 54-2416.
Nebraska Litter Reduction and Recycling Act, see section 81-1534.
Waste Reduction and Recycling Incentive Act, see section 81-15,158.01.

13-2042.01 Landfill disposal fee; rebate to municipality or county; application; Department of Environmental Quality; materiel division of Department of Administrative Services; municipality; county; duties; suspension or denial of rebate; appeal; rules and regulations.

(1) The Department of Environmental Quality shall rebate to the municipality or county of origin ten cents of the disposal fee required by section 13-2042 for

solid waste disposed of at landfills regulated by the department or transported for disposal out of state from a solid waste processing facility holding a permit under the Integrated Solid Waste Management Act and when such solid waste originated in a municipality or county with a purchasing policy approved by the department. The fee shall be rebated on a schedule agreed upon between the municipality or county and the department. The schedule shall be no more often than quarterly and no less often than annually.

(2) Any municipality or county may apply to the department for the rebate authorized in subsection (1) of this section if the municipality or county has a written purchasing policy in effect requiring a preference for purchasing products, materials, or supplies which are manufactured or produced from recycled material. The policy shall provide that the preference shall not operate when it would result in the purchase of products, materials, or supplies which are of inadequate quality as determined by the municipality or county. Upon receipt of an application, the Department of Environmental Quality shall submit the application to the materiel division of the Department of Administrative Services for review. The materiel division shall review the application for compliance with this section and any rules and regulations adopted pursuant to this section and to determine the probable effectiveness in assuring that a preference is given to products, materials, or supplies which are manufactured or produced from recycled material. The materiel division shall provide a report of its findings to the Department of Environmental Quality within thirty days after receiving the review request. The Department of Environmental Quality shall approve the application or suggest modifications to the application within sixty days after receiving the application based on the materiel division's report, any analysis by the Department of Environmental Quality, and any factors affecting compliance with this section or the rules and regulations adopted pursuant to this section.

(3) A municipality or county shall file a report complying with the rules and regulations adopted pursuant to this section with the Department of Environmental Quality before April 1 of each year documenting purchasing practices for the past calendar year in order to continue receiving the rebate. The report shall include, but not be limited to, quantities of products, materials, or supplies purchased which were manufactured or produced from recycled material. The department shall provide copies of each report to the materiel division in a timely manner. If the department determines that a municipality or county is not following the purchasing policy presented in the approved application or that the purchasing policy presented in the approved application is not effective in assuring that a preference is given to products, materials, or supplies which are manufactured or produced from recycled material, the department shall suspend the rebate until it determines that the municipality or county is giving a preference to products, materials, or supplies which are manufactured or produced from recycled material pursuant to a written purchasing policy approved by the department subsequent to the suspension. The materiel division may make recommendations to the department regarding suspensions and reinstatements of rebates. The Department of Administrative Services may adopt and promulgate rules and regulations establishing procedures for reviewing applications and for annual reports.

(4) Any suspension of the rebate or denial of an application made under this section may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

(5) The council shall adopt and promulgate rules and regulations establishing criteria for application procedures, for accepting and denying applications, for required reports, and for suspending and reinstating the rebate. The materiel division shall recommend to the council criteria for accepting and denying applications and for suspending and reinstating the rebate. The materiel division may make other recommendations to the council regarding rules and regulations authorized under this section.

Source: Laws 1994, LB 1207, § 3; Laws 2009, LB180, § 1; Laws 2010, LB696, § 2.
Effective date July 15, 2010.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 22
LOCAL GOVERNMENT MISCELLANEOUS EXPENDITURES

Section
13-2202. Terms, defined.

13-2202 Terms, defined.

For purposes of the Local Government Miscellaneous Expenditure Act:

(1) Elected and appointed officials and employees shall mean the elected and appointed officials and employees of any local government;

(2) Governing body shall mean, in the case of a city of any class, the council; in the case of a village, cemetery district, community hospital for two or more adjoining counties, county hospital, road improvement district, sanitary drainage district, or sanitary and improvement district, the board of trustees; in the case of a county, the county board; in the case of a municipal county, the council; in the case of a township, the town board; in the case of a school district, the school board; in the case of a rural or suburban fire protection district, reclamation district, natural resources district, or hospital district, the board of directors; in the case of a health district, the board of health; in the case of an educational service unit, the board; in the case of a community college, the Community College Board of Governors for the area the board serves; in the case of an airport authority, the airport authority board; in the case of a weed control authority, the board; in the case of a county agricultural society, the board of governors; and in the case of a learning community, the learning community coordinating council;

(3) Local government shall mean cities of any class, villages, cemetery districts, community hospitals for two or more adjoining counties, county hospitals, road improvement districts, counties, townships, sanitary drainage districts, sanitary and improvement districts, school districts, rural or suburban fire protection districts, reclamation districts, natural resources districts, hospital districts, health districts, educational service units, community colleges, airport authorities, weed control authorities, county agricultural societies, and learning communities;

(4) Public funds shall mean such public funds as defined in section 13-503 as are under the direct control of governing bodies of local governments;

(5) Public meeting shall mean all regular, special, or called meetings, formal or informal, of any governing body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the governing body; and

(6) Volunteer shall mean a person who is not an elected or appointed official or an employee of a local government and who, at the request or with the permission of the local government, engages in activities related to the purposes or functions of the local government or for its general benefit.

Source: Laws 1993, LB 734, § 10; Laws 1997, LB 250, § 3; Laws 2001, LB 142, § 27; Laws 2009, LB392, § 4.

ARTICLE 26

CONVENTION CENTER FACILITY FINANCING ASSISTANCE ACT

Section
13-2601. Act, how cited.
13-2603. Terms, defined.
13-2604. State assistance.
13-2610. Convention Center Support Fund; created; use; investment; distribution to certain areas; development fund; committee.
13-2611. Bonds; issuance; election.
13-2612. Act; applications; limitation.
13-2613. Rules and regulations.

13-2601 Act, how cited.

Sections 13-2601 to 13-2613 shall be known and may be cited as the Convention Center Facility Financing Assistance Act.

Source: Laws 1999, LB 382, § 1; Laws 2010, LB779, § 2.
Operative date July 1, 2010.

Cross References

Limitation on applications, see section 13-2612.

13-2603 Terms, defined.

For purposes of the Convention Center Facility Financing Assistance Act:

(1)(a) Associated hotel means any publicly owned facility in which the public may, for a consideration, obtain sleeping accommodations and which is located within two hundred yards of an eligible facility; and

(b) Beginning with applications for financial assistance received on or after February 1, 2008, associated hotel means any publicly or privately owned facility in which the public may, for a consideration, obtain sleeping accommodations and which is located within four hundred fifty yards of an eligible facility, measured from the eligible facility but not from any parking facility or other structure;

(2) Board means a board consisting of the Governor, the State Treasurer, the chairperson of the Nebraska Investment Council, the chairperson of the Nebraska State Board of Public Accountancy, and a professor of economics on the faculty of a state postsecondary educational institution appointed to a two-year term on the board by the Coordinating Commission for Postsecondary Education. For administrative and budget purposes only, the board shall be considered part of the Department of Revenue;

(3) Bond means a general obligation bond, redevelopment bond, lease-purchase bond, revenue bond, or combination of any such bonds;

(4) Convention and meeting center facility means a temperature-controlled building and personal property primarily used as a convention and meeting center, including an auditorium, an exhibition hall, a facility for onsite food preparation and serving, an onsite, directly connected parking facility for the use of the convention and meeting center facility, and an onsite administrative office of the convention and meeting center facility;

(5)(a) Eligible facility means any publicly owned convention and meeting center facility approved for state assistance on or before June 1, 2007, any publicly owned sports arena facility attached to such convention and meeting center facility, or any publicly or privately owned convention and meeting center facility or publicly or privately owned sports arena facility acquired, constructed, improved, or equipped after June 1, 2007; and

(b) Beginning with applications for financial assistance received on or after February 1, 2008, eligible facility does not include any publicly or privately owned sports arena facility with a seating capacity greater than sixteen thousand seats;

(6) General obligation bond means any bond or refunding bond issued by a political subdivision and which is payable from the proceeds of an ad valorem tax;

(7) Political subdivision means any local governmental body formed and organized under state law and any joint entity or joint public agency created under state law to act on behalf of political subdivisions which has statutory authority to issue general obligation bonds;

(8) Revenue bond means any bond or refunding bond issued by a political subdivision which is limited or special rather than a general obligation bond of the political subdivision and which is not payable from the proceeds of an ad valorem tax; and

(9) Sports arena facility means any enclosed temperature-controlled building primarily used for competitive sports, including arenas, dressing and locker facilities, concession areas, parking facilities, and onsite administrative offices connected with operating the facilities.

Source: Laws 1999, LB 382, § 3; Laws 2007, LB551, § 2; Laws 2008, LB912, § 1.

Cross References

Limitation on applications, see section 13-2612.

13-2604 State assistance.

Any political subdivision that has acquired, constructed, improved, or equipped or has approved a general obligation bond issue to acquire, construct, improve, or equip eligible facilities may apply to the board for state assistance. The state assistance may be used to pay back amounts expended or borrowed through one or more issues of bonds to be expended by the political subdivision to acquire, construct, improve, and equip eligible facilities until repayment in full of the amounts expended or borrowed by the political subdivision, including the principal of and interest on bonds, for eligible facilities.

Source: Laws 1999, LB 382, § 4; Laws 2010, LB779, § 3.
Operative date July 1, 2010.

Cross References

Limitation on applications, see section 13-2612.

13-2610 Convention Center Support Fund; created; use; investment; distribution to certain areas; development fund; committee.

(1) Upon the annual certification under section 13-2609, the State Treasurer shall transfer after the audit the amount certified to the Convention Center Support Fund. The Convention Center Support Fund is created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2)(a) It is the intent of the Legislature to appropriate from the fund to any political subdivision for which an application for state assistance under the Convention Center Facility Financing Assistance Act has been approved an amount not to exceed (i) seventy percent of the state sales tax revenue collected by retailers and operators doing business at such facilities on sales at such facilities, state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities, and state sales tax revenue collected by associated hotels, (ii) seventy-five million dollars for any one approved project, or (iii) the total cost of acquiring, constructing, improving, or equipping the eligible facility. State assistance shall not be used for an operating subsidy or other ancillary facility.

(b) Ten percent of such funds appropriated to a city of the metropolitan class under this subsection shall be equally distributed to areas with a high concentration of poverty to (i) showcase important historical aspects of such areas or areas within close geographic proximity of the area with a high concentration of poverty or (ii) assist with the reduction of street and gang violence in such areas.

(c) Each area with a high concentration of poverty that has been distributed funds under subdivision (b) of this subsection shall establish a development fund and form a committee which shall identify and research potential projects to be completed in the area with a high concentration of poverty or in an area within close geographic proximity of such area if the project would have a significant or demonstrable impact on such area and make final determinations on the use of state sales tax revenue received for such projects.

(d) A committee formed in subdivision (c) of this subsection shall include the following three members:

(i) The member of the city council whose district includes a majority of the census tracts which each contain a percentage of persons below the poverty line of greater than thirty percent, as determined by the most recent federal decennial census, within the area with a high concentration of poverty;

(ii) The commissioner of the county whose district includes a majority of the census tracts which each contain a percentage of persons below the poverty line of greater than thirty percent, as determined by the most recent federal decennial census, within the area with a high concentration of poverty; and

(iii) A resident of the area with a high concentration of poverty, appointed by the other two members of the committee.

(e) A committee formed in subdivision (c) of this subsection shall solicit project ideas from the public and shall hold a public hearing in the area with a high concentration of poverty. Notice of a proposed hearing shall be provided

in accordance with the procedures for notice of a public hearing pursuant to section 18-2115. The committee shall research potential projects and make the final determination regarding the annual distribution of funding to such projects.

(f) For purposes of this subsection, an area with a high concentration of poverty means an area within the corporate limits of a city of the metropolitan class consisting of one or more contiguous census tracts, as determined by the most recent federal decennial census, which contain a percentage of persons below the poverty line of greater than thirty percent, and all census tracts contiguous to such tract or tracts, as determined by the most recent federal decennial census.

(3) State assistance to the political subdivision shall no longer be available upon the retirement of the bonds issued to acquire, construct, improve, or equip the facility or any subsequent bonds that refunded the original issue or when state assistance reaches the amount determined under subdivision (2)(a) of this section, whichever comes first.

(4) The remaining thirty percent of state sales tax revenue collected by retailers and operators doing business at such facilities on sales at such facilities, state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities, and state sales tax revenue collected by associated hotels, shall be appropriated by the Legislature to the Local Civic, Cultural, and Convention Center Financing Fund.

(5) Any municipality that has applied for and received a grant of assistance under the Local Civic, Cultural, and Convention Center Financing Act may not receive state assistance under the Convention Center Facility Financing Assistance Act.

Source: Laws 1999, LB 382, § 10; Laws 2007, LB551, § 6; Laws 2008, LB754, § 1; Laws 2009, LB63, § 1; Laws 2010, LB975, § 1. Effective date July 15, 2010.

Cross References

Limitation on applications, see section 13-2612.
Local Civic, Cultural, and Convention Center Financing Act, see section 13-2701.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

13-2611 Bonds; issuance; election.

(1) The applicant political subdivision may issue from time to time its bonds and refunding bonds to finance and refinance the acquisition, construction, improving, and equipping of eligible facilities and appurtenant public facilities that are a part of the same project. The bonds may be sold by the applicant in such manner and for such price as the applicant determines, at a discount, at par, or at a premium, at private negotiated sale or at public sale, after notice published prior to the sale in a legal newspaper having general circulation in the political subdivision or in such other medium of publication as the applicant deems appropriate. The bonds shall have a stated maturity of thirty years or less and shall bear interest at such rate or rates and otherwise be issued in accordance with the respective procedures and with such other terms and provisions as are established, permitted, or authorized by applicable state laws and home rule charters for the type of bonds to be issued. Such bonds may be secured as to payment in whole or in part by a pledge, as shall be determined by the applicant, from the income, proceeds, and revenue of the eligible

facilities financed with proceeds of such bonds, from the income, proceeds, and revenue of any of its eligible facilities, or from its revenue and income, including its sales, use, or occupation tax revenue, fees, or receipts, as may be determined by the applicant. The applicant may further secure the bonds by a mortgage or deed of trust encumbering all or any portion of the eligible facilities and by a bond insurance policy or other credit support facility. No general obligation bonds, except refunding bonds, shall be issued until authorized by greater than fifty percent of the applicant's electors voting on the question as to their issuance at any election as defined in section 32-108. The face of the bonds shall plainly state that the bonds and the interest thereon shall not constitute nor give rise to an indebtedness, obligation, or pecuniary liability of the state nor a charge against the general credit, revenue, or taxing power of the state. Bonds of the applicant are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempt from all state income taxes.

(2) All payments to political subdivisions under the Convention Center Facility Financing Assistance Act are made subject to specific appropriation for such purpose. Nothing in the act precludes the Legislature from amending or repealing the act at any time.

Source: Laws 1999, LB 382, § 11; Laws 2009, LB402, § 1.

Cross References

Limitation on applications, see section 13-2612.

13-2612 Act; applications; limitation.

The board shall not accept applications for assistance under the Convention Center Facility Financing Assistance Act after December 31, 2012.

Source: Laws 1999, LB 382, § 12; Laws 2007, LB551, § 7; Laws 2009, LB402, § 2.

13-2613 Rules and regulations.

The Department of Revenue may adopt and promulgate rules and regulations to carry out the Convention Center Facility Financing Assistance Act.

Source: Laws 2010, LB779, § 4.
Operative date July 1, 2010.

ARTICLE 27

LOCAL CIVIC, CULTURAL, AND CONVENTION CENTER FINANCING ACT

Section
13-2704. Local Civic, Cultural, and Convention Center Financing Fund; created; use; investment.
13-2705. Conditional grant approval.
13-2706. Grant application.

13-2704 Local Civic, Cultural, and Convention Center Financing Fund; created; use; investment.

(1) The Local Civic, Cultural, and Convention Center Financing Fund is created. The fund shall be administered by the department. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any

money in the Local Civic, Cultural, and Convention Center Financing Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The fund may be used for assistance for the construction of new centers or the renovation or expansion of existing centers. The fund may not be used for planning, programming, marketing, advertising, and related activities. Transfers may be made from the fund to the Department of Revenue Enforcement Fund at the direction of the Legislature.

(2) On July 1, 2010, or as soon thereafter as is administratively possible the State Treasurer shall transfer seventy-nine thousand three hundred dollars from the Local Civic, Cultural, and Convention Center Financing Fund to the Department of Revenue Enforcement Fund.

(3) It is the intent of the Legislature that on July 1, 2011, or as soon thereafter as is administratively possible the State Treasurer shall transfer forty-two thousand nine hundred dollars from the Local Civic, Cultural, and Convention Center Financing Fund to the Department of Revenue Enforcement Fund.

Source: Laws 1999, LB 382, § 16; Laws 2009, First Spec. Sess., LB3, § 8; Laws 2010, LB779, § 5.
Operative date July 1, 2010.

Cross References

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

13-2705 Conditional grant approval.

The department may conditionally approve grants of assistance from the fund to eligible and competitive applicants within the following limits:

(1) A grant request shall be at least twenty thousand dollars but no more than:

(a) For a city of the primary class, one million five hundred thousand dollars;

(b) For a municipality with a population of forty thousand but less than one hundred thousand, seven hundred fifty thousand dollars;

(c) For a municipality with a population of twenty thousand but less than forty thousand, five hundred thousand dollars;

(d) For a municipality with a population of ten thousand but less than twenty thousand, four hundred thousand dollars; and

(e) For a municipality with a population of less than ten thousand, two hundred fifty thousand dollars;

(2) Assistance from the fund shall not amount to more than fifty percent of the cost of construction, renovation, or expansion; and

(3) A municipality shall not be awarded more than one grant in any five-year period.

Source: Laws 1999, LB 382, § 17; Laws 2003, LB 385, § 1; Laws 2010, LB789, § 1.
Effective date July 15, 2010.

13-2706 Grant application.

Any municipality, except a city that has received funding under the Convention Center Facility Financing Assistance Act or the Sports Arena Facility

Financing Assistance Act, may apply for a grant of assistance from the fund. Application shall be made on forms developed by the department.

Source: Laws 1999, LB 382, § 18; Laws 2003, LB 385, § 2; Laws 2007, LB551, § 8; Laws 2010, LB779, § 6.
Operative date July 1, 2010.

Cross References

Convention Center Facility Financing Assistance Act, see section 13-2601.
Sports Arena Facility Financing Assistance Act, see section 13-3101.

ARTICLE 29

POLITICAL SUBDIVISIONS CONSTRUCTION ALTERNATIVES ACT

Section
13-2901. Act, how cited.
13-2902. Purpose.
13-2903. Terms, defined.
13-2904. Contracts authorized; governing body; resolution required.
13-2905. Political subdivision; policies; requirements.
13-2906. Letters of interest; requirements.
13-2907. Design-build contract; request for proposals; requirements.
13-2908. Design-build contract; evaluation of proposals; requirements; negotiations.
13-2909. Construction management at risk contract; request for proposals; requirements.
13-2910. Construction management at risk contract; evaluation of proposals; requirements; negotiations.
13-2911. Contract proposals; evaluation; selection committee; duties.
13-2912. Contracts; refinements; changes authorized.
13-2913. Act; bonding or insurance requirements.
13-2914. Projects excluded.

13-2901 Act, how cited.

Sections 13-2901 to 13-2914 shall be known and may be cited as the Political Subdivisions Construction Alternatives Act.

Source: Laws 2002, LB 391, § 1; R.S.1943, (2003), § 79-2001; Laws 2008, LB889, § 1.

13-2902 Purpose.

The purpose of the Political Subdivisions Construction Alternatives Act is to authorize a political subdivision to enter into a design-build contract which is subject to qualification-based selection or a construction management at risk contract for a public project if the political subdivision adheres to the procedures set forth in the act.

Source: Laws 2002, LB 391, § 2; R.S.1943, (2003), § 79-2002; Laws 2008, LB889, § 2.

13-2903 Terms, defined.

For purposes of the Political Subdivisions Construction Alternatives Act:

(1) Construction management at risk contract means a contract by which a construction manager (a) assumes the legal responsibility to deliver a construction project within a contracted price to the political subdivision, (b) acts as a construction consultant to the political subdivision during the design development phase of the project when the political subdivision's architect or engineer

designs the project, and (c) is the builder during the construction phase of the project;

(2) Construction manager means the legal entity which proposes to enter into a construction management at risk contract pursuant to the act;

(3) Design-build contract means a contract which is subject to qualification-based selection between a political subdivision and a design-builder to furnish (a) architectural, engineering, and related design services for a project pursuant to the act and (b) labor, materials, supplies, equipment, and construction services for a project pursuant to the act;

(4) Design-builder means the legal entity which proposes to enter into a design-build contract which is subject to qualification-based selection pursuant to the act;

(5) Letter of interest means a statement indicating interest to enter into a design-build contract or a construction management at risk contract for a project pursuant to the act;

(6) Performance-criteria developer means any person licensed or any organization issued a certificate of authorization to practice architecture or engineering pursuant to the Engineers and Architects Regulation Act who is selected by a political subdivision to assist the political subdivision in the development of project performance criteria, requests for proposals, evaluation of proposals, evaluation of the construction under a design-build contract to determine adherence to the performance criteria, and any additional services requested by the political subdivision to represent its interests in relation to a project;

(7) Political subdivision means a city, village, county, school district, community college, or state college;

(8) Project performance criteria means the performance requirements of the project suitable to allow the design-builder to make a proposal. Performance requirements include the following, if required by the project: Capacity, durability, standards, ingress and egress requirements, description of the site, surveys, soil and environmental information concerning the site, interior space requirements, material quality standards, design and construction schedules, site development requirements, provisions for utilities, storm water retention and disposal, parking requirements, applicable governmental code requirements, and other criteria for the intended use of the project;

(9) Proposal means an offer in response to a request for proposals (a) by a design-builder to enter into a design-build contract for a project pursuant to the Political Subdivisions Construction Alternatives Act or (b) by a construction manager to enter into a construction management at risk contract for a project pursuant to the act;

(10) Qualification-based selection process means a process of selecting a design-builder based first on the qualifications of the design-builder and then on the design-builder's proposed approach to the design and construction of the project;

(11) Request for letters of interest means the documentation or publication by which a political subdivision solicits letters of interest;

(12) Request for proposals means the documentation by which a political subdivision solicits proposals; and

(13) School district means any school district classified under section 79-102.

Source: Laws 2002, LB 391, § 3; R.S.1943, (2003), § 79-2003; Laws 2008, LB889, § 3.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.

13-2904 Contracts authorized; governing body; resolution required.

(1) Notwithstanding the procedures for public lettings in sections 73-101 to 73-106 or any other statute relating to the letting of bids by a political subdivision, a political subdivision which follows the Political Subdivisions Construction Alternatives Act may solicit and execute a design-build contract or a construction management at risk contract.

(2) The governing body of the political subdivision shall adopt a resolution selecting the design-build contract or construction management at risk contract delivery system provided under the act prior to proceeding with the provisions of sections 13-2905 to 13-2914. The resolution shall require the affirmative vote of at least two-thirds of the governing body of the political subdivision.

Source: Laws 2002, LB 391, § 4; R.S.1943, (2003), § 79-2004; Laws 2008, LB889, § 4.

13-2905 Political subdivision; policies; requirements.

The political subdivision shall adopt policies for entering into a design-build contract or construction management at risk contract. The policies shall require that such contracts include the following:

(1) Procedures for selecting and hiring on its behalf a performance-criteria developer when soliciting and executing a design-build contract. The procedures shall be consistent with the Nebraska Consultants' Competitive Negotiation Act and shall provide that the performance-criteria developer (a) is ineligible to be included as a provider of any services in a proposal for the project on which it has acted as performance-criteria developer and (b) is not employed by or does not have a financial or other interest in a design-builder or construction manager who will submit a proposal;

(2) Procedures for the preparation and content of requests for proposals;

(3) Procedures and standards to be used to prequalify design-builders and construction managers. The procedures and standards shall provide that the political subdivision will evaluate prospective design-builders and construction managers based on the information submitted to the political subdivision in response to a request for letters of interest and will select design-builders or construction managers who are prequalified and consequently eligible to respond to the request for proposals;

(4) Procedures for preparing and submitting proposals;

(5) Procedures for evaluating proposals in accordance with sections 13-2908, 13-2910, and 13-2911;

(6) Procedures for negotiations between the political subdivision and the design-builders or construction managers submitting proposals prior to the acceptance of a proposal if any such negotiations are contemplated;

(7) Procedures for filing and acting on formal protests relating to the solicitation or execution of design-build contracts or construction management at risk contracts; and

(8) Procedures for the evaluation of construction under a design-build contract by the performance-criteria developer to determine adherence to the performance criteria.

Source: Laws 2002, LB 391, § 5; R.S.1943, (2003), § 79-2005; Laws 2008, LB889, § 5.

Cross References

Nebraska Consultants' Competitive Negotiation Act, see section 81-1702.

13-2906 Letters of interest; requirements.

(1) A political subdivision shall prepare a request for letters of interest for design-build proposals and shall prequalify design-builders in accordance with this section. The request for letters of interest shall describe the project in sufficient detail to permit a design-builder to submit a letter of interest.

(2) The request for letters of interest shall be (a) published in a newspaper of general circulation within the political subdivision at least thirty days prior to the deadline for receiving letters of interest and (b) sent by first-class mail to any design-builder upon request.

(3) Letters of interest shall be reviewed by the political subdivision in consultation with the performance-criteria developer. The political subdivision shall select prospective design-builders in accordance with the procedures and standards adopted by the political subdivision pursuant to section 13-2905. The political subdivision shall select at least three prospective design-builders, except that if only two design-builders have submitted letters of interest, the political subdivision shall select at least two prospective design-builders. The selected design-builders shall then be considered prequalified and eligible to receive requests for proposals.

Source: Laws 2002, LB 391, § 6; R.S.1943, (2003), § 79-2006; Laws 2008, LB889, § 6.

13-2907 Design-build contract; request for proposals; requirements.

A political subdivision shall prepare a request for proposals for each design-build contract in accordance with this section. Notice of the request for proposals shall be published in a newspaper of general circulation within the political subdivision at least thirty days prior to the deadline for receiving and opening proposals. A notice of the request for proposals by a school district shall be filed with the State Department of Education at least thirty days prior to the deadline for receiving and opening proposals. The request for proposals shall contain, at a minimum, the following elements:

(1) The identity of the political subdivision for which the project will be built and the political subdivision that will execute the design-build contract;

(2) Policies adopted by the political subdivision in accordance with section 13-2905;

(3) The proposed terms and conditions of the design-build contract, including any terms and conditions which are subject to further negotiation. The proposed general terms and conditions shall be consistent with nationally recog-

nized model general terms and conditions which are standard in the design and construction industry in Nebraska. The proposed terms and conditions may set forth an initial determination of the manner by which the design-builder selects any subcontractor and may require that any work subcontracted be awarded by competitive bidding;

(4) A project statement which contains information about the scope and nature of the project;

(5) Project performance criteria;

(6) Budget parameters for the project;

(7) Any bonds and insurance required by law or as may be additionally required by the political subdivision;

(8) The criteria for evaluation of proposals and the relative weight of each criterion;

(9) A requirement that the design-builder provide a written statement of the design-builder's proposed approach to the design and construction of the project, which may include graphic materials illustrating the proposed approach to design and construction but shall not include price proposals;

(10) A requirement that the design-builder agree to the following conditions:

(a) An architect or engineer licensed to practice in Nebraska will participate substantially in those aspects of the offering which involve architectural or engineering services;

(b) At the time of the design-build offering, the design-builder will furnish to the governing body of the political subdivision a written statement identifying the architect or engineer who will perform the architectural or engineering work for the design-build project;

(c) The architect or engineer engaged by the design-builder to perform the architectural or engineering work with respect to the design-build project will have direct supervision of such work and may not be removed by the design-builder prior to the completion of the project without the written consent of the governing body of the political subdivision;

(d) A design-builder offering design-build services with its own employees who are design professionals licensed to practice in Nebraska will (i) comply with the Engineers and Architects Regulation Act by procuring a certificate of authorization to practice architecture or engineering and (ii) submit proof of sufficient professional liability insurance; and

(e) The rendering of architectural or engineering services by a licensed architect or engineer employed by the design-builder will conform to the Engineers and Architects Regulation Act and rules and regulations adopted under the act; and

(11) Other information which the political subdivision chooses to require.

Source: Laws 2002, LB 391, § 7; R.S.1943, (2003), § 79-2007; Laws 2008, LB889, § 7.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.

13-2908 Design-build contract; evaluation of proposals; requirements; negotiations.

(1) A political subdivision shall evaluate proposals for a design-build contract in accordance with this section.

(2) The request for proposals shall be sent only to the prequalified design-builders selected pursuant to section 13-2906.

(3) Design-builders shall submit proposals as required by the request for proposals. The political subdivision may only proceed to negotiate and enter into a design-build contract if there are at least two proposals from prequalified design-builders.

(4) Proposals shall be sealed and shall not be opened until expiration of the time established for making proposals as set forth in the request for proposals.

(5) Proposals may be withdrawn at any time prior to acceptance. The political subdivision shall have the right to reject any and all proposals except for the purpose of evading the provisions and policies of the Political Subdivisions Construction Alternatives Act. The political subdivision may thereafter solicit new proposals using the same or a different project performance criteria.

(6) The political subdivision shall rank in order of preference the design-builders pursuant to the criteria in the request for proposals and taking into consideration the recommendation of the selection committee pursuant to section 13-2911.

(7) The political subdivision may attempt to negotiate a design-build contract with the highest ranked design-builder selected by the political subdivision and may enter into a design-build contract after negotiations. The negotiations shall include a final determination of the manner by which the design-builder selects a subcontractor. If the political subdivision is unable to negotiate a satisfactory design-build contract with the highest ranked design-builder, the political subdivision may terminate negotiations with that design-builder. The political subdivision may then undertake negotiations with the second highest ranked design-builder and may enter into a design-build contract after negotiations. If the political subdivision is unable to negotiate a satisfactory contract with the second highest ranked design-builder, the political subdivision may undertake negotiations with the third highest ranked design-builder, if any, and may enter into a design-build contract after negotiations.

(8) A school district shall file a copy of all design-build contract documents with the State Department of Education within thirty days after their full execution. Within thirty days after completion of the project, the design-builder shall file a copy of all contract modifications and change orders with the department.

(9) If the political subdivision is unable to negotiate a satisfactory contract with any of the ranked design-builders, the political subdivision may either revise the request for proposals and solicit new proposals or cancel the design-build process under the act.

Source: Laws 2002, LB 391, § 8; R.S.1943, (2003), § 79-2008; Laws 2008, LB889, § 8.

13-2909 Construction management at risk contract; request for proposals; requirements.

A political subdivision shall prepare a request for proposals for each construction management at risk contract in accordance with this section. At least thirty days prior to the deadline for receiving and opening proposals, notice of

the request for proposals shall be published in a newspaper of general circulation within the political subdivision. A notice of the request for proposals by a school district shall be filed with the State Department of Education at least thirty days prior to the deadline for receiving and opening proposals. The request for proposals shall contain, at a minimum, the following elements:

(1) The identity of the political subdivision for which the project will be built and the political subdivision that will execute the contract;

(2) Policies adopted by the political subdivision in accordance with section 13-2905;

(3) The proposed terms and conditions of the contract, including any terms and conditions which are subject to further negotiation. The proposed general terms and conditions shall be consistent with nationally recognized model general terms and conditions which are standard in the design and construction industry in Nebraska. The proposed terms and conditions may set forth an initial determination of the manner by which the construction manager selects any subcontractor and may require that any work subcontracted be awarded by competitive bidding;

(4) Any bonds and insurance required by law or as may be additionally required by the political subdivision;

(5) General information about the project which will assist the political subdivision in its selection of the construction manager, including a project statement which contains information about the scope and nature of the project, the project site, the schedule, and the estimated budget;

(6) The criteria for evaluation of proposals and the relative weight of each criterion; and

(7) A description of any other information which the political subdivision chooses to require.

Source: Laws 2002, LB 391, § 9; R.S.1943, (2003), § 79-2009; Laws 2008, LB889, § 9.

13-2910 Construction management at risk contract; evaluation of proposals; requirements; negotiations.

(1) A political subdivision shall evaluate proposals for a construction management at risk contract in accordance with this section.

(2) The political subdivision shall evaluate and rank each proposal on the basis of best meeting the criteria in the request for proposals and taking into consideration the recommendation of the selection committee pursuant to section 13-2911.

(3) The political subdivision shall attempt to negotiate a construction management at risk contract with the highest ranked construction manager and may enter into a construction management at risk contract after negotiations. The negotiations shall include a final determination of the manner by which the construction manager selects a subcontractor. If the political subdivision is unable to negotiate a satisfactory contract with the highest ranked construction manager, the political subdivision may terminate negotiations with that construction manager. The political subdivision may then undertake negotiations with the second highest ranked construction manager and may enter into a construction management at risk contract after negotiations. If the political subdivision is unable to negotiate a satisfactory contract with the second

highest ranked construction manager, the political subdivision may undertake negotiations with the third highest ranked construction manager, if any, and may enter into a construction management at risk contract after negotiations.

(4) A school district shall file a copy of all construction management at risk contract documents with the State Department of Education within thirty days after their full execution. Within thirty days after completion of the project, the construction manager shall file a copy of all contract modifications and change orders with the department.

(5) If the political subdivision is unable to negotiate a satisfactory contract with any of the ranked construction managers, the political subdivision may either revise the request for proposals and solicit new proposals or cancel the construction management at risk process under the Political Subdivisions Construction Alternatives Act.

Source: Laws 2002, LB 391, § 10; R.S.1943, (2003), § 79-2010; Laws 2008, LB889, § 10.

13-2911 Contract proposals; evaluation; selection committee; duties.

(1) In evaluating proposals in accordance with sections 13-2908 and 13-2910, the political subdivision shall refer the proposals for recommendation to a selection committee. The selection committee shall be a group of at least five persons designated by the political subdivision. Members of the selection committee shall include (a) members of the governing body of the political subdivision, (b) members of the administration or staff of the political subdivision, (c) the performance-criteria developer when evaluating proposals from design-builders under section 13-2908 or the political subdivision's architect or engineer when evaluating proposals from construction managers under section 13-2910, (d) any person having special expertise relevant to selection of a design-builder or construction manager under the Political Subdivisions Construction Alternatives Act, and (e) a resident of the political subdivision other than an individual included in subdivisions (a) through (d) of this subsection. A member of the selection committee designated under subdivision (d) or (e) of this subsection shall not be employed by or have a financial or other interest in a design-builder or construction manager who has a proposal being evaluated and shall not be employed by the political subdivision or the performance-criteria developer.

(2) The selection committee and the political subdivision shall evaluate proposals taking into consideration the criteria enumerated in subdivisions (a) through (g) of this subsection with the maximum percentage of total points for evaluation which may be assigned to each criterion set forth following the criterion. The following criteria shall be evaluated, when applicable:

(a) The financial resources of the design-builder or construction manager to complete the project, ten percent;

(b) The ability of the proposed personnel of the design-builder or construction manager to perform, thirty percent;

(c) The character, integrity, reputation, judgment, experience, and efficiency of the design-builder or construction manager, thirty percent;

(d) The quality of performance on previous projects, thirty percent;

(e) The ability of the design-builder or construction manager to perform within the time specified, thirty percent;

(f) The previous and existing compliance of the design-builder or construction manager with laws relating to the contract, ten percent; and

(g) Such other information as may be secured having a bearing on the selection, twenty percent.

(3) The records of the selection committee in evaluating proposals and making recommendations shall be considered public records for purposes of section 84-712.01.

Source: Laws 2002, LB 391, § 11; R.S.1943, (2003), § 79-2011; Laws 2008, LB889, § 11.

13-2912 Contracts; refinements; changes authorized.

A design-build contract and a construction management at risk contract may be conditioned upon later refinements in scope and price and may permit the political subdivision in agreement with the design-builder or construction manager to make changes in the project without invalidating the contract. Later refinements under this section shall not exceed the scope of the project statement contained in the request for proposals pursuant to section 13-2907 or 13-2909.

Source: Laws 2002, LB 391, § 12; R.S.1943, (2003), § 79-2012; Laws 2008, LB889, § 12.

13-2913 Act; bonding or insurance requirements.

Nothing in the Political Subdivisions Construction Alternatives Act shall limit or reduce statutory or regulatory requirements regarding bonding or insurance.

Source: Laws 2002, LB 391, § 13; R.S.1943, (2003), § 79-2013; Laws 2008, LB889, § 13.

13-2914 Projects excluded.

A political subdivision shall not use a design-build contract or construction management at risk contract for a project, in whole or in part, for road, street, highway, water, wastewater, utility, or sewer construction, except that a city of the metropolitan class may use a design-build contract or construction management at risk contract for the purpose of complying with state or federal requirements to control or minimize overflows from combined sewers.

Source: Laws 2008, LB889, § 14.

ARTICLE 30
PEACE OFFICERS

Section
13-3001. Peace officer; production or disclosure of personal financial records; restrictions.
13-3002. Peace officer; release of photograph; restrictions.
13-3003. Peace officer; disciplinary action; inclusion in personnel record; restrictions.
13-3004. Peace officer; exercise of rights; no retaliation.
13-3005. City of first class and county sheriff; adopt rules and regulations governing peace officer removal, suspension, or demotion.

13-3001 Peace officer; production or disclosure of personal financial records; restrictions.

After an applicant is hired by any municipality or county as a peace officer, no municipality or county may require the peace officer to produce or disclose

the peace officer's personal financial records except pursuant to a valid search warrant or subpoena. This section does not apply to any municipality or county accredited through the Commission on Accreditation for Law Enforcement Agencies.

Source: Laws 2009, LB158, § 4.

13-3002 Peace officer; release of photograph; restrictions.

No municipality or county shall publicly release a photograph of a peace officer who is the subject of an investigation without the written permission of the peace officer, except that the municipality or county may display a photograph of a peace officer to a prospective witness as part of an investigation and the municipality or county may provide a photograph of a peace officer to the investigating individual to display to a prospective witness as part of the investigation. This section does not apply to any municipality or county accredited through the Commission on Accreditation for Law Enforcement Agencies.

Source: Laws 2009, LB158, § 5.

13-3003 Peace officer; disciplinary action; inclusion in personnel record; restrictions.

No disciplinary action by any municipality or county may be included in a peace officer's personnel record unless such disciplinary action has been reduced to writing and the peace officer has been given a copy, and no correspondence may be included in a peace officer's personnel record unless the peace officer has been given a copy of the correspondence. The peace officer shall sign a written acknowledgement of receipt for any copy of a disciplinary action. This section does not apply to any municipality or county accredited through the Commission on Accreditation for Law Enforcement Agencies.

Source: Laws 2009, LB158, § 6.

13-3004 Peace officer; exercise of rights; no retaliation.

No peace officer of any municipality or county may be discharged, subject to disciplinary action, or threatened with discharge or disciplinary action as retaliation for or solely by reason of the peace officer's exercise of his or her rights provided in section 17-107, 17-208, or 23-1734 or sections 13-3001 to 13-3004. This section does not apply to any municipality or county accredited through the Commission on Accreditation for Law Enforcement Agencies.

Source: Laws 2009, LB158, § 7.

13-3005 City of first class and county sheriff; adopt rules and regulations governing peace officer removal, suspension, or demotion.

(1) Except as otherwise provided in a collective-bargaining agreement, Chapter 19, article 18, or Chapter 23, article 17, any city of the first class and all county sheriffs shall adopt rules and regulations governing the removal, suspension with or without pay, or demotion of any peace officer, including the chief of police. Such rules and regulations shall include: (a) Provisions for giving notice and a copy of the written accusation to the peace officer; (b) the peace officer's right to have an attorney or representative retained by the peace officer present with him or her at all hearings or proceedings regarding the written

accusation; (c) the right of the peace officer or his or her attorney or representative retained by the peace officer to be heard and present evidence; (d) the right of the peace officer as well as the individual imposing the action or their respective attorneys or representatives to record all hearings or proceedings regarding the written accusation; and (e) a procedure for making application for an appeal. Nothing in this section shall be construed to prevent the preemptory suspension or immediate removal from duty of an officer by the appropriate authority, pending the hearing authorized by this section, in cases of gross misconduct, neglect of duty, or disobedience of orders.

(2) This section does not apply to a peace officer during his or her probationary period.

Source: Laws 2009, LB158, § 8.

ARTICLE 31

SPORTS ARENA FACILITY FINANCING ASSISTANCE ACT

Section
13-3101. Act, how cited.
13-3102. Terms, defined.
13-3103. State assistance.
13-3104. Application; contents; board; duties.
13-3105. Public hearing; notice.
13-3106. Application; approval; board; findings; temporary approval; when; board; quorum.
13-3107. Tax Commissioner; duties; Department of Revenue; rules and regulations.
13-3108. State Treasurer; duties; Sports Arena Facility Support Fund; created; investment; state assistance; use.
13-3109. Bonds and refunding bonds; issuance; procedure; security; treatment.

13-3101 Act, how cited.

Sections 13-3101 to 13-3109 shall be known and may be cited as the Sports Arena Facility Financing Assistance Act.

Source: Laws 2010, LB779, § 7.
Operative date July 1, 2010.

13-3102 Terms, defined.

For purposes of the Sports Arena Facility Financing Assistance Act:

(1) Board means a board consisting of the Governor, the State Treasurer, the chairperson of the Nebraska Investment Council, the chairperson of the Nebraska State Board of Public Accountancy, and a professor of economics on the faculty of a state postsecondary educational institution appointed to a two-year term on the board by the Coordinating Commission for Postsecondary Education. For administrative and budget purposes only, the board shall be considered part of the Department of Revenue;

(2) Bond means a general obligation bond, redevelopment bond, lease-purchase bond, revenue bond, or combination of any such bonds;

(3) Eligible sports arena facility means:

(a) Any publicly owned, enclosed, and temperature-controlled building primarily used for sports that has a permanent seating capacity of at least three thousand but no more than seven thousand seats and in which initial occupancy occurs on or after July 1, 2010. Eligible sports arena facility includes

stadiums, arenas, dressing and locker facilities, concession areas, parking facilities, and onsite administrative offices connected with operating the facilities; and

(b) Any racetrack enclosure licensed by the State Racing Commission in which initial occupancy occurs on or after July 1, 2010, including concession areas, parking facilities, and onsite administrative offices connected with operating the racetrack;

(4) General obligation bond means any bond or refunding bond issued by a political subdivision and which is payable from the proceeds of an ad valorem tax;

(5) Increase in state sales tax revenue means the amount of state sales tax revenue collected by a nearby retailer during the fiscal year for which state assistance is calculated minus the amount of state sales tax revenue collected by the nearby retailer in the fiscal year that ended immediately preceding the date of occupancy of the eligible sports arena facility, except that the amount of state sales tax revenue of a nearby retailer shall not be less than zero;

(6) Nearby retailer means a retailer as defined in section 77-2701.32 that is located within six hundred yards of an eligible sports arena facility, measured from the facility but not from any parking facility or other structure. The term includes a subsequent owner of a nearby retailer operating at the same location;

(7) New state sales tax revenue means:

(a) For nearby retailers that commenced collecting state sales tax during the period of time beginning twenty-four months prior to occupancy of the eligible sports arena facility and ending twenty-four months after the occupancy of the eligible sports arena facility, one hundred percent of the state sales tax revenue collected by the nearby retailer and sourced under sections 77-2703.01 to 77-2703.04 to a location within six hundred yards of the eligible sports arena facility; and

(b) For nearby retailers that commenced collecting state sales tax prior to twenty-four months prior to occupancy of the eligible sports arena facility, the increase in state sales tax revenue collected by the nearby retailer and sourced under sections 77-2703.01 to 77-2703.04 to a location within six hundred yards of the facility;

(8) Political subdivision means any city, village, or county; and

(9) Revenue bond means any bond or refunding bond issued by a political subdivision which is limited or special rather than a general obligation bond of the political subdivision and which is not payable from the proceeds of an ad valorem tax.

Source: Laws 2010, LB779, § 8.
Operative date July 1, 2010.

13-3103 State assistance.

Any political subdivision or its governing body that has (1) acquired, constructed, improved, or equipped, (2) approved a general obligation bond issue to acquire, construct, improve, or equip, or (3) adopted a resolution authorizing the political subdivision to pursue a general obligation bond issue to acquire, construct, improve, or equip an eligible sports arena facility may apply to the board for state assistance. The state assistance shall only be used to pay back

amounts expended or borrowed through one or more issues of bonds to be expended by the political subdivision to acquire, construct, improve, and equip the eligible sports arena facility.

Source: Laws 2010, LB779, § 9.
Operative date July 1, 2010.

13-3104 Application; contents; board; duties.

(1) All applications for state assistance under the Sports Arena Facility Financing Assistance Act shall be in writing and shall include a certified copy of the approving action of the governing body of the applicant describing the proposed eligible sports arena facility and the anticipated financing.

(2) The application shall contain:

(a) A description of the proposed financing of the eligible sports arena facility, including the estimated principal and interest requirements for the bonds proposed to be issued in connection with the facility or the amounts necessary to repay the original investment by the applicant in the facility;

(b) Documentation of local financial commitment to support the project, including all public and private resources pledged or committed to the project and including a copy of any operating agreement or lease with substantial users of the facility; and

(c) Any other project information deemed appropriate by the board.

(3) Upon receiving an application for state assistance, the board shall review the application and notify the applicant of any additional information needed for a proper evaluation of the application.

(4) Any state assistance received pursuant to the act shall be used only for public purposes.

Source: Laws 2010, LB779, § 10.
Operative date July 1, 2010.

13-3105 Public hearing; notice.

(1) After reviewing an application submitted under section 13-3104, the board shall hold a public hearing on the application.

(2) The board shall give notice of the time, place, and purpose of the public hearing by publication three times in a newspaper of general circulation in the area where the applicant is located. Such publication shall be not less than ten days prior to the hearing. The notice shall describe generally the eligible sports arena facility for which state assistance has been requested. The applicant shall pay the cost of the notice.

(3) At the public hearing, representatives of the applicant and any other interested persons may appear and present evidence and argument in support of or in opposition to the application or neutral testimony. The board may seek expert testimony and may require testimony of persons whom the board desires to comment on the application. The board may accept additional evidence after conclusion of the public hearing.

Source: Laws 2010, LB779, § 11.
Operative date July 1, 2010.

13-3106 Application; approval; board; findings; temporary approval; when; board; quorum.

(1) After consideration of the application and the evidence, if the board finds that the facility described in the application is eligible and that state assistance is in the best interest of the state, the application shall be approved, except that an approval of an application submitted because of the requirement in subdivision (3) of section 13-3103 is a temporary approval. If the general obligation bond issue is subsequently approved by the voters of the political subdivision, the approval by the board becomes permanent. If the general obligation bond issue is not approved by such voters, the temporary approval shall become void.

(2) In determining whether state assistance is in the best interest of the state, the board shall consider the fiscal and economic capacity of the applicant to finance the local share of the facility.

(3) A majority of the board members constitutes a quorum for the purpose of conducting business. All actions of the board shall be by a majority vote of all the board members, one of whom must be the Governor.

Source: Laws 2010, LB779, § 12.
Operative date July 1, 2010.

13-3107 Tax Commissioner; duties; Department of Revenue; rules and regulations.

(1) If an application is approved, the Tax Commissioner shall:

(a) Audit or review audits of the approved eligible sports arena facility to determine the (i) state sales tax revenue collected by retailers doing business at such facility on sales at such facility, (ii) state sales tax revenue collected on primary and secondary box office sales of admissions to such facility, and (iii) new state sales tax revenue collected by nearby retailers;

(b) Certify annually the amount of state sales tax revenue and new state sales tax revenue determined under subdivision (a) of this subsection to the State Treasurer; and

(c) Determine if more than one facility is eligible for state assistance from state sales tax revenue collected by the same nearby retailers. If the Tax Commissioner has made such a determination, the facility that was first determined to be eligible for state assistance shall be the only facility eligible to receive such funds.

(2) State sales tax revenue collected by retailers that are doing business at an eligible sports arena facility and new state sales tax revenue collected by nearby retailers shall be reported on informational returns developed by the Department of Revenue and provided to any such retailers by the facility. The informational returns shall be submitted to the department by the retailer by the twenty-fifth day of the month following the month the sales taxes are collected. The Tax Commissioner shall use the data from the informational returns and sales tax returns of both such categories of retailers and the sports arena facility to determine the appropriate amount of state sales tax revenue.

(3) The Department of Revenue may adopt and promulgate rules and regulations to carry out the Sports Arena Facility Financing Assistance Act.

Source: Laws 2010, LB779, § 13.
Operative date July 1, 2010.

13-3108 State Treasurer; duties; Sports Arena Facility Support Fund; created; investment; state assistance; use.

(1) Upon the annual certification under section 13-3107, the State Treasurer shall transfer after the audit the amount certified to the Sports Arena Facility Support Fund which is hereby created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2)(a) It is the intent of the Legislature to appropriate from the fund money to be distributed to any political subdivision for which an application for state assistance under the Sports Arena Facility Financing Assistance Act has been approved an amount not to exceed seventy percent of the (i) state sales tax revenue collected by retailers doing business at eligible sports arena facilities on sales at such facilities, (ii) state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities, and (iii) new state sales tax revenue collected by nearby retailers and sourced under sections 77-2703.01 to 77-2703.04 to a location within six hundred yards of the eligible facility.

(b) The amount to be appropriated for distribution as state assistance to a political subdivision under this subsection for any one year after the tenth year shall not exceed the highest such amount appropriated under subdivision (2)(a) of this section during any one year of the first ten years of such appropriation. If seventy percent of the state sales tax revenue as described in subdivision (2)(a) of this section exceeds the amount to be appropriated under this subdivision, such excess funds shall be transferred to the General Fund.

(3) The total amount of state assistance approved for an eligible sports arena facility shall not (a) exceed fifty million dollars or (b) be paid out for more than twenty years after the issuance of the first bond for the sports arena facility.

(4) State assistance to the political subdivision shall no longer be available upon the retirement of the bonds issued to acquire, construct, improve, or equip the facility or any subsequent bonds that refunded the original issue or when state assistance reaches the amount determined under subsection (3) of this section, whichever comes first.

(5) State assistance shall not be used for an operating subsidy or other ancillary facility.

(6) The thirty percent of state sales tax revenue remaining after the appropriation and transfer in subsection (2) of this section shall be appropriated by the Legislature to the Local Civic, Cultural, and Convention Center Financing Fund.

(7) Any municipality that has applied for and received a grant of assistance under the Local Civic, Cultural, and Convention Center Financing Act shall not receive state assistance under the Sports Arena Facility Financing Assistance Act.

Source: Laws 2010, LB779, § 14.
Operative date July 1, 2010.

Cross References

Local Civic, Cultural, and Convention Center Financing Act, see section 13-2701.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

13-3109 Bonds and refunding bonds; issuance; procedure; security; treatment.

(1) The applicant political subdivision may issue from time to time its bonds and refunding bonds to finance and refinance the acquisition, construction, improving, and equipping of eligible sports arena facilities. The bonds may be sold by the applicant in such manner and for such price as the applicant determines, at a discount, at par, or at a premium, at private negotiated sale or at public sale, after notice published prior to the sale in a legal newspaper having general circulation in the political subdivision or in such other medium of publication as the applicant deems appropriate. The bonds shall have a stated maturity of twenty years or less and shall bear interest at such rate or rates and otherwise be issued in accordance with the respective procedures and with such other terms and provisions as are established, permitted, or authorized by applicable state laws and home rule charters for the type of bonds to be issued. Such bonds may be secured as to payment in whole or in part by a pledge, as shall be determined by the applicant, from the income, proceeds, and revenue of the eligible sports arena facilities financed with proceeds of such bonds, from the income, proceeds, and revenue of any of its eligible sports arena facilities, or from its revenue and income, including its sales, use, or occupation tax revenue, fees, or receipts, as may be determined by the applicant. The applicant may further secure the bonds by a mortgage or deed of trust encumbering all or any portion of the eligible sports arena facilities and by a bond insurance policy or other credit support facility. No general obligation bonds, except refunding bonds, shall be issued until authorized by greater than fifty percent of the applicant's electors voting on the question as to their issuance at any election as defined in section 32-108. The face of the bonds shall plainly state that the bonds and the interest thereon shall not constitute nor give rise to an indebtedness, obligation, or pecuniary liability of the state nor a charge against the general credit, revenue, or taxing power of the state. Bonds of the applicant are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempt from all state income taxes.

(2) All payments to political subdivisions under the Sports Arena Facility Financing Assistance Act are made subject to specific appropriation for such purpose.

Source: Laws 2010, LB779, § 15.
Operative date July 1, 2010.

CHAPTER 14
CITIES OF THE METROPOLITAN CLASS

Article.
1. General Powers. 14-102.
4. City Planning, Zoning. 14-403.01, 14-407.
5. Fiscal Management, Revenue, and Finances.
(a) General Provisions. 14-501.01.
(d) City Treasurer. 14-556.
8. Miscellaneous Provisions. 14-813.
21. Public Utilities. 14-2102.

ARTICLE 1
GENERAL POWERS

Section
14-102. Additional powers.

14-102 Additional powers.

In addition to the powers granted in section 14-101, cities of the metropolitan class shall have power by ordinance:

Taxes, special assessments.

(1) To levy any tax or special assessment authorized by law;

Corporate seal.

(2) To provide a corporate seal for the use of the city, and also any official seal for the use of any officer, board, or agent of the city, whose duties under this act or under any ordinance require an official seal to be used. Such corporate seal shall be used in the execution of municipal bonds, warrants, conveyances, and other instruments and proceedings as this act or the ordinances of the city require;

Regulation of public health.

(3) To provide all needful rules and regulations for the protection and preservation of health within the city; and for this purpose they may provide for the enforcement of the use of water from public water supplies when the use of water from other sources shall be deemed unsafe;

Appropriations for debts and expenses.

(4) To appropriate money and provide for the payment of debts and expenses of the city;

Protection of strangers and travelers.

(5) To adopt all such measures as they may deem necessary for the accommodation and protection of strangers and the traveling public in person and property;

Concealed weapons, firearms, fireworks, explosives.

(6) To punish and prevent the carrying of concealed weapons, except the carrying of a concealed handgun in compliance with the Concealed Handgun Permit Act, and the discharge of firearms, fireworks, or explosives of any

description within the city, other than the discharge of firearms at a shooting range pursuant to the Nebraska Shooting Range Protection Act;

Sale of foodstuffs.

(7) To regulate the inspection and sale of meats, flour, poultry, fish, milk, vegetables, and all other provisions or articles of food exposed or offered for sale in the city;

Official bonds.

(8) To require all officers or servants elected or appointed in pursuance of this act to give bond and security for the faithful performance of their duties; but no officer shall become security upon the official bond of another or upon any bond executed to the city;

Official reports of city officers.

(9) To require from any officer of the city at any time a report, in detail, of the transactions of his or her office or any matter connected therewith;

Cruelty to children and animals.

(10) To provide for the prevention of cruelty to children and animals;

Dogs; taxes and restrictions.

(11) To regulate, license, or prohibit the running at large of dogs and other animals within the city as well as in areas within three miles of the corporate limits of the city, to guard against injuries or annoyance from such dogs and other animals, and to authorize the destruction of the dogs and other animals when running at large contrary to the provisions of any ordinance. Any licensing provision shall comply with subsection (2) of section 54-603 for service animals;

Cleaning sidewalks.

(12) To provide for keeping sidewalks clean and free from obstructions and accumulations, to provide for the assessment and collection of taxes on real estate and for the sale and conveyance thereof, and to pay the expenses of keeping the sidewalk adjacent to such real estate clean and free from obstructions and accumulations as herein provided;

Planting and trimming of trees; protection of birds.

(13) To provide for the planting and protection of shade or ornamental and useful trees upon the streets or boulevards, to assess the cost thereof to the extent of benefits upon the abutting property as a special assessment, and to provide for the protection of birds and animals and their nests; to provide for the trimming of trees located upon the streets and boulevards or when the branches of trees overhang the streets and boulevards when in the judgment of the mayor and council such trimming is made necessary to properly light such street or boulevard or to furnish proper police protection and to assess the cost thereof upon the abutting property as a special assessment;

Naming and numbering streets and houses.

(14) To provide for, regulate, and require the numbering or renumbering of houses along public streets or avenues; to care for and control and to name and rename streets, avenues, parks, and squares within the city;

Weeds.

(15) To require weeds and worthless vegetation growing upon any lot or piece of ground within the city to be cut and destroyed so as to abate any

nuisance occasioned thereby, to prohibit and control the throwing, depositing, or accumulation of litter on any lot or piece of ground within the city and to require the removal thereof so as to abate any nuisance occasioned thereby, and if the owner fails to cut and destroy weeds and worthless vegetation or remove litter, or both, after notice as required by ordinance, to assess the cost thereof upon the lots or lands as a special assessment. The notice required to be given may be by publication in the official newspaper of the city and may be directed in general terms to the owners of lots and lands affected without naming such owners;

Animals running at large.

(16) To prohibit and regulate the running at large or the herding or driving of domestic animals, such as hogs, cattle, horses, sheep, goats, fowls, or animals of any kind or description within the corporate limits and provide for the impounding of all animals running at large, herded, or driven contrary to such prohibition; and to provide for the forfeiture and sale of animals impounded to pay the expense of taking up, caring for, and selling such impounded animals, including the cost of advertising and fees of officers;

Use of streets.

(17) To regulate the transportation of articles through the streets, to prevent injuries to the streets from overloaded vehicles, and to regulate the width of wagon tires and tires of other vehicles;

Playing on streets and sidewalks.

(18) To prevent or regulate the rolling of hoops, playing of ball, flying of kites, the riding of bicycles or tricycles, or any other amusement or practice having a tendency to annoy persons passing in the streets or on the sidewalks or to frighten teams or horses; to regulate the use of vehicles propelled by steam, gas, electricity, or other motive power, operated on the streets of the city;

Combustibles and explosives.

(19) To regulate or prohibit the transportation and keeping of gunpowder, oils, and other combustible and explosive articles;

Public sale of chattels on streets.

(20) To regulate, license, or prohibit the sale of domestic animals or of goods, wares, and merchandise at public auction on the streets, alleys, highways, or any public ground within the city;

Signs and obstruction in streets.

(21) To regulate and prevent the use of streets, sidewalks, and public grounds for signs, posts, awnings, awning posts, scales, or other like purposes; to regulate and prohibit the exhibition or carrying or conveying of banners, placards, advertisements, or the distribution or posting of advertisements or handbills in the streets or public grounds or upon the sidewalks;

Disorderly conduct.

(22) To provide for the punishment of persons disturbing the peace and good order of the city by clamor and noise, intoxication, drunkenness, fighting, or using obscene or profane language in the streets or other public places or otherwise violating the public peace by indecent or disorderly conduct or by lewd and lascivious behavior;

Vagrants and tramps.

(23) To provide for the punishment of vagrants, tramps, common street beggars, common prostitutes, habitual disturbers of the peace, pickpockets, gamblers, burglars, thieves, or persons who practice any game, trick, or device with intent to swindle, persons who abuse their families, and suspicious persons who can give no reasonable account of themselves; and to punish trespassers upon private property;

Disorderly houses, gambling, offenses against public morals.

(24) To prohibit, restrain, and suppress tippling shops, houses of prostitution, opium joints, gambling houses, prize fighting, dog fighting, cock fighting, and other disorderly houses and practices, all games and gambling and desecration of the Sabbath, commonly called Sunday, and all kinds of indecencies; to regulate and license or prohibit the keeping and use of billiard tables, ten pins or ball alleys, shooting galleries except as provided in the Nebraska Shooting Range Protection Act, and other similar places of amusement; and to prohibit and suppress all lotteries and gift enterprises of all kinds under whatsoever name carried on, except that nothing in this subdivision shall be construed to apply to bingo, lotteries, lotteries by the sale of pickle cards, or raffles conducted in accordance with the Nebraska Bingo 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;

Police regulation in general.

(25) To make and enforce all police regulations for the good government, general welfare, health, safety, and security of the city and the citizens thereof in addition to the police powers expressly granted herein; and in the exercise of the police power, to pass all needful and proper ordinances and impose fines, forfeitures, penalties, and imprisonment at hard labor for the violation of any ordinance, and to provide for the recovery, collection, and enforcement thereof; and in default of payment to provide for confinement in the city or county prison, workhouse, or other place of confinement with or without hard labor as may be provided by ordinance;

Fast driving on streets.

(26) To prevent horseracing and immoderate driving or riding on the street and to compel persons to fasten their horses or other animals attached to vehicles while standing in the streets;

Libraries, art galleries, and museums.

(27) To establish and maintain public libraries, reading rooms, art galleries, and museums and to provide the necessary grounds or buildings therefor; to purchase books, papers, maps, manuscripts, works of art, and objects of natural or of scientific curiosity, and instruction therefor; to receive donations and bequests of money or property for the same in trust or otherwise and to pass necessary bylaws and regulations for the protection and government of the same;

Hospitals, workhouses, jails, firehouses, etc.; garbage disposal.

(28) To erect, designate, establish, maintain, and regulate hospitals or workhouses, houses of correction, jails, station houses, fire engine houses, asphalt repair plants, and other necessary buildings; and to erect, designate, establish, maintain, and regulate plants for the removal, disposal, or recycling of garbage and refuse or to make contracts for garbage and refuse removal, disposal, or recycling, or all of the same, and to charge equitable fees for such removal,

disposal, or recycling, or all of the same, except as hereinafter provided. The fees collected pursuant to this subdivision shall be credited to a single fund to be used exclusively by the city for the removal, disposal, or recycling of garbage and refuse, or all of the same, including any costs incurred for collecting the fee. Before any contract for such removal, disposal, or recycling is let, the city council shall make specifications therefor, bids shall be advertised for as now provided by law, and the contract shall be let to the lowest and best bidder, who shall furnish bond to the city conditioned upon his or her carrying out the terms of the contract, the bond to be approved by the city council. Nothing in this act, and no contract or regulation made by the city council, shall be so construed as to prohibit any person, firm, or corporation engaged in any business in which garbage or refuse accumulates as a byproduct from selling, recycling, or otherwise disposing of his, her, or its garbage or refuse or hauling such garbage or refuse through the streets and alleys under such uniform and reasonable regulations as the city council may by ordinance prescribe for the removal and hauling of garbage or refuse;

Market places.

(29) To erect and establish market houses and market places and to provide for the erection of all other useful and necessary buildings for the use of the city and for the protection and safety of all property owned by the city; and such market houses and market places and buildings aforesaid may be located on any street, alley, or public ground or on land purchased for such purpose;

Cemeteries, registers of births and deaths.

(30) To prohibit the establishment of additional cemeteries within the limits of the city, to regulate the registration of births and deaths, to direct the keeping and returning of bills of mortality, and to impose penalties on physicians, sextons, and others for any default in the premises;

Plumbing, etc., inspection.

(31) To provide for the inspection of steam boilers, electric light appliances, pipefittings, and plumbings, to regulate their erection and construction, to appoint inspectors, and to declare their powers and duties, except as herein otherwise provided;

Fire limits and fire protection.

(32) To prescribe fire limits and regulate the erection of all buildings and other structures within the corporate limits; to provide for the removal of any buildings or structures or additions thereto erected contrary to such regulations, to provide for the removal of dangerous buildings, and to provide that wooden buildings shall not be erected or placed or repaired in the fire limits; but such ordinance shall not be suspended or modified by resolution nor shall exceptions be made by ordinance or resolution in favor of any person, firm, or corporation or concerning any particular lot or building; to direct that all and any building within such fire limits, when the same shall have been damaged by fire, decay, or otherwise, to the extent of fifty percent of the value of a similar new building above the foundation, shall be torn down or removed; and to prescribe the manner of ascertaining such damages and to assess the cost of removal of any building erected or existing contrary to such regulations or provisions, against the lot or real estate upon which such building or structure is located or shall be erected, or to collect such costs from the owner of any such building or structure and enforce such collection by civil action in any court of competent jurisdiction;

Building regulations.

(33) To regulate the construction, use, and maintenance of party walls, to prescribe and regulate the thickness, strength, and manner of constructing stone, brick, wood, or other buildings and the size and shape of brick and other material placed therein, to prescribe and regulate the construction and arrangement of fire escapes and the placing of iron and metallic shutters and doors therein and thereon, and to provide for the inspection of elevators and hoist-way openings to avoid accidents; to prescribe, regulate, and provide for the inspection of all plumbing, pipefitting, or sewer connections in all houses or buildings now or hereafter erected; to regulate the size, number, and manner of construction of halls, doors, stairways, seats, aisles, and passageways of theaters, tenement houses, audience rooms, and all buildings of a public character, whether now built or hereafter to be built, so that there may be convenient, safe, and speedy exit in case of fire; to prevent the dangerous construction and condition of chimneys, fireplaces, hearths, stoves, stovepipes, ovens, boilers, and heating appliances used in or about any building or a manufactory and to cause the same to be removed or placed in safe condition when they are considered dangerous; to regulate and prevent the carrying on of manufactures dangerous in causing and promoting fires; to prevent the deposit of ashes in unsafe places and to cause such buildings and enclosures as may be in a dangerous state to be put in a safe condition; to prevent the disposing of and delivery or use in any building or other structure, of soft, shelly, or imperfectly burned brick or other unsuitable building material within the city limits and provide for the inspection of the same; to provide for the abatement of dense volumes of smoke; to regulate the construction of areaways, stairways, and vaults and to regulate partition fences; to enforce proper heating and ventilation of buildings used for schools, workhouses, or shops of every class in which labor is employed or large numbers of persons are liable to congregate;

Warehouses and street railways.

(34) To regulate levees, depots and depot grounds, and places for storing freight and goods and to provide for and regulate the laying of tracks and the passage of steam or other railways through the streets, alleys, and public grounds of the city;

Lighting railroad property.

(35) To require the lighting of any railway within the city, the cars of which are propelled by steam, and to fix and determine the number, size, and style of lampposts, burners, lamps, and all other fixtures and apparatus necessary for such lighting and the points of location for such lampposts; and in case any company owning or operating such railways shall fail to comply with such requirements, the council may cause the same to be done and may assess the expense thereof against such company, and the same shall constitute a lien upon any real estate belonging to such company and lying within such city and may be collected in the same manner as taxes for general purposes;

City publicity.

(36) To provide for necessary publicity and to appropriate money for the purpose of advertising the resources and advantages of the city;

Offstreet parking.

(37) To erect, establish, and maintain offstreet parking areas on publicly owned property located beneath any elevated segment of the National System

of Interstate and Defense Highways or portion thereof, or public property title to which is in the city on May 12, 1971, or property owned by the city and used in conjunction with and incidental to city-operated facilities, and to regulate parking thereon by time limitation devises or by lease;

Public passenger transportation systems.

(38) To acquire, by the exercise of the power of eminent domain or otherwise, lease, purchase, construct, own, maintain, operate, or contract for the operation of public passenger transportation systems, excluding taxicabs and railroad systems, including all property and facilities required therefor, within and without the limits of the city, to redeem such property from prior encumbrance in order to protect or preserve the interest of the city therein, to exercise all powers granted by the Constitution of Nebraska and laws of the State of Nebraska or exercised by or pursuant to a home rule charter adopted pursuant thereto, including but not limited to receiving and accepting from the government of the United States or any agency thereof, from the State of Nebraska or any subdivision thereof, and from any person or corporation donations, devises, gifts, bequests, loans, or grants for or in aid of the acquisition, operation, and maintenance of such public passenger transportation systems and to administer, hold, use, and apply the same for the purposes for which such donations, devises, gifts, bequests, loans, or grants may have been made, to negotiate with employees and enter into contracts of employment, to employ by contract or otherwise individuals singularly or collectively, to enter into agreements authorized under the Interlocal Cooperation Act or the Joint Public Agency Act, to contract with an operating and management company for the purpose of operating, servicing, and maintaining any public passenger transportation systems any city of the metropolitan class shall acquire under the provisions of this act, and to exercise such other and further powers as may be necessary, incident, or appropriate to the powers of such city; and

Regulation of air quality.

(39) In addition to powers conferred elsewhere in the laws of the state and notwithstanding any other law of the state, to implement and enforce an air pollution control program within the corporate limits of the city under subdivision (23) of section 81-1504 or subsection (1) of section 81-1528, which program shall be consistent with the federal Clean Air Act, as amended, 42 U.S.C. 7401 et seq. Such powers shall include without limitation those involving injunctive relief, civil penalties, criminal fines, and burden of proof. Nothing in this section shall preclude the control of air pollution by resolution, ordinance, or regulation not in actual conflict with the state air pollution control regulations.

Source: Laws 1921, c. 116, art. I, § 2, p. 398; C.S.1922, § 3489; C.S.1929, § 14-102; R.S.1943, § 14-102; Laws 1963, c. 314, § 1, p. 945; Laws 1971, LB 237, § 1; Laws 1972, LB 1274, § 1; Laws 1974, LB 768, § 1; Laws 1981, LB 501, § 1; Laws 1986, LB 1027, § 186; Laws 1991, LB 356, § 1; Laws 1991, LB 849, § 59; Laws 1992, LB 1257, § 63; Laws 1993, LB 138, § 61; Laws 1993, LB 623, § 1; Laws 1997, LB 814, § 2; Laws 1999, LB 87, § 59; Laws 2008, LB806, § 1; Laws 2009, LB430, § 1; Laws 2009, LB503, § 11.

Cross References

Concealed Handgun Permit Act, see section 69-2427.
Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.
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 Shooting Range Protection Act, see section 37-1301.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.
"This act", defined, see section 14-101.

ARTICLE 4
CITY PLANNING, ZONING

Section
14-403.01. New comprehensive plan or full update; requirements.
14-407. Zoning; exercise of powers; planning board or official; notice to military installation.

14-403.01 New comprehensive plan or full update; requirements.

When a city of the metropolitan class adopts a new comprehensive plan or a full update to an existing comprehensive plan on or after July 15, 2010, but not later than January 1, 2015, such plan or update shall include, but not be limited to, an energy element which: Assesses energy infrastructure and energy use by sector, including residential, commercial, and industrial sectors; evaluates utilization of renewable energy sources; and promotes energy conservation measures that benefit the community.

Source: Laws 2010, LB997, § 1.
Effective date July 15, 2010.

14-407 Zoning; exercise of powers; planning board or official; notice to military installation.

A city of the metropolitan class shall exercise the powers conferred by sections 14-401 to 14-418 through such appropriate planning board or official as exists in such city.

When the city is considering the adoption or amendment of a zoning ordinance or the approval of the platting or replatting of any development of real estate, the city shall notify any military installation which is located within the corporate boundary limits or the extraterritorial zoning jurisdiction of the city if the city has received a written request for such notification from the military installation. The planning board shall deliver the notification to the military installation at least ten days prior to the meeting of the planning board at which the proposal is to be considered.

Source: Laws 1925, c. 45, § 7, p. 181; C.S.1929, § 14-410; R.S.1943, § 14-407; Laws 1959, c. 37, § 2, p. 212; Laws 2010, LB279, § 1.
Effective date July 15, 2010.

Cross References

Planning board, extraterritorial member, see sections 14-373.01 and 14-373.02.

ARTICLE 5
FISCAL MANAGEMENT, REVENUE, AND FINANCES

(a) GENERAL PROVISIONS

Section
14-501.01. Biennial budget authorized.

(d) CITY TREASURER

14-556. City treasurer; authorized depositories; securities; conflict of interest.

(a) GENERAL PROVISIONS

14-501.01 Biennial budget authorized.

A city of the metropolitan class may adopt biennial budgets for biennial periods if such budgets are provided for by a city charter provision. For purposes of this section:

(1) Biennial budget means a budget that provides for a biennial period to determine and carry on the city's financial and taxing affairs; and

(2) Biennial period means the two fiscal years comprising a biennium commencing in odd-numbered or even-numbered years.

Source: Laws 2000, LB 1116, § 2; Laws 2010, LB779, § 16.
Operative date July 1, 2010.

(d) CITY TREASURER

14-556 City treasurer; authorized depositories; securities; conflict of interest.

(1) The city treasurer shall place all funds of the city, as the same accrue, on deposit in such banks, capital stock financial institutions, or qualifying mutual financial institutions within the city as shall agree to pay the highest rate of interest for the use of such funds so deposited. The city council is hereby directed to advertise for bids for rates for the deposit of such funds as is hereby contemplated.

(2) The banks, capital stock financial institutions, or qualifying mutual financial institutions referred to in subsection (1) of this section, so selected, shall:

(a) Give bond to the city for the safekeeping of such funds, and such city shall not have on deposit in any bank, capital stock financial institution, or qualifying mutual financial institution giving a guaranty bond more than the amount insured or guaranteed by the Federal Deposit Insurance Corporation plus the maximum amount of the bond given by the bank, capital stock financial institution, or qualifying mutual financial institution or in any bank, capital stock financial institution, or qualifying mutual financial institution giving a personal bond more than the amount insured or guaranteed by the Federal Deposit Insurance Corporation plus one-half of the amount of the bond of the bank, capital stock financial institution, or qualifying mutual financial institution. All bonds of such banks, capital stock financial institutions, or qualifying mutual financial institutions shall be deposited with and held by the city treasurer; or

(b) Give security as provided in the Public Funds Deposit Security Act.

(3) The fact that a stockholder, director, or other officer of such bank, capital stock financial institution, or qualifying mutual financial institution is also serving as mayor, as a member of the city council, as a member of a board of public works, or as any other officer of such municipality shall not disqualify such bank, capital stock financial institution, or qualifying mutual financial institution from acting as a depository for such municipal funds.

(4) Section 77-2366 shall apply to deposits in capital stock financial institutions.

(5) Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1921, c. 116, art. IV, § 44, p. 491; C.S.1922, § 3670; C.S.1929, § 14-547; R.S.1943, § 14-556; Laws 1957, c. 54, § 1, p. 263; Laws 1959, c. 35, § 2, p. 193; Laws 1989, LB 33, § 9; Laws 1993, LB 157, § 1; Laws 1996, LB 1274, § 13; Laws 2001, LB 362, § 10; Laws 2009, LB259, § 4.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

ARTICLE 8
MISCELLANEOUS PROVISIONS

Section
14-813. Awards, orders of council; appeals from; procedure; indigent appellant.

14-813 Awards, orders of council; appeals from; procedure; indigent appellant.

Whenever the right of appeal is conferred by this act, the procedure, unless otherwise provided, shall be substantially as follows: The claimant or appellant shall, within twenty days after the date of the order complained of, execute a bond to such city with sufficient surety to be approved by the clerk, conditioned for the faithful prosecution of such appeal, and the payment of all costs adjudged against the appellant. Such bond shall be filed in the office of the city clerk. Upon the request of the appellant and the payment by the appellant to the city clerk or his or her designee of the estimated cost of preparation of the transcript, the city clerk shall cause a complete transcript of the proceedings of the city relating to its decision to be prepared. The cost of preparing the transcript shall be calculated in the same manner as the calculation of the fee for a court reporter for the preparation of a bill of exceptions as specified by rules of practice prescribed by the Supreme Court. At such time as the completed transcript is presented to the appellant, the appellant shall pay the amount of the cost of preparation in excess of the estimated amount already paid or shall receive a refund of any amount in excess of the actual cost. An appellant determined to be indigent shall not be required to pay a bond or any costs associated with such transcript preparation. For purposes of this section, indigent means the inability to financially pursue the appeal without prejudicing the appellant's ability to provide economic necessities for the appellant or the appellant's family. Indigency shall be determined by the court having jurisdiction over the appeal upon motion of the appellant. The court shall make a reasonable inquiry to determine the appellant's financial condition and shall consider such factors as the appellant's income, the availability to the appellant

of other resources, including real and personal property, bank accounts, social security benefits, and unemployment or other benefits, the appellant's normal living expenses, the appellant's outstanding debts, the number and age of the appellant's dependents, and other relevant circumstances. It shall be the duty of the claimant or appellant to file a petition in the district court as in the commencement of an action within thirty days after the date of the order or award appealed from, and he or she shall also file such transcript before answer day. The proceedings of the district court shall thereafter be the same as on appeal from the county board. Any taxpayer may appeal from the allowance of any claim against the city by giving a bond and complying with this section.

This section shall not be so construed as to prevent the city council from once reconsidering its action on any claim or award upon ten days' notice to the parties interested.

Source: Laws 1921, c. 116, art. VII, § 13, p. 512; C.S.1922, § 3721; C.S.1929, § 14-813; R.S.1943, § 14-813; Laws 2009, LB441, § 1.

Cross References

"This act", defined, see section 14-101.

ARTICLE 21
PUBLIC UTILITIES

Section
14-2102. Board of directors; qualifications; election; outside member.

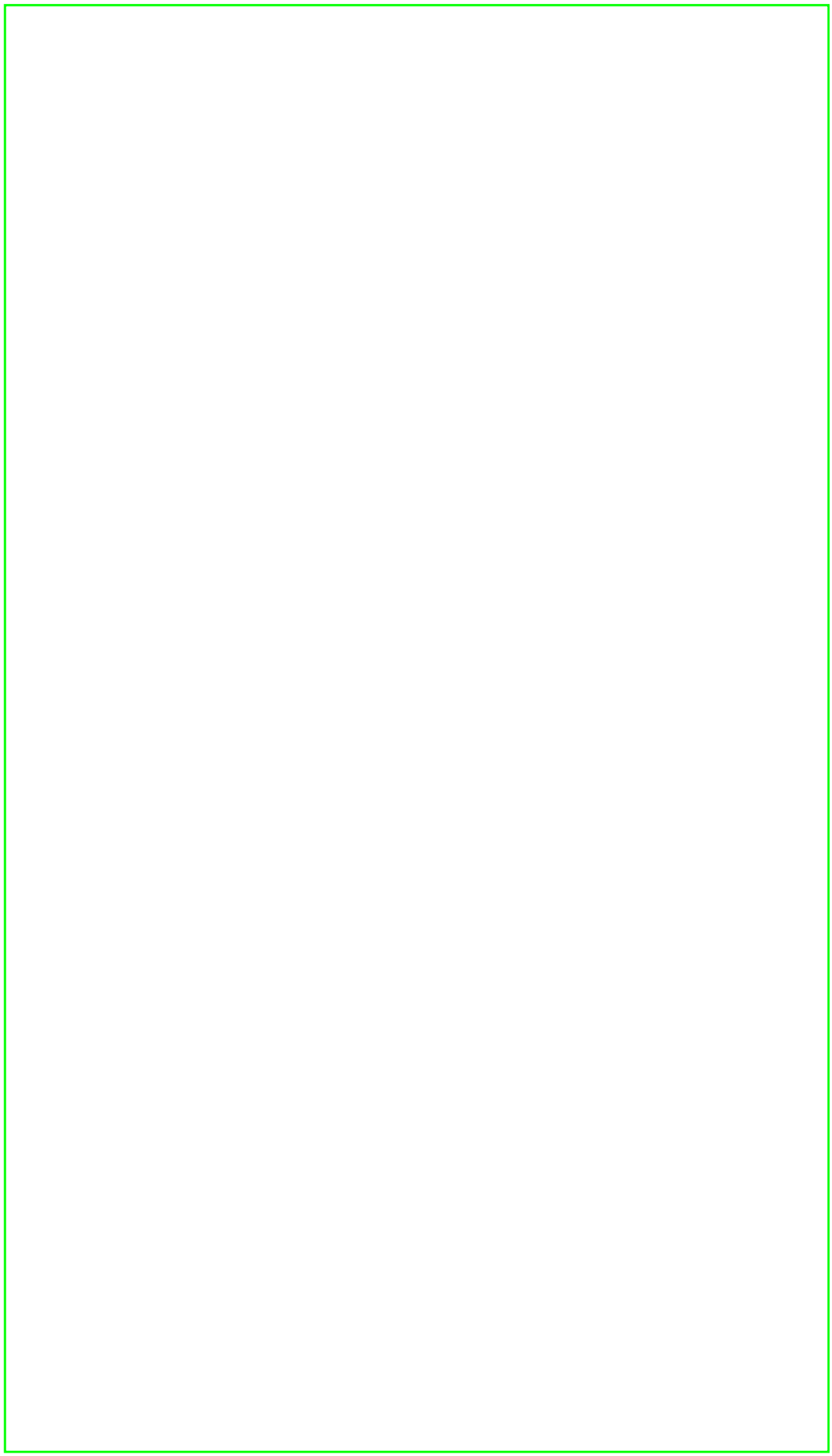
14-2102 Board of directors; qualifications; election; outside member.

In each metropolitan utilities district service area, there shall be a board of directors consisting of seven members. The members shall be elected as provided in section 32-540.

Registered voters within the boundaries of the district shall be registered voters of such district and shall be eligible for the office of director subject to the special qualification of residence for the outside member. The outside member specified in section 32-540 shall be a registered voter residing within the district but outside the corporate limits of the city of the metropolitan class for which the district was created.

In the event of the annexation of the area within which the outside member resides, he or she may continue to serve as the outside member until the expiration of the term of office for which such member was elected and until a successor is elected and qualified.

Source: Laws 1913, c. 143, § 3, p. 350; R.S.1913, § 4245; C.S.1922, § 3747; C.S.1929, § 14-1003; R.S.1943, § 14-1003; Laws 1945, c. 17, § 1, p. 121; Laws 1953, c. 22, § 1, p. 93; Laws 1961, c. 32, § 1, p. 152; Laws 1976, LB 665, § 1; Laws 1977, LB 201, § 3; R.S.1943, (1991), § 14-1003; Laws 1992, LB 746, § 2; Laws 1994, LB 76, § 477; Laws 2009, LB562, § 1.



CHAPTER 15
CITIES OF THE PRIMARY CLASS

Article.
2. General Powers. 15-220 to 15-268.
8. Fiscal Management, Revenue, and Finances. 15-801 to 15-849.
11. Planning Department. 15-1102, 15-1103.
12. Appeals. 15-1202 to 15-1204.

ARTICLE 2
GENERAL POWERS

Section
15-220. Dogs and other animals; licensing; regulation.
15-255. Public safety; measures to protect.
15-258. Billiard halls; disorderly houses; desecration of Sabbath.
15-268. Weeds; destruction and removal; procedure.

15-220 Dogs and other animals; licensing; regulation.

A primary city shall have power to regulate, license, or prohibit the running at large of dogs and other animals and guard against injuries or annoyances therefrom, and to authorize the destruction of the same when running at large contrary to the provisions of any ordinance. Any licensing provision shall comply with subsection (2) of section 54-603 for service animals.

Source: Laws 1901, c. 16, § 129, XXIV, p. 133; R.S.1913, § 4434; C.S. 1922, § 3818; C.S.1929, § 15-221; R.S.1943, § 15-220; Laws 1981, LB 501, § 2; Laws 1997, LB 814, § 3; Laws 2008, LB806, § 2.

Cross References

For other provisions for regulation of dogs and cats, see sections 15-218, 54-601 to 54-624, and 71-4401 to 71-4412.

15-255 Public safety; measures to protect.

A city of the primary class may prohibit riots, routs, noise, or disorderly assemblies; prevent use of firearms, rockets, powder, fireworks, or other dangerous and combustible material; prohibit carrying of concealed weapons, except the carrying of a concealed handgun in compliance with the Concealed Handgun Permit Act; arrest, punish, fine, or set at work on streets or elsewhere vagrants and persons found without visible means of support or legitimate business; regulate and prevent the transportation of gunpowder or combustible articles, tar, pitch, resin, coal oil, benzine, turpentine, hemp, cotton, nitroglycerine, dynamite, petroleum or its products, or other explosives or inflammables; regulate use of lights in stables, shops, or other places and building of bonfires; and regulate and prohibit the piling of building material or any excavation or obstruction of the streets.

Source: Laws 1901, c. 16, § 129, LV, p. 141; R.S.1913, § 4465; C.S.1922, § 3850; C.S.1929, § 15-253; R.S.1943, § 15-255; Laws 2009, LB430, § 2.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

15-258 Billiard halls; disorderly houses; desecration of Sabbath.

A city of the primary class may restrain, prohibit, and suppress unlicensed tippling shops, billiard tables, bowling alleys, houses of prostitution, opium joints, dens, and other disorderly houses and practices, games, gambling houses, desecration of the Sabbath day, commonly called Sunday, and may prohibit all public amusements, shows, exhibitions, or ordinary business pursuits upon such day, all lotteries, all fraudulent devices and practices for the purposes of obtaining money or property, all shooting galleries except as provided in the Nebraska Shooting Range Protection Act, and all kinds of public indecencies, except that nothing in this section shall be construed to apply to bingo, lotteries, lotteries by the sale of pickle cards, or raffles conducted in accordance with the Nebraska Bingo 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 1901, c. 16, § 129, LVIII, p. 142; R.S.1913, § 4468; C.S. 1922, § 3853; C.S.1929, § 15-256; R.S.1943, § 15-258; Laws 1986, LB 1027, § 187; Laws 1991, LB 849, § 60; Laws 1993, LB 138, § 62; Laws 2009, LB503, § 12.

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 Shooting Range Protection Act, see section 37-1301.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

15-268 Weeds; destruction and removal; procedure.

A city of the primary class may provide for the destruction and removal of weeds and worthless vegetation growing upon any lot or lots or lands within the corporate limits of such city or upon the streets and alleys abutting upon any lot or lots or lands, and such city may require the owner or owners of such lot or lots or lands to destroy and remove the same therefrom and from the streets and alleys abutting thereon. If, after five days' notice by publication, by certified United States mail, or by the conspicuous posting of the notice on the lot or land upon which the nuisance exists, the owner or owners fail, neglect, or refuse to destroy or remove the nuisance, the city, through its proper officers, shall destroy and remove the nuisance, or cause the nuisance to be destroyed or removed, from the lot or lots or lands and streets and alleys abutting thereon and shall assess the cost thereof against such lot or lots or lands, as provided by ordinance.

Source: Laws 1915, c. 215, § 1, p. 484; C.S.1922, § 3863; C.S.1929, § 15-266; R.S.1943, § 15-268; Laws 1988, LB 973, § 1; Laws 2009, LB495, § 2.

ARTICLE 8

FISCAL MANAGEMENT, REVENUE, AND FINANCES

Section
15-801. Biennial budget authorized.
15-847. Deposit of city funds; security in lieu of bond.

Section
15-849. City funds; additional investments authorized.

15-801 Biennial budget authorized.

A city of the primary class may adopt biennial budgets for biennial periods if such budgets are provided for by a city charter provision. For purposes of this section:

(1) Biennial budget means a budget that provides for a biennial period to determine and carry on the city's financial and taxing affairs; and

(2) Biennial period means the two fiscal years comprising a biennium commencing in odd-numbered or even-numbered years.

Source: Laws 2000, LB 1116, § 1; Laws 2010, LB779, § 17.
Operative date July 1, 2010.

15-847 Deposit of city funds; security in lieu of bond.

In lieu of the bond required by section 15-846, any bank, capital stock financial institution, or qualifying mutual financial institution making application to become a depository may give security as provided in the Public Funds Deposit Security Act to the city treasurer. The penal sum of such bond or the sum of such security may be reduced in the amount of such deposit insured or guaranteed by the Federal Deposit Insurance Corporation. 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 1963, c. 54, § 3, p. 233; Laws 1987, LB 440, § 4; Laws 1989, LB 33, § 15; Laws 1989, LB 377, § 9; Laws 1992, LB 757, § 15; Laws 1995, LB 384, § 14; Laws 1996, LB 1274, § 15; Laws 2001, LB 362, § 16; Laws 2009, LB259, § 5.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

15-849 City funds; additional investments authorized.

The city treasurer may purchase certificates of deposit from and make time deposits in banks, capital stock financial institutions, or qualifying mutual financial institutions selected as depositories of city funds pursuant to sections 15-846 to 15-848. The certificates of deposit purchased and time deposits made shall bear interest and shall be secured as prescribed in such sections. The penal sum of such bond or the sum of such security shall be reduced in the amount of the time deposit or certificate of deposit insured or guaranteed by the Federal Deposit Insurance Corporation. 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 1987, LB 440, § 6; Laws 1989, LB 33, § 17; Laws 1992, LB 757, § 16; Laws 1996, LB 1274, § 17; Laws 2001, LB 362, § 18; Laws 2009, LB259, § 6.

ARTICLE 11
PLANNING DEPARTMENT

Section
15-1102. Comprehensive plan; requirements; contents.

Section
15-1103. Planning director; prepare comprehensive plan; review by commission; city council; adopt or amend plan; notice to military installation.

15-1102 Comprehensive plan; requirements; contents.

The general plan for the improvement and development of the city of the primary class shall be known as the comprehensive plan. This plan for governmental policies and action shall include the pattern and intensity of land use, the provision of public facilities including transportation and other governmental services, the effective development and utilization of human and natural resources, the identification and evaluation of area needs including housing, employment, education, and health and the formulation of programs to meet such needs, surveys of structures and sites determined to be of historic, cultural, archaeological, or architectural significance or value, long-range physical and fiscal plans for governmental policies and action, and coordination of all related plans and activities of the state and local governments and agencies concerned. The comprehensive plan, with the accompanying maps, plats, charts and descriptive and explanatory materials, shall show the recommendations concerning the physical development pattern of such city and of any land outside its boundaries related thereto, taking into account the availability of and need for conserving land and other irreplaceable natural resources, the preservation of sites of historic, cultural, archaeological, and architectural significance or value, the projected changes in size, movement, and composition of population, the necessity for expanding housing and employment opportunities, and the need for methods of achieving modernization, simplification, and improvements in governmental structures, systems, and procedures related to growth objectives. The comprehensive plan shall, among other things, show:

(1) The general location, character, and extent of existing and proposed streets and highways and railroad, air, and other transportation routes and terminals;

(2) Existing and proposed public ways, parks, grounds, and open spaces;

(3) The general location, character, and extent of schools, school grounds, and other educational facilities and properties;

(4) The general location and extent of existing and proposed public utility installations;

(5) The general location and extent of community development and housing activities;

(6) The general location of existing and proposed public buildings, structures, and facilities; and

(7) When a new comprehensive plan or a full update to an existing comprehensive plan is developed on or after July 15, 2010, but not later than January 1, 2015, an energy element which: Assesses energy infrastructure and energy use by sector, including residential, commercial, and industrial sectors; evaluates utilization of renewable energy sources; and promotes energy conservation measures that benefit the community.

The comprehensive plan shall include a land-use plan showing the proposed general distribution and general location of business and industry, residential areas, utilities, and recreational, educational, and other categories of public and private land uses. The land-use plan shall also show the recommended standards of population density based upon population estimates and providing for

activities for which space should be supplied within the area covered by the plan. The comprehensive plan shall include and show proposals for acquisition, extension, widening, narrowing, removal, vacation, abandonment, sale, and other actions affecting public improvements.

Source: Laws 1959, c. 46, § 2, p. 229; Laws 1975, LB 111, § 1; Laws 2010, LB997, § 2.
Effective date July 15, 2010.

15-1103 Planning director; prepare comprehensive plan; review by commission; city council; adopt or amend plan; notice to military installation.

The planning director shall be responsible for preparing the comprehensive plan and amendments and extensions thereto and for submitting such plans and modifications to the city planning commission for its consideration and action. The commission shall review such plans and modifications and those which the city council may suggest and, after holding at least one public hearing on each proposed action, shall provide its recommendations to the city council within a reasonable period of time. The city council shall review the recommendations of the planning commission and, after at least one public hearing on each proposed action, shall adopt or reject such plans as submitted, except that the city council may, by an affirmative vote of at least five members of the city council, adopt a plan or amendments to the proposed plan different from that recommended by the planning commission.

When the city is considering the adoption or amendment of a zoning ordinance or the approval of the platting or replatting of any development of real estate, the planning director shall notify any military installation which is located within the corporate boundary limits or the extraterritorial zoning jurisdiction of the city if the city has received a written request for such notification from the military installation. The planning director shall deliver the notification to the military installation at least ten days prior to the meeting of the planning commission at which the proposal is to be considered.

Source: Laws 1959, c. 46, § 3, p. 230; Laws 1975, LB 111, § 2; Laws 2010, LB279, § 2.
Effective date July 15, 2010.

ARTICLE 12

APPEALS

Section
15-1202. Appeal; procedure; fees; bond; indigent appellant.
15-1203. City clerk; duties.
15-1204. Petition on appeal; time for filing; indigency.

15-1202 Appeal; procedure; fees; bond; indigent appellant.

(1) The party appealing shall within thirty days after the date of the order or decision complained of (a) file a notice of appeal with the city clerk specifying the parties taking the appeal and the order or decision appealed from and serve a copy of the notice upon the city attorney and (b) deposit the fees and bond or undertaking required pursuant to subsection (2) of this section or file an affidavit pursuant to subsection (3) of this section. The notice of appeal shall serve as a praecipe for a transcript.

(2) Except as provided in subsection (3) of this section, the appellant shall:

(a) Deposit with the city clerk a docket fee in the amount of the filing fee in district court for cases originally commenced in district court;

(b) Deposit with the city clerk a cash bond or undertaking with at least one good and sufficient surety approved by the city clerk, in the amount of two hundred dollars, on condition that the appellant will satisfy any judgment and costs that may be adjudged against him or her; and

(c) Deposit with the city clerk the fees for the preparation of a certified and complete transcript of the proceedings of the city relating to the order or decision appealed.

(3)(a) An appellant may file with the city clerk an affidavit alleging that the appellant is indigent. The filing of such an affidavit shall relieve the appellant of the duty to deposit any fee, bond, or undertaking required by subsection (2) of this section as a condition for the preparation of the transcript or the perfecting of the appeal by the appellant subject to the determination of the court as provided in section 15-1204. In conjunction with the filing of the petition for appeal as provided for in section 15-1204, the appellant shall file a copy of the affidavit alleging his or her indigency and the district court shall rule upon the issue of indigency prior to the consideration of any other matter relating to the appeal as provided in section 15-1204.

(b) An appellant determined to be indigent under this subsection shall not be required to deposit any fee, bond, or undertaking required by subsection (2) of this section. For purposes of this section, indigent means the inability to financially pursue the appeal without prejudicing the appellant's ability to provide economic necessities for the appellant or the appellant's family.

(c) An appellant determined not to be indigent shall, within thirty days after the determination, deposit with the city clerk the fees and bond or undertaking required by subsection (2) of this section. The appeal shall not proceed further until the city clerk notifies the court that the appropriate deposit has been made.

Source: Laws 1969, c. 65, § 2, p. 377; Laws 1983, LB 52, § 3; Laws 1988, LB 352, § 17; Laws 2009, LB441, § 2.

15-1203 City clerk; duties.

(1) Except as provided in subsection (2) of this section, the city clerk, on payment to him or her of the costs of the transcript, shall transmit within fifteen days to the clerk of the district court the docket fee and a certified and complete transcript of the proceedings of the city relating to the order or decision appealed. After receipt of such fee and transcript, the clerk of the district court shall docket the appeal.

(2) If the appellant files an affidavit alleging that he or she is indigent pursuant to section 15-1202, the city clerk shall transmit within fifteen days to the clerk of the district court a certified and complete transcript of the proceedings of the city relating to the order or decision appealed. After receipt of the transcript, the clerk of the district court shall docket the appeal.

Source: Laws 1969, c. 65, § 3, p. 378; Laws 1983, LB 52, § 4; Laws 1988, LB 352, § 18; Laws 2009, LB441, § 3.

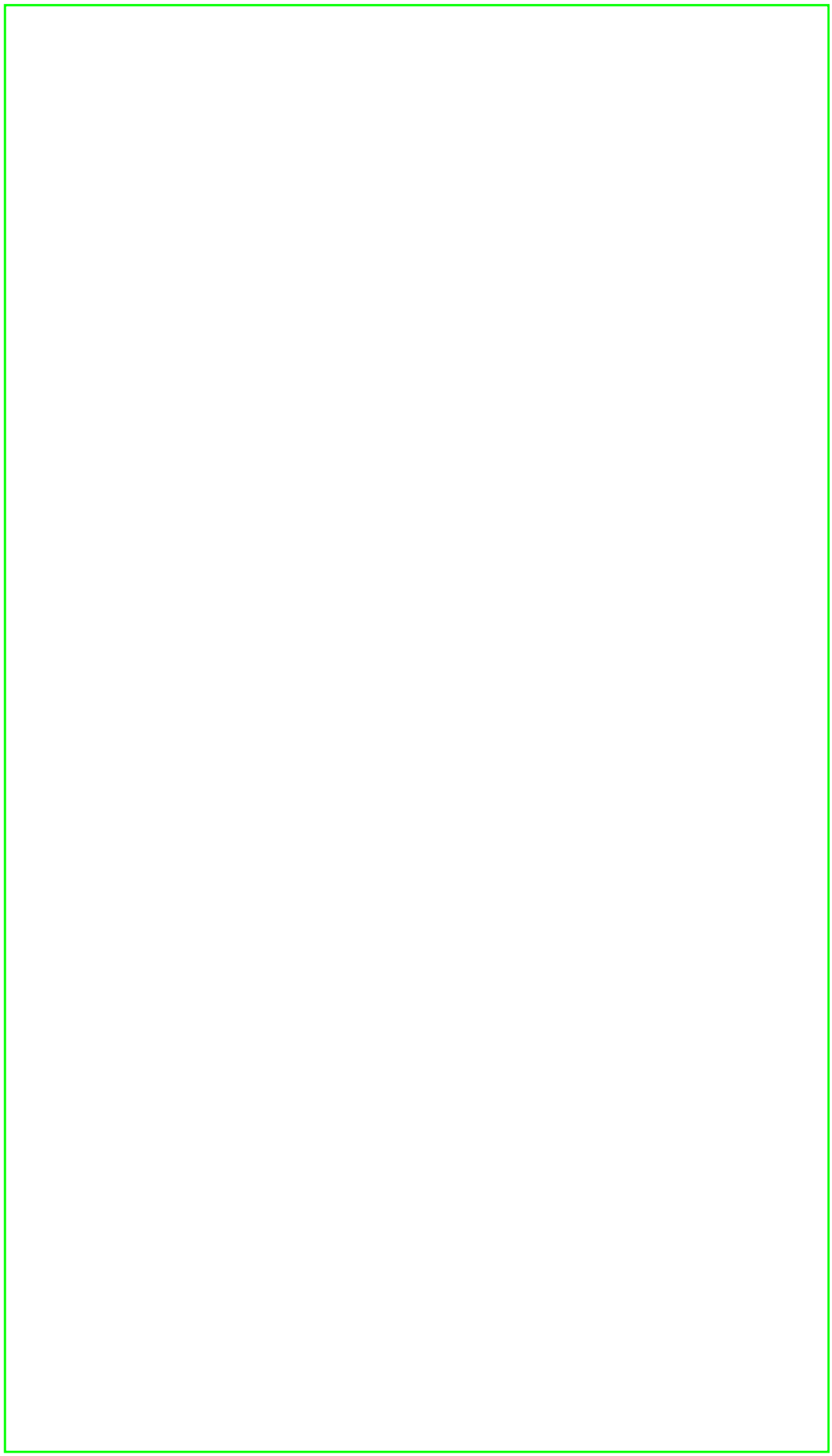
15-1204 Petition on appeal; time for filing; indigency.

(1) The party appealing shall file a petition within thirty days after the date the transcript is filed in the district court.

(2) Except as provided in subsection (3) of this section, satisfaction of the requirements of subsections (1) and (2) of section 15-1202 and subsection (1) of this section shall perfect the appeal and give the district court jurisdiction of the matter appealed.

(3) Indigency shall be determined by the district court having jurisdiction of the appeal upon motion of the appellant before the court considers any other matter relating to the appeal. The court shall make a reasonable inquiry to determine the appellant's financial condition and shall consider such factors as the appellant's income, the availability to the appellant of other resources, including real and personal property, bank accounts, social security benefits, and unemployment or other benefits, the appellant's normal living expenses, the appellant's outstanding debts, the number and age of the appellant's dependents, and other relevant circumstances. If the appellant is deemed to be indigent, the satisfaction of the requirements of subsections (1) and (3) of section 15-1202 and subsection (1) of this section shall perfect the appeal and give the district court jurisdiction of the matter appealed.

Source: Laws 1969, c. 65, § 4, p. 378; Laws 1983, LB 52, § 5; Laws 1988, LB 352, § 19; Laws 2009, LB441, § 4.



CHAPTER 16
CITIES OF THE FIRST CLASS

Article.
1. Incorporation, Extensions, Additions, Wards. 16-117, 16-130.
2. General Powers. 16-206 to 16-242.
3. Officers, Elections, Employees. 16-321.
7. Fiscal Management, Revenue, and Finances. 16-707 to 16-716.
11. First-Class City Merger Act. 16-1101 to 16-1115.

ARTICLE 1
INCORPORATION, EXTENSIONS, ADDITIONS, WARDS

Section
16-117. Annexation; powers; procedure; hearing.
16-130. Annexation by city within county between 100,000 and 200,000 inhabitants; mayor and city council; powers; notice; contents; liability; limitation on action.

16-117 Annexation; powers; procedure; hearing.

(1) Except as provided in sections 13-1111 to 13-1120 and 16-130 and subject to this section, the mayor and city council of a city of the first class may by ordinance at any time include within the corporate limits of such city any contiguous or adjacent lands, lots, tracts, streets, or highways as are urban or suburban in character and in such direction as may be deemed proper. Such grant of power shall not be construed as conferring power upon the mayor and city council to extend the limits of a city of the first class over any agricultural lands which are rural in character.

(2) The invalidity of the annexation of any tract of land in one ordinance shall not affect the validity of the remaining tracts of land which are annexed by the ordinance and which otherwise conform to state law.

(3) The city council proposing to annex land under the authority of this section shall first adopt both a resolution stating that the city is proposing the annexation of the land and a plan for extending city services to the land. The resolution shall state:

(a) The time, date, and location of the public hearing required by subsection (5) of this section;

(b) A description of the boundaries of the land proposed for annexation; and

(c) That the plan of the city for the extension of city services to the land proposed for annexation is available for inspection during regular business hours in the office of the city clerk.

(4) The plan adopted by the city council shall contain sufficient detail to provide a reasonable person with a full and complete understanding of the proposal for extending city services to the land proposed for annexation. The plan shall (a) state the estimated cost impact of providing the services to such land, (b) state the method by which the city plans to finance the extension of services to the land and how any services already provided to the land will be

maintained, (c) include a timetable for extending services to the land proposed for annexation, and (d) include a map drawn to scale clearly delineating the land proposed for annexation, the current boundaries of the city, the proposed boundaries of the city after the annexation, and the general land-use pattern in the land proposed for annexation.

(5) A public hearing on the proposed annexation shall be held within sixty days following the adoption of the resolution proposing to annex land to allow the city council to receive testimony from interested persons. The city council may recess the hearing, for good cause, to a time and date specified at the hearing.

(6) A copy of the resolution providing for the public hearing shall be published in the official newspaper in the city at least once not less than ten days preceding the date of the public hearing. A map drawn to scale delineating the land proposed for annexation shall be published with the resolution. A copy of the resolution providing for the public hearing shall be sent by first-class mail following its passage to the school board of any school district in the land proposed for annexation.

(7) Any owner of property contiguous or adjacent to a city of the first class may by petition request that such property be included within the corporate limits of such city. The mayor and city council may include such property within the corporate limits of the city without complying with subsections (3) through (6) of this section.

(8) Notwithstanding the requirements of this section, the mayor and city council are not required to approve any petition requesting annexation or any resolution or ordinance proposing to annex land pursuant to this section.

Source: Laws 1967, c. 64, § 1, p. 213; Laws 1989, LB 421, § 1; Laws 2007, LB11, § 1; Laws 2009, LB495, § 3.

16-130 Annexation by city within county between 100,000 and 200,000 inhabitants; mayor and city council; powers; notice; contents; liability; limitation on action.

(1) The provisions of this section shall govern annexation by a city of the first class located in whole or in part within the boundaries of a county having a population in excess of one hundred thousand inhabitants but less than two hundred thousand inhabitants.

(2) Except as provided in sections 13-1111 to 13-1120 and subject to this section, the mayor and city council of a city of the first class described in subsection (1) of this section may by ordinance at any time include within the corporate limits of such city any contiguous or adjacent lands, lots, tracts, streets, or highways as are urban or suburban in character and in such direction as may be deemed proper. Such grant of power shall not be construed as conferring power upon the mayor and city council to extend the limits of such a city over any agricultural lands which are rural in character.

(3) The invalidity of the annexation of any tract of land in one ordinance shall not affect the validity of the remaining tracts of land which are annexed by the ordinance and which otherwise conform to state law.

(4) Any owner of property contiguous or adjacent to such a city may by petition request that such property be included within the corporate limits of such city.

(5) Notwithstanding the requirements of this section, the mayor and city council are not required to approve any petition requesting annexation or any resolution or ordinance proposing to annex land pursuant to this section.

(6) Not later than fourteen days prior to the public hearing before the planning commission on a proposed annexation by the city, the city clerk shall send notice of the proposed annexation by certified mail, return receipt requested, to any of the following entities serving customers in such city or in the area proposed for annexation: Any natural gas public utility as defined in section 66-1802; any natural gas utility owned or operated by the city; any metropolitan utilities district; any public power district; any public power and irrigation district; any municipality; any electric cooperative; and any other governmental entity providing electric service. Such notice shall include a copy of the proposed annexation ordinance, the date, time, and place of the public hearing before the planning commission on the proposed annexation ordinance, and a map showing the boundaries of the area proposed for annexation.

(7) Prior to the final adoption of the annexation ordinance, the minutes of the city council meeting at which such final adoption was considered shall reflect formal compliance with the provisions of subsection (6) of this section.

(8) No additional or further notice beyond that required by subsection (6) of this section shall be necessary in the event (a) that the scheduled city council public hearing on the proposed annexation is adjourned, continued, or postponed until a later date or (b) that subsequent to providing such notice the ordinance regarding such proposed annexation was amended, changed, or rejected by action of the city council prior to formal passage of the annexation ordinance.

(9) Except for a willful or deliberate failure to cause notice to be given, no annexation decision made by a city either to accept or reject a proposed annexation, either in whole or in part, shall be void, invalidated, or affected in any way because of any irregularity, defect, error, or failure on the part of the city or its employees to cause notice to be given as required by this section if a reasonable attempt to comply with this section was made.

(10) Except for a willful or deliberate failure to cause notice to be given, the city and its employees shall not be liable for any damage to any person resulting from any failure to cause notice to be given as required by this section when a reasonable attempt was made to provide such notice. No action for damages resulting from the failure to cause notice to be provided as required by this section shall be filed more than one year following the date of the formal acceptance or rejection of the proposed annexation, either in whole or in part, by the city council.

(11) No action to challenge the validity of the acceptance or rejection of a proposed annexation on the basis of this section shall be filed more than one year following the date of the formal acceptance or rejection of the annexation by the city council.

Source: Laws 2009, LB495, § 4.

ARTICLE 2
GENERAL POWERS

Section
16-206. Dogs and other animals; regulation; license tax; enforcement.

Section
16-222.01. Emergency response systems; legislative findings.
16-222.02. Employment of full-time fire chief; appointment; duties.
16-222.03. Fire chief; annual report; contents; report to city council.
16-226. Billiard halls; bowling alleys; disorderly houses; gambling; desecration of Sabbath.
16-227. Riots; disorderly conduct; use of explosives; weapons; vagabonds; lights; bonfires; regulation.
16-230. Drainage; nuisance; weeds; litter; removal; notice; action by city council; violation; penalty; civil action.
16-242. Cemeteries; maintenance; funds; how used.

16-206 Dogs and other animals; regulation; license tax; enforcement.

A city of the first class may collect a license tax from the owners and harborers of dogs and other animals in an amount which shall be determined by the governing body of such city and enforce the same by appropriate penalties. Any licensing provision shall comply with subsection (2) of section 54-603 for service animals. The city may cause the destruction of any dog or other animal, for which the owner or harborer shall refuse or neglect to pay such license tax. It may regulate, license, or prohibit the running at large of dogs and other animals and guard against injuries or annoyances therefrom and authorize the destruction of the same when running at large contrary to the provisions of any ordinance.

Source: Laws 1901, c. 18, § 48, X, p. 247; R.S.1913, § 4822; C.S.1922, § 3990; C.S.1929, § 16-207; R.S.1943, § 16-206; Laws 1959, c. 59, § 1, p. 253; Laws 1971, LB 478, § 1; Laws 1981, LB 501, § 3; Laws 1997, LB 814, § 4; Laws 2008, LB806, § 3.

16-222.01 Emergency response systems; legislative findings.

The Legislature finds that matters relating to emergency medical first response and fire protection are matters of state concern, particularly in larger cities that rely primarily or entirely upon volunteers to provide these services. Recognizing the increasing complexity and difficulty of providing these services, the stringent and growing training demands made upon volunteers, the demographics of an aging population, the economic pressures that deny or inhibit employers from granting the opportunity for volunteers to respond to emergency calls during business hours, and the economic costs to residents and businesses of financing either a paid or partly paid emergency response system, the Legislature hereby declares the necessity of establishing a system and process whereby certain cities of the first class would be required to review, study, and modify on a continuing basis their emergency response systems, with appropriate public input, based upon local conditions and circumstances.

Source: Laws 2008, LB1096, § 1.

16-222.02 Employment of full-time fire chief; appointment; duties.

Not later than January 5, 2009, each city of the first class with a population in excess of thirty-seven thousand five hundred inhabitants shall employ a full-time fire chief with appropriate training, credentials, and experience and for whom firefighting or emergency medical first response is a full-time career. The fire chief shall be appointed by the mayor with the approval of the city council or by the city manager in cities that have adopted the city manager plan of government. The fire chief shall have the immediate superintendence of the fire

prevention, fire suppression, and emergency medical first response services and the facilities and equipment related to such services of the city. The fire chief shall promulgate, implement, and enforce rules governing the actions and conduct of volunteer members of the department so as to be in conformity with the personnel policies of the city.

Source: Laws 2008, LB1096, § 2.

16-222.03 Fire chief; annual report; contents; report to city council.

(1) In addition to such other duties as may be performed by the fire chief employed pursuant to section 16-222.02, he or she shall keep and maintain full and complete records regarding the twelve-month period ending thirty days prior to the annual report of the chief to the city council as provided for in subsection (2) of this section. Such records include, but are not limited to, the number of volunteers in active volunteer service providing emergency response services to the city including their ages, the amount and type of training received by each volunteer during the course of his or her time of service as an active volunteer, the number of new volunteers recruited during such period, the number of volunteers who ceased to be active volunteers during that period, the basic information regarding each volunteer specified in section 35-1309.01, the number and nature of calls or requests for emergency services, the response time for each call, to be calculated from the time of receipt of the dispatch to the time of arrival of the first fire or rescue emergency response vehicle at the site of the request, the number of volunteers responding to each call, and the time each call was received. The city council may specify any additional information to be gathered or collected by the fire chief or as the fire chief may recommend.

(2) The fire chief shall collate and analyze the information gathered pursuant to subsection (1) of this section and shall, no less than once in any twelve-month period, on a date specified by the city council, provide a report to the city council at a regular council meeting on the prior year's experience regarding the volunteer department and shall make such recommendations as he or she deems appropriate.

Source: Laws 2008, LB1096, § 3.

16-226 Billiard halls; bowling alleys; disorderly houses; gambling; desecration of Sabbath.

A city of the first class by ordinance may regulate, prohibit, and suppress unlicensed tippling shops, billiard tables, and bowling alleys, may restrain houses of prostitution, opium joints, dens, and other disorderly houses and practices, games, gambling houses, desecration of the Sabbath day, commonly called Sunday, and may prohibit all public amusements, shows, exhibitions, or ordinary business pursuits upon such day, all lotteries, all fraudulent devices and practices for the purpose of obtaining money or property, all shooting galleries except as provided in the Nebraska Shooting Range Protection Act, and all kinds of public indecencies, except that nothing in this section shall be construed to apply to bingo, lotteries, lotteries by the sale of pickle cards, or raffles conducted in accordance with the Nebraska Bingo 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 1901, c. 18, § 48, XXXIII, p. 254; R.S.1913, § 4842; C.S. 1922, § 4010; C.S.1929, § 16-227; R.S.1943, § 16-226; Laws 1986, LB 1027, § 188; Laws 1991, LB 849, § 61; Laws 1993, LB 138, § 63; Laws 2009, LB503, § 13.

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 Shooting Range Protection Act, see section 37-1301.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

16-227 Riots; disorderly conduct; use of explosives; weapons; vagabonds; lights; bonfires; regulation.

A city of the first class may prevent and restrain riots, routs, noises, disturbances, breach of the peace, or disorderly assemblies in any street, house, or place in the city; regulate, punish, and prevent the discharge of firearms, rockets, powder, fireworks, or any other dangerous combustible material in the streets, lots, grounds, and alleys or about or in the vicinity of any buildings; regulate, prevent, and punish the carrying of concealed weapons, except the carrying of a concealed handgun in compliance with the Concealed Handgun Permit Act; arrest, regulate, punish, fine, or set at work on the streets or elsewhere all vagabonds and persons found in the city without visible means of support or some legitimate business; regulate and prevent the transportation or storage of gunpowder or other explosive or combustible articles, tar, pitch, resin, coal oil, benzine, turpentine, hemp, cotton, nitroglycerine, dynamite, petroleum or any other productions thereof, and other materials of like nature, the use of lights in stables, shops, or other places, and the building of bonfires; and regulate and prohibit the piling of building material or any excavation or obstruction in the street.

Source: Laws 1901, c. 18, § 48, XXXIV, p. 255; R.S.1913, § 4843; C.S. 1922, § 4011; C.S.1929, § 16-228; R.S.1943, § 16-227; Laws 2009, LB430, § 3.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

16-230 Drainage; nuisance; weeds; litter; removal; notice; action by city council; violation; penalty; civil action.

(1) A city of the first class by ordinance may require lots or pieces of ground within the city or within the city's extraterritorial zoning jurisdiction to be drained or filled so as to prevent stagnant water or any other nuisance accumulating thereon. Except as provided in subsection (6) of this section, the city may require the owner or occupant of all lots and pieces of ground within the city to keep the lots and pieces of ground and the adjoining streets and alleys free of any growth of twelve inches or more in height of weeds, grasses, or worthless vegetation, and it may prohibit and control the throwing, depositing, or accumulation of litter on any lot or piece of ground within the city.

(2) Except as provided in subsection (6) of this section, any city of the first class may by ordinance declare it to be a nuisance to permit or maintain any

growth of twelve inches or more in height of weeds, grasses, or worthless vegetation or to litter or cause litter to be deposited or remain thereon except in proper receptacles.

(3) Any owner or occupant of a lot or piece of ground shall, upon conviction of violating any ordinance authorized under this section, be guilty of a Class V misdemeanor.

(4) Notice to abate and remove such nuisance shall be given to each owner or owner's duly authorized agent and to the occupant, if any, by personal service or certified mail. If notice by personal service or certified mail is unsuccessful, notice shall be given by publication in a newspaper of general circulation in the city or by conspicuously posting the notice on the lot or ground upon which the nuisance is to be abated and removed. Within five days after receipt of such notice or publication or posting, whichever is applicable, if the owner or occupant of the lot or piece of ground does not request a hearing with the city or fails to comply with the order to abate and remove the nuisance, the city may have such work done. The costs and expenses of any such work shall be paid by the owner. If unpaid for two months after such work is done, the city may either (a) levy and assess the costs and expenses of the work upon the lot or piece of ground so benefited in the same manner as other special taxes for improvements are levied and assessed or (b) recover in a civil action the costs and expenses of the work upon the lot or piece of ground and the adjoining streets and alleys.

(5) For purposes of this section:

(a) Litter includes, but is not limited to: (i) Trash, rubbish, refuse, garbage, paper, rags, and ashes; (ii) wood, plaster, cement, brick, or stone building rubble; (iii) grass, leaves, and worthless vegetation; (iv) offal and dead animals; and (v) any machine or machines, vehicle or vehicles, or parts of a machine or vehicle which have lost their identity, character, utility, or serviceability as such through deterioration, dismantling, or the ravages of time, are inoperative or unable to perform their intended functions, or are cast off, discarded, or thrown away or left as waste, wreckage, or junk;

(b) Weeds includes, but is not limited to, bindweed (Convolvulus arvensis), puncture vine (Tribulus terrestris), leafy spurge (Euphorbia esula), Canada thistle (Cirsium arvense), perennial peppergrass (Lepidium draba), Russian knapweed (Centaurea picris), Johnson grass (Sorghum halepense), nodding or musk thistle, quack grass (Agropyron repens), perennial sow thistle (Sonchus arvensis), horse nettle (Solanum carolinense), bull thistle (Cirsium lanceolatum), buckthorn (Rhamnus sp.) (tourn), hemp plant (Cannabis sativa), and ragweed (Ambrosiaceae); and

(c) Weeds, grasses, and worthless vegetation does not include vegetation applied or grown on a lot or piece of ground outside the corporate limits of the city but inside the city's extraterritorial zoning jurisdiction expressly for the purpose of weed or erosion control.

(6) A city of the first class by ordinance may declare it to be a nuisance to permit or maintain any growth of eight inches or more in height of weeds, grasses, or worthless vegetation on any lot or piece of ground located within the corporate limits of the city during any calendar year if, within the same calendar year, the city has, pursuant to subsection (4) of this section, acted to remove weeds, grasses, or worthless vegetation exceeding twelve inches in

height on the same lot or piece of ground and had to seek recovery of the costs and expenses of such work from the owner.

Source: Laws 1901, c. 18, § 48, XXXVII, p. 255; R.S.1913, § 4846; Laws 1915, c. 84, § 1, p. 222; C.S.1922, § 4014; C.S.1929, § 16-231; R.S.1943, § 16-230; Laws 1975, LB 117, § 1; Laws 1988, LB 934, § 2; Laws 1991, LB 330, § 1; Laws 1995, LB 42, § 2; Laws 2004, LB 997, § 1; Laws 2009, LB495, § 5.

16-242 Cemeteries; maintenance; funds; how used.

(1) A city of the first class may survey, plat, map, grade, fence, ornament, and otherwise improve all burial and cemetery grounds and avenues leading thereto owned by such city. It may construct walks, rear and protect ornamental trees therein, and provide for paying the expenses thereof.

(2) After the burial and cemetery grounds are fully paid for, the city may set aside the proceeds of the sale of lots as a perpetual fund to be invested as provided by ordinance. The income from the fund may be used for the general care, management, maintenance, improvement, beautifying, and welfare of the cemetery. The principal of the perpetual fund may be used for the general care, management, maintenance, improvement, beautifying, and welfare of the cemetery as long as no more than twenty percent of the principal is so used in any fiscal year and no more than forty percent of the principal is so used in any period of ten consecutive fiscal years. The principal of the perpetual fund may also be used for the purchase and development of additional land to be used for cemetery purposes as long as no more than twenty-five percent of the principal is so used in any fiscal year and no more than thirty-five percent of the principal is so used in any period of ten consecutive fiscal years.

(3) The city may receive money by donation, bequest, or otherwise for credit to the perpetual fund to be invested as provided by ordinance or as conditioned by the donor. The income therefrom may be used for the general care, management, maintenance, improvement, beautifying, and welfare of the cemetery as the donor may designate. The principal therefrom may be used for the general care, management, maintenance, improvement, beautifying, and welfare of the cemetery as the donor may designate as long as no more than twenty percent of the principal is so used in any fiscal year and no more than forty percent of the principal is so used in any period of ten consecutive fiscal years. The principal therefrom may also be used for the purchase and development of additional land to be used for cemetery purposes as the donor may designate as long as no more than twenty-five percent of the principal is so used in any fiscal year and no more than thirty-five percent of the principal is so used in any period of ten consecutive fiscal years.

(4) The city treasurer shall be the custodian of such funds, and the same shall be invested by a board composed of the mayor, city treasurer, and city clerk.

(5) This section does not limit the use of any money that comes to the city by donation, bequest, or otherwise that is not designated to be credited to the perpetual fund or that allows greater use for purchase or development of additional land to be used for cemetery purposes.

Source: Laws 1901, c. 18, § 48, XLVIII, p. 258; Laws 1913, c. 256, § 1, p. 790; R.S.1913, § 4858; C.S.1922, § 4026; C.S.1929, § 16-243; R.S.1943, § 16-242; Laws 2005, LB 262, § 2; Laws 2009, LB500, § 2.

ARTICLE 3
OFFICERS, ELECTIONS, EMPLOYEES

Section
16-321. City engineer; public works; prepare estimate of cost; board of public works; powers; contracts; procedure; city council; powers and duties; public emergency.

16-321 City engineer; public works; prepare estimate of cost; board of public works; powers; contracts; procedure; city council; powers and duties; public emergency.

(1) The city engineer shall, when requested by the mayor or city council, make estimates of the cost of labor and material which may be done or furnished by contract with the city and make all surveys, estimates, and calculations necessary to be made for the establishment of grades, the building of culverts, sewers, electric light system, waterworks, power plant, public heating system, bridges, curbing, and gutters, the improvement of streets, and the erection and repair of buildings and shall perform such other duties as the council may require. When the city has appointed a board of public works, and the mayor and city council have by ordinance so authorized, such board may utilize its own engineering staff and may hire consulting engineers for the design and installation of extensions and improvements of the works under the jurisdiction of the board of public works. Whenever the mayor and city council have authorized the same, the board of public works may purchase material and employ labor for the enlargement or improvement of the systems and works under the jurisdiction of the board.

(2) Except as provided in section 18-412.01, no contract for enlargement or general improvements, such as water extensions, sewers, public heating system, bridges, work on streets, or any other work or improvement when the cost of such improvement is assessed to the property, costing over thirty thousand dollars shall be made unless it is first approved by the city council.

(3) Except as provided in section 18-412.01, before the city council makes any contract in excess of thirty thousand dollars for enlargement or general improvements, such as water extensions, sewers, public heating system, bridges, work on streets, or any other work or improvement when the cost of such enlargement or improvement is assessed to the property, an estimate of the cost shall be made by the city engineer and submitted to the council. In advertising for bids as provided in subsections (4) and (6) of this section, the council may publish the amount of the estimate.

(4) Advertisements for bids shall be required for any contract costing over thirty thousand dollars entered into (a) for enlargement or general improvements, such as water extensions, sewers, public heating system, bridges, work on streets, or any other work or improvement when the cost of such enlargement or improvement is assessed to the property, or (b) for the purchase of equipment used in the construction of such enlargement or general improvements.

(5) A municipal electric utility may enter into a contract for the enlargement or improvement of the electric system or for the purchase of equipment used for such enlargement or improvement without advertising for bids if the price is: (a) Thirty thousand dollars or less; (b) sixty thousand dollars or less and the municipal electric utility has gross annual revenue from retail sales in excess of

one million dollars; (c) ninety thousand dollars or less and the municipal electric utility has gross annual revenue from retail sales in excess of five million dollars; or (d) one hundred twenty thousand dollars or less and the municipal electric utility has gross annual revenue from retail sales in excess of ten million dollars.

(6) The advertisement provided for in subsections (3) and (4) of this section shall be published at least seven days prior to the bid closing in a legal newspaper published in or of general circulation in the city. In case of a public emergency resulting from infectious or contagious diseases, destructive windstorms, floods, snow, war, or an exigency or pressing necessity or unforeseen need calling for immediate action or remedy to prevent a serious loss of, or serious injury or damage to, life, health, or property, estimates of costs and advertising for bids may be waived in the emergency ordinance authorized by section 16-405 when adopted by a three-fourths vote of the council and entered of record.

(7) If, after advertising for bids as provided in subsections (3), (4), and (6) of this section, the city council receives fewer than two bids on a contract or if the bids received by the city council contain a price which exceeds the estimated cost, the mayor and the city council may negotiate a contract in an attempt to complete the proposed enlargement or general improvements at a cost commensurate with the estimate given.

(8) If the materials are of such a nature that, in the opinion of the manufacturer and with the concurrence of the city council or board of public works, no cost can be estimated until the materials have been manufactured or assembled to the specific qualifications of the purchasing municipality, the city council or board of public works may authorize the manufacture and assemblage of such materials and may thereafter approve the estimated cost expenditure when it is provided by the manufacturer.

Source: Laws 1901, c. 18, § 29, p. 237; R.S.1913, § 4887; C.S.1922, § 4055; Laws 1925, c. 44, § 1, p. 174; C.S.1929, § 16-317; R.S.1943, § 16-321; Laws 1947, c. 26, § 2, p. 128; Laws 1951, c. 25, § 1, p. 115; Laws 1959, c. 61, § 1, p. 276; Laws 1969, c. 78, § 1, p. 407; Laws 1971, LB 85, § 1; Laws 1975, LB 171, § 1; Laws 1979, LB 356, § 1; Laws 1983, LB 304, § 1; Laws 1984, LB 540, § 7; Laws 1997, LB 238, § 1; Laws 2008, LB947, § 1.

ARTICLE 7

FISCAL MANAGEMENT, REVENUE, AND FINANCES

Section
16-707. Board of equalization; meetings; notice; special assessments; grounds for review.
16-713. City funds; certificates of deposit; time deposits; security required.
16-715. City funds; depository; security in lieu of bond; authorized.
16-716. City funds; depositories; maximum deposits; liability of treasurer.

16-707 Board of equalization; meetings; notice; special assessments; grounds for review.

The mayor and council shall meet as a board of equalization each year at such times as they shall determine to be necessary, giving notice of any such sitting at least ten days prior thereto by publication in a newspaper having

general circulation in the city. When so assembled they shall have power to equalize all special assessments, not herein otherwise provided for, and to supply any omissions in the same; and at such meeting the assessments shall be finally levied by them. A majority of all the members elected to the council shall constitute a quorum for the transaction of any business properly brought before them, but a less number may adjourn from time to time and compel the attendance of absent members. When sitting as a board of equalization on special taxes, the council may adopt such reasonable rules as to the manner of presenting complaints and applying for remedies and relief as shall seem just. It shall not invalidate or prejudice the proceedings of the board that a majority of the members thereof do not, after organization by a majority, continue present during the advertised hours of sitting so long as the city clerk or some member of the board shall be present to receive complaints and applications and give information. No final action shall be taken by the board except by a majority of all the members elected to the city council comprising the same, and in open session. All the special taxes herein authorized shall be levied and assessed on all lots, parts of lots, lands, and real estate to the extent of the special benefit to such lots, parts of lots, lands, and real estate, by reason of such improvement, such benefits to be determined by the council sitting as a board of equalization, or as otherwise herein provided, after publication and notice to property owners herein provided. In cases where the council sitting as a board of equalization shall find such benefits to be equal and uniform, such assessments may be according to the feet frontage and may be prorated and scaled back from the line of such improvement according to such rules as the board of equalization may consider fair and equitable; and all such assessments and findings of benefits shall not be subject to review in any equitable or legal action except for fraud, injustice, or mistake.

Source: Laws 1901, c. 18, § 83, p. 292; Laws 1903, c. 19, § 17, p. 246; Laws 1905, c. 23, § 3, p. 246; R.S.1913, § 4977; C.S.1922, § 4146; C.S.1929, § 16-706; R.S.1943, § 16-707; Laws 2010, LB848, § 1.
Effective date July 15, 2010.

16-713 City funds; certificates of deposit; time deposits; security required.

The city treasurer may, upon resolution of the mayor and council authorizing the same, purchase certificates of deposit from and make time deposits in banks, capital stock financial institutions, or qualifying mutual financial institutions selected as depositories of city funds under the provisions of sections 16-712, 16-714, and 16-715. The certificates of deposit purchased and time deposits made shall bear interest and shall be secured as set forth in sections 16-714 and 16-715, except that the penal sum of such bond or the sum of such security shall be reduced in the amount of the time deposit or certificate of deposit insured or guaranteed by the Federal Deposit Insurance Corporation. 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 1901, c. 18, § 85, p. 293; R.S.1913, § 4981; C.S.1922, § 4150; C.S.1929, § 16-712; R.S.1943, § 16-713; Laws 1959, c. 48, § 2, p. 235; Laws 1969, c. 84, § 4, p. 425; Laws 1989, LB 33, § 19; Laws 1992, LB 757, § 17; Laws 1996, LB 1274, § 19; Laws 2001, LB 362, § 20; Laws 2009, LB259, § 7.

16-715 City funds; depository; security in lieu of bond; authorized.

In lieu of the bond required by section 16-714, any bank, capital stock financial institution, or qualifying mutual financial institution making application to become a depository may give security as provided in the Public Funds Deposit Security Act to the city clerk. The penal sum of such bond shall be equal to or greater than the amount of the deposit in excess of that portion of such deposit insured or guaranteed by the Federal Deposit Insurance Corporation. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1931, c. 28, § 1, p. 116; Laws 1937, c. 22, § 1, p. 135; C.S.Supp.,1941, § 16-713; R.S.1943, § 16-715; Laws 1959, c. 263, § 5, p. 926; Laws 1969, c. 84, § 6, p. 426; Laws 1972, LB 1152, § 1; Laws 1977, LB 266, § 1; Laws 1987, LB 440, § 7; Laws 1989, LB 33, § 21; Laws 1989, LB 377, § 10; Laws 1992, LB 757, § 18; Laws 1996, LB 1274, § 20; Laws 2001, LB 362, § 22; Laws 2009, LB259, § 8.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

16-716 City funds; depositories; maximum deposits; liability of treasurer.

The treasurer shall not have on deposit in any bank, capital stock financial institution, or qualifying mutual financial institution at any time more than the amount insured or guaranteed by the Federal Deposit Insurance Corporation plus the maximum amount of the bond given by the bank, capital stock financial institution, or qualifying mutual financial institution if the bank, capital stock financial institution, or qualifying mutual financial institution gives a surety bond, nor in any bank, capital stock financial institution, or qualifying mutual financial institution giving a personal bond, more than the amount insured or guaranteed by the Federal Deposit Insurance Corporation plus one-half of the amount of the bond of such bank, capital stock financial institution, or qualifying mutual financial institution, and the amount so on deposit any time with any such bank, capital stock financial institution, or qualifying mutual financial institution shall not in either case exceed the amount insured or guaranteed by the Federal Deposit Insurance Corporation plus the paid-up capital stock and surplus of such bank, capital stock financial institution, or qualifying mutual financial institution.

The city treasurer shall not be liable for any loss sustained by reason of the failure of any such bonded depository whose bond has been duly approved by the mayor as provided in section 16-714 or which has, in lieu of a surety bond, given security as provided in section 16-715.

Source: Laws 1901, c. 18, § 86, p. 294; R.S.1913, § 4982; C.S.1922, § 4151; C.S.1929, § 16-713; Laws 1931, c. 28, § 1, p. 116; Laws 1937, c. 22, § 1, p. 135; C.S.Supp.,1941, § 16-713; R.S.1943, § 16-716; Laws 1981, LB 491, § 1; Laws 1993, LB 157, § 2; Laws 1996, LB 1274, § 21; Laws 2001, LB 362, § 23; Laws 2002, LB 860, § 1; Laws 2009, LB259, § 9.

ARTICLE 11
FIRST-CLASS CITY MERGER ACT

Section
16-1101. Act, how cited.
16-1102. Terms, defined.
16-1103. Merger authorized.
16-1104. Merger plan; city council; adopt resolution; advisory vote; notice.
16-1105. Merger plan; contents; advisory committee.
16-1106. Public hearing; notice.
16-1107. Adoption of joint merger plan.
16-1108. Submission of joint merger plan to voters.
16-1109. Submission of plan to voters; notice; publication; contents.
16-1110. Question submitted to voters; form; effective date of plan.
16-1111. Nominations for merged city offices; special election.
16-1112. Election of merged city officers; terms; appointive city officers; terms.
16-1113. Merged cities; name; rights, privileges, franchises, property, and suits; how treated.
16-1114. Merger; deemed permanent.
16-1115. Joint sessions of city councils; authorized.

16-1101 Act, how cited.

Sections 16-1101 to 16-1115 shall be known and may be cited as the First-Class City Merger Act.

Source: Laws 2008, LB1056, § 1.

16-1102 Terms, defined.

For purposes of the First-Class City Merger Act:

(1) City means a city of the first class; and

(2) Merger means a full and permanent union of two or more cities of the first class, resulting in one city.

Source: Laws 2008, LB1056, § 2.

16-1103 Merger authorized.

Any two or more contiguous and adjacent cities of the first class in the state may merge by complying with the requirements and procedures specified in the First-Class City Merger Act. Merger shall not be allowed across county lines.

Source: Laws 2008, LB1056, § 3.

16-1104 Merger plan; city council; adopt resolution; advisory vote; notice.

(1) To enter into a merger plan, each city council of any two or more contiguous and adjacent cities shall adopt an initial joint concurrent resolution of intent to pursue such plan.

(2) If a resolution is adopted pursuant to subsection (1) of this section, the city councils of each city involved may hold an advisory vote at any general, primary, or special election if the advisory vote is presented to voters of all cities involved on the same day. Notice of the advisory vote to be voted on at a special election shall be given in the manner of notice for special elections in accordance with the Election Act. The result of the vote cast on a question submitted under this subsection shall not be binding upon such city councils.

Source: Laws 2008, LB1056, § 4.

Cross References

Election Act, see section 32-101.

16-1105 Merger plan; contents; advisory committee.

(1) After adoption of a resolution pursuant to section 16-1104 by the city councils of any two or more cities, such city councils may propose a merger plan subject to the First-Class City Merger Act.

(2) A merger plan shall include, but not be limited to, (a) the names of the cities which propose to merge, (b) the name under which the cities would merge, (c) the manner of financing and allocating all costs associated with the plan, (d) the property, real and personal, belonging to each city and the fair value thereof in current money of the United States, (e) the indebtedness, bonded and otherwise, of each city and the plan for repayment of the indebtedness after merger, (f) how the local ballot initiatives enacted in either city, if any, will be reconciled or terminated after merger, (g) if the cities have different forms of organization and government, the proposed form of organization and government of the merged city, (h) the redistricting of the newly merged city, including the number of wards and elected representatives from each ward, (i) the pay and perquisites of the mayor and city council, (j) the treatment of related city entities such as the housing authority, airport authority, or other city authority, and (k) any other terms of the agreement. A merger plan shall not be considered an interlocal cooperation agreement pursuant to the Interlocal Cooperation Act.

(3) Each city council may appoint an advisory committee to assist the council in the preparation of the merger plan.

Source: Laws 2008, LB1056, § 5 .

Cross References

Interlocal Cooperation Act, see section 13-801.

16-1106 Public hearing; notice.

After adoption of a resolution pursuant to section 16-1104 and preparation of the required merger plan pursuant to section 16-1105, the city council of each city proposing to enter into such plan shall hold a public hearing on the plan and shall give notice of the hearing by publication in a newspaper of general circulation in the city once each week for three consecutive weeks prior to the hearing. Final publication shall be within seven calendar days prior to the hearing. The notice shall describe the contents of the plan and specify that a copy of the plan may be obtained at no charge at the city clerk's office.

Source: Laws 2008, LB1056, § 6.

16-1107 Adoption of joint merger plan.

After a public hearing held pursuant to section 16-1106, the city council of each city shall adopt the joint merger plan by a majority vote of the council.

Source: Laws 2008, LB1056, § 7.

16-1108 Submission of joint merger plan to voters.

If a merger plan is adopted pursuant to section 16-1107, the city council of each city adopting such plan shall submit the plan for approval by the registered voters at a primary or special election held on the same day in each

of the cities which are parties to the plan, not less than one hundred eighty days prior to the next statewide general election. An election held pursuant to this section shall be conducted in accordance with the Election Act.

Source: Laws 2008, LB1056, § 8.

Cross References

Election Act, see section 32-101.

16-1109 Submission of plan to voters; notice; publication; contents.

When a merger plan is submitted to the voters for approval pursuant to section 16-1108, the city council of each city adopting the plan shall publish a notice at least once each week for three consecutive weeks prior to the election in one or more newspapers of general circulation in the city. Final publication in each city shall be within seven calendar days prior to the election pursuant to section 16-1110. The notice shall describe the contents of the plan and specify that a copy of the plan may be obtained at no charge at the city clerk's office.

Source: Laws 2008, LB1056, § 9.

16-1110 Question submitted to voters; form; effective date of plan.

(1) After publication pursuant to section 16-1109, each city council shall submit the question as proposed in the merger plan to the registered voters of the city as provided in section 16-1108.

(2) The question shall be submitted to the voters in substantially the following form:

''Shall (name of city in which ballot will be voted) merge with (name of other city or cities) according to the merger plan previously adopted by the city councils in such cities? Yes No''.

(3) The election shall be conducted in accordance with the Election Act. The election commissioner or county clerk shall certify the results to each city council involved in the plan.

(4) If a majority of the voters of each city voting on the question vote in favor of the merger plan, the plan shall become effective at the first regular meeting of the city council in December following the election, and the terms of the incumbents in the offices involved in the plan shall be deemed to end on that day.

Source: Laws 2008, LB1056, § 10.

Cross References

Election Act, see section 32-101.

16-1111 Nominations for merged city offices; special election.

Candidates for merged city offices shall be nominated at a special election to be held no less than thirty days after the election at which the merger is approved by the voters and no less than sixty days prior to the next statewide general election. The election shall be held in accordance with the Election Act.

Source: Laws 2008, LB1056, § 11.

Cross References

Election Act, see section 32-101.

16-1112 Election of merged city officers; terms; appointive city officers; terms.

(1) At the next statewide general election held after the election at which the merger is approved by the voters, the merged city officers shall be elected. Their terms shall begin at the first regular meeting of the city council in December following their election, and the terms of the incumbents in the offices involved in the plan shall be deemed to end on that day. The initial term of a merged officer shall be set forth in the merger plan.

(2) All appointive city officers shall be appointed by the person, council, or authority upon whom the power is conferred to appoint such officers in other cities of the first class. The terms of such officers shall begin at the first regular meeting of the city council in December following the first election of officers for the merged city and shall continue, unless otherwise removed, until their successors have been appointed and qualified.

Source: Laws 2008, LB1056, § 12.

16-1113 Merged cities; name; rights, privileges, franchises, property, and suits; how treated.

(1) Upon the effective date of a merger plan, the cities involved in the plan shall be treated under the name and upon the terms and conditions set forth in the plan. Except as provided in subsections (6) and (7) of this section, statutory references to the names of the cities as they existed prior to the merger plan shall be deemed to reference the name of the merged city as set forth in the plan.

(2) All rights, privileges, and franchises of each of the several cities, all real and personal property, all rights-of-way, all other interests, and all debts due on whatever account, as well as other things in action, belonging to each of such cities, shall be deemed as transferred to and vested in the merged city without further act or deed. All records, books, and documents shall be transferred to and vested in the merged city. All money on hand and accounts receivable shall be distributed pursuant to the merger plan.

(3) The title to real property, either by deed or otherwise, under the laws of this state vested in any of the cities, shall not be deemed to revert or be in any way impaired by reason of merger, but the rights of creditors and all liens upon the property of any of the cities shall be preserved unimpaired.

(4) Suits may be brought and maintained against such merged city in any of the courts of this state in the same manner as against any other city of the first class. Pursuant to the merger plan, any action or proceeding pending by or against any of the cities may be prosecuted to judgment and the merged city may be substituted in its place.

(5) The boundaries for school districts and election districts for offices other than the merged offices shall continue as prior to merger unless and until changed in accordance with law.

(6) For purposes of political representation, the existing boundaries for such districts shall continue until changed in accordance with law.

(7) Such merged city shall in all respects, except as provided in the First-Class City Merger Act, be subject to all the obligations and liabilities imposed

and shall possess all the rights, powers, and privileges vested by law in other cities of the first class.

Source: Laws 2008, LB1056, § 13.

16-1114 Merger; deemed permanent.

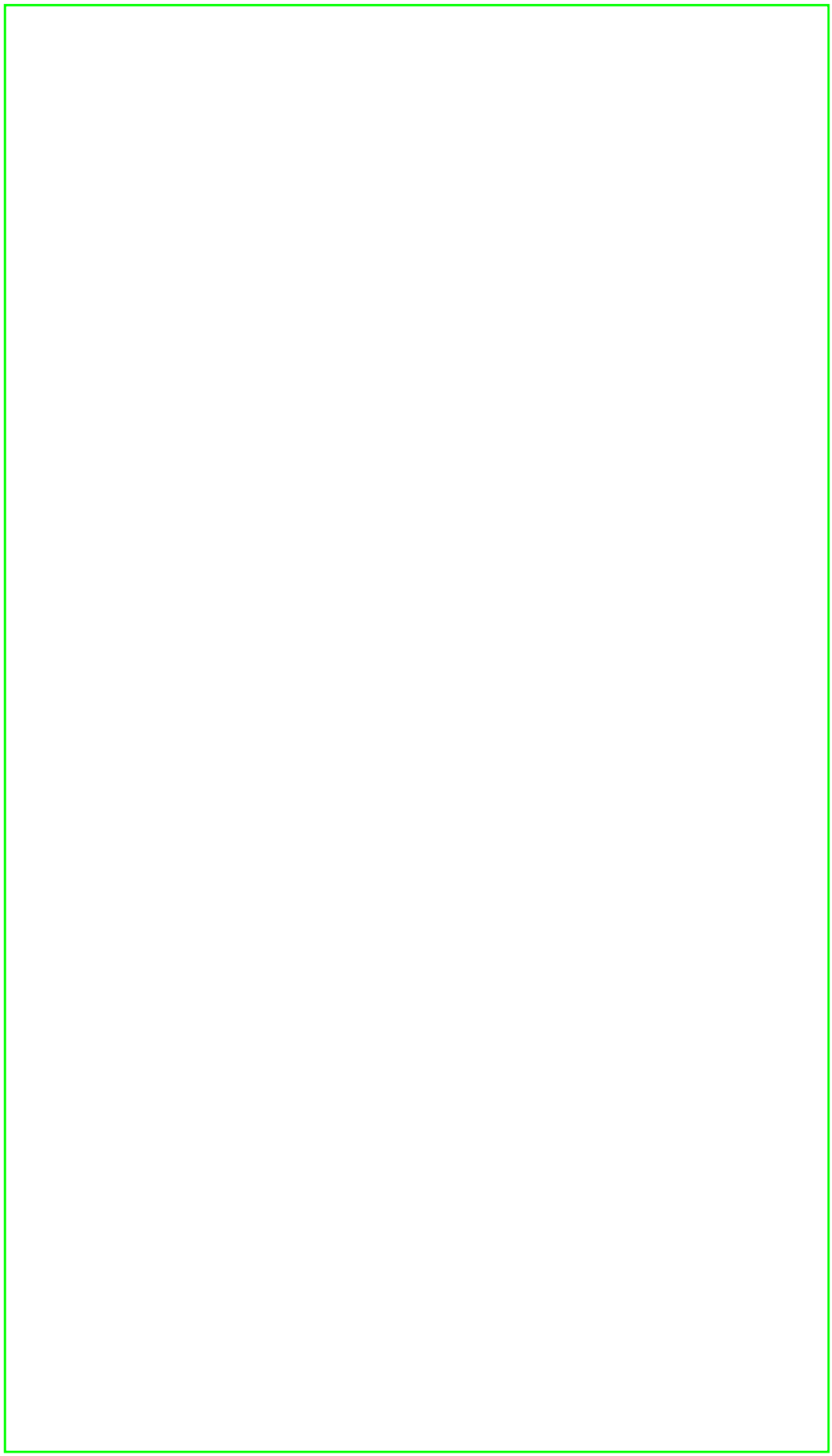
Merger according to the First-Class City Merger Act is deemed permanent, and no withdrawal or dissolution shall be permitted.

Source: Laws 2008, LB1056, § 14.

16-1115 Joint sessions of city councils; authorized.

The city councils of two or more cities of the first class may meet and hold joint sessions for purposes of the First-Class City Merger Act.

Source: Laws 2008, LB1056, § 15.



CHAPTER 17
CITIES OF THE SECOND CLASS AND VILLAGES

Article.
1. Laws Applicable Only to Cities of the Second Class. 17-107.
2. Laws Applicable Only to Villages. 17-208.
3. Changes in Population or Class.
(a) Cities of the First Class. 17-301, 17-305.01.
4. Change of Boundary; Additions.
(b) Annexation of Territory. 17-405.01, 17-407.
5. General Grant of Power. 17-526 to 17-568.01.
6. Elections, Officers, Ordinances.
(b) Officers. 17-607.
7. Fiscal Management. 17-720.
9. Particular Municipal Enterprises.
(c) Cemeteries. 17-936.

ARTICLE 1
LAWS APPLICABLE ONLY TO CITIES OF THE SECOND CLASS

Section
17-107. Mayor; qualifications; election; officers; appointment; removal; police officers; appointment; removal, demotion, or suspension; procedure.

17-107 Mayor; qualifications; election; officers; appointment; removal; police officers; appointment; removal, demotion, or suspension; procedure.

(1) A mayor of a city of the second class shall be elected in the manner provided in the Election Act. The mayor shall be a resident and registered voter of the city. If the president of the council assumes the office of mayor for the unexpired term, there shall be a vacancy on the council which vacancy shall be filled as provided in section 32-568. The mayor, with the consent of the council, may appoint such officers as shall be required by ordinance or otherwise required by law. Such officers may be removed from office by the mayor. The mayor, by and with the consent of the council, shall appoint such a number of regular police officers as may be necessary. All police officers appointed by the mayor and council may be removed, demoted, or suspended at any time by the mayor as provided in subsection (2) of this section. A police officer, including the chief of police, may appeal to the city council such removal, demotion, or suspension with or without pay. After a hearing, the city council may uphold, reverse, or modify the action.

(2) The city council shall by ordinance adopt rules and regulations governing the removal, demotion, or suspension with or without pay of any police officer, including the chief of police. The ordinance shall include a procedure for such removal, demotion, or suspension with or without pay of any police officer, including the chief of police, upon the written accusation of the police chief, the mayor, or any citizen or taxpayer. The city council shall establish by ordinance procedures for acting upon such written accusation, including: (a) Provisions for giving notice and a copy of the written accusation to the police officer; (b) the police officer's right to have an attorney or representative retained by the police officer present with him or her at all hearings or proceedings regarding

the written accusation; (c) the right of the police officer or his or her attorney or representative retained by the police officer to be heard and present evidence; and (d) the right of the police officer as well as the individual imposing the action or their respective attorneys or representatives to record all hearings or proceedings regarding the written accusation. The ordinance shall also include a procedure for making application for an appeal, specifications on the period of time within which such application shall be made, and provisions on the manner in which the appeals hearing shall be conducted. Both the police officer and the individual imposing the action or their respective attorneys or representatives shall have the right at the hearing to be heard and to present evidence to the city council for its consideration. Not later than thirty days following the adjournment of the meeting at which the hearing was held, the city council shall vote to uphold, reverse, or modify the action. The failure of the city council to act within thirty days or the failure of a majority of the elected council members to vote to reverse or modify the action shall be construed as a vote to uphold the action. The decision of the city council shall be based upon its determination that, under the facts and evidence presented at the hearing, the action was necessary for the proper management and the effective operation of the police department in the performance of its duties under the statutes of the State of Nebraska. Nothing in this section shall be construed to prevent the preemptory suspension or immediate removal from duty of an officer by the appropriate authority, pending the hearing authorized by this section, in cases of gross misconduct, neglect of duty, or disobedience of orders.

(3) This section does not apply to a police officer during his or her probationary period.

Source: Laws 1879, § 6, p. 194; Laws 1881, c. 23, § 1, p. 168; R.S.1913, § 4999; Laws 1921, c. 155, § 1, p. 637; C.S.1922, § 4168; Laws 1923, c. 67, § 3, p. 203; Laws 1925, c. 36, § 1, p. 143; C.S.1929, § 17-107; R.S.1943, § 17-107; Laws 1955, c. 38, § 1, p. 151; Laws 1969, c. 257, § 7, p. 935; Laws 1972, LB 1032, § 104; Laws 1973, LB 559, § 2; Laws 1974, LB 1025, § 1; Laws 1976, LB 441, § 1; Laws 1976, LB 782, § 13; Laws 1994, LB 76, § 491; Laws 1995, LB 346, § 1; Laws 2009, LB158, § 1.

Cross References

Election Act, see section 32-101.

ARTICLE 2
LAWS APPLICABLE ONLY TO VILLAGES

Section
17-208. Appointive officers; police officer; removal, demotion, or suspension; procedure; board of health; members; duties.

17-208 Appointive officers; police officer; removal, demotion, or suspension; procedure; board of health; members; duties.

(1)(a) The village board of trustees may appoint a village clerk, treasurer, attorney, overseer of the streets, and marshal or chief of police. Pursuant to subsection (2) of this section, the village marshal or chief of police or any other police officer may appeal to the village board his or her removal, demotion, or

suspension with or without pay. After a hearing, the village board may uphold, reverse, or modify the action.

(b) The village board of trustees shall by ordinance adopt rules and regulations governing the removal, demotion, or suspension with or without pay of any police officer, including the village marshal or chief of police. The ordinance shall include a procedure for such removal, demotion, or suspension with or without pay of any police officer, including the village marshal or chief of police, upon the written accusation of the village marshal or chief of police, the chairperson, or any citizen or taxpayer. The village board of trustees shall establish by ordinance procedures for acting upon such written accusation, including: (i) Provisions for giving notice and a copy of the written accusation to the police officer; (ii) the police officer's right to have an attorney or representative retained by the police officer present with him or her at all hearings or proceedings regarding the written accusation; (iii) the right of the police officer or his or her attorney or representative retained by the police officer to be heard and present evidence; and (iv) the right of the police officer as well as the individual imposing the action or their respective attorneys or representatives to record all hearings or proceedings regarding the written accusation. The ordinance shall also include a procedure for making application for an appeal, specifications on the period of time within which such application shall be made, and provisions on the manner in which the appeals hearing shall be conducted. Both the police officer and the individual imposing the action or their respective attorneys or representatives shall have the right at the hearing to be heard and to present evidence to the village board for its consideration. Not later than thirty days following the adjournment of the meeting at which the hearing was held, the village board shall vote to uphold, reverse, or modify the action. The failure of the village board to act within thirty days or the failure of a majority of the elected board members to vote to reverse or modify the action shall be construed as a vote to uphold the action. The decision of the village board shall be based upon its determination that, under the facts and evidence presented at the hearing, the action was necessary for the proper management and the effective operation of the police department in the performance of its duties under the statutes of the State of Nebraska. Nothing in this section shall be construed to prevent the preemptory suspension or immediate removal from duty of an officer by the appropriate authority, pending the hearing authorized by this section, in cases of gross misconduct, neglect of duty, or disobedience of orders.

(c) This subsection does not apply to a police officer during his or her probationary period.

(2) The village board of trustees shall also appoint a board of health consisting of three members: The chairperson of the village board, who shall be chairperson, and two other members. One member shall be a physician or health care provider, if one can be found who is willing to serve. Such physician or health care provider, if appointed, shall be the board's medical advisor. If the village board of trustees has appointed a marshal or chief of police, the marshal or chief of police may be appointed to the board and serve as secretary and quarantine officer. A majority of the board of health shall constitute a quorum and shall enact rules and regulations, which shall have the force and effect of law, to safeguard the health of the people of such village and prevent nuisances and unsanitary conditions. The board of health shall enforce the same and provide fines and punishments for violations. The appointees

shall hold office for one year unless removed by the chairperson of the village board with the advice and consent of the trustees.

Source: Laws 1879, § 47, p. 204; Laws 1885, c. 18, § 1, p. 158; Laws 1895, c. 15, § 1, p. 110; Laws 1911, c. 20, § 1, p. 137; R.S.1913, § 5058; Laws 1919, c. 165, § 1, p. 369; C.S.1922, § 4230; C.S. 1929, § 17-208; R.S.1943, § 17-208; Laws 1995, LB 346, § 2; Laws 1996, LB 1162, § 2; Laws 2009, LB158, § 2.

ARTICLE 3

CHANGES IN POPULATION OR CLASS

(a) CITIES OF FIRST CLASS

Section
17-301. City of the first class; reorganization as city of the second class; procedure; mayor, city council, and Secretary of State; duties.
17-305.01. Repealed. Laws 2010, LB 919, § 3.

(a) CITIES OF FIRST CLASS

17-301 City of the first class; reorganization as city of the second class; procedure; mayor, city council, and Secretary of State; duties.

(1) This section applies to cities of the first class whose population is less than five thousand inhabitants but more than eight hundred inhabitants according to the federal decennial census conducted in the year 2010 or any subsequent federal decennial census.

(2)(a) If a city of the first class has a population of less than five thousand inhabitants but not less than four thousand inhabitants, as ascertained and officially promulgated by the most recent federal decennial census, the mayor of the city shall certify such fact to the Secretary of State. If the mayor and city council of the city determine that it is in the best interests of such city to become a city of the second class, the mayor and city council shall adopt an ordinance to that effect and shall notify the Secretary of State and notice and a copy of such ordinance shall accompany the certification. If the Secretary of State receives such notification, he or she shall declare such city to be a city of the second class. If the mayor and city council determine that it is in the best interests of such city to remain a city of the first class, they shall submit to the Secretary of State, within nine years after the certification is required to be submitted pursuant to this subdivision, an explanation of the city's plan to increase the city's population.

(b) If a city of the first class has a population of less than five thousand inhabitants but not less than four thousand inhabitants, as ascertained and officially promulgated by the most recent federal decennial census immediately following the census referred to in subdivision (a) of this subsection, the mayor of the city shall certify such fact to the Secretary of State. If the mayor and city council of the city determine that it is in the best interests of such city to become a city of the second class, the mayor and city council shall adopt an ordinance to that effect and shall notify the Secretary of State and notice and a copy of such ordinance shall accompany the certification. If the Secretary of State receives such notification, he or she shall declare such city to be a city of the second class.

(c) If a city of the first class has a population of less than five thousand inhabitants but not less than four thousand inhabitants, as ascertained and officially promulgated by the most recent federal decennial census immediately following the census referred to in subdivision (b) of this subsection, the mayor of the city shall certify such fact to the Secretary of State. After receipt of such certification, the Secretary of State shall declare such city to be a city of the second class.

(3) If a city of the first class has a population of less than four thousand inhabitants but more than eight hundred inhabitants, as ascertained and officially promulgated by the most recent federal decennial census, the mayor of the city shall certify such fact to the Secretary of State. After receipt of such certification, the Secretary of State shall declare such city to be a city of the second class.

(4) Beginning on the date upon which a city becomes a city of the second class pursuant to section 17-305, such city shall be governed by the laws of this state applicable to cities of the second class.

Source: Laws 1933, c. 112, § 1, p. 452; C.S.Supp.,1941, § 17-162; R.S. 1943, § 17-301; Laws 1984, LB 1119, § 3; Laws 2002, LB 729, § 5; Laws 2010, LB919, § 1.
Effective date April 2, 2010.

17-305.01 Repealed. Laws 2010, LB 919, § 3.

ARTICLE 4

CHANGE OF BOUNDARY; ADDITIONS

(b) ANNEXATION OF TERRITORY

Section
17-405.01. Annexation; powers; restrictions.
17-407. Annexation by city or village within county between 100,000 and 200,000 inhabitants; mayor and council or chairperson and board of trustees; powers; notice; contents; liability; limitation on action.

(b) ANNEXATION OF TERRITORY

17-405.01 Annexation; powers; restrictions.

(1) Except as provided in subsection (2) of this section and section 17-407, the mayor and council of any city of the second class or the chairperson and members of the board of trustees of any village may by ordinance, except as provided in sections 13-1111 to 13-1118, at any time, include within the corporate limits of such city or village any contiguous or adjacent lands, lots, tracts, streets, or highways as are urban or suburban in character, and in such direction as may be deemed proper. Such grant of power shall not be construed as conferring power to extend the limits of any municipality over any agricultural lands which are rural in character.

(2) The mayor and city council of any city of the second class or the chairperson and members of the board of trustees of any village may, by ordinance, annex any lands, lots, tracts, streets, or highways which constitute a redevelopment project area so designated by the city or village or its community redevelopment authority in accordance with the provisions of the Community Development Law and sections 18-2145 to 18-2154 when such annexation is

for the purpose of implementing a lawfully adopted redevelopment plan containing a provision dividing ad valorem taxes as provided in subsection (1) of section 18-2147 and which will involve the construction or development of an agricultural processing facility, notwithstanding that such lands, lots, tracts, streets, or highways are not contiguous or adjacent or are not urban or suburban in character. Such annexation shall comply with all other provisions of law relating to annexation generally for cities of the second class and villages. The city or village shall not, in consequence of the annexation under this subsection of any noncontiguous land, exercise the authority granted to it by statute to extend its jurisdiction beyond its corporate boundaries for purposes of planning, zoning, or subdivision development without the agreement of any other city, village, or county currently exercising such jurisdiction over the area surrounding the annexed redevelopment project area. The annexation of any noncontiguous land undertaken pursuant to this subsection shall not result in any change in the service area of any electric utility without the express agreement of the electric utility serving the annexed noncontiguous area at the time of annexation, except that at such time following the annexation of the noncontiguous area as the city or village lawfully annexes sufficient intervening territory so as to directly connect the noncontiguous area to the main body of the city or village, such noncontiguous area shall, solely for the purposes of section 70-1008, be treated as if it had been annexed by the city or village on the date upon which the connecting intervening territory had been formally annexed.

(3) For the purposes of subsection (2) of this section, agricultural processing facility means a plant or establishment where value is added to agricultural commodities through processing, fabrication, or other means and where eighty percent or more of the direct sales from the facility are to other than the ultimate consumer of the processed commodities. A facility shall not qualify as an agricultural processing facility unless its construction or development involves the investment of more than one million dollars derived from nongovernmental sources.

Source: Laws 1967, c. 74, § 1, p. 240; Laws 1997, LB 875, § 1; Laws 2009, LB495, § 6.

Cross References

Community Development Law, see section 18-2101.

17-407 Annexation by city or village within county between 100,000 and 200,000 inhabitants; mayor and council or chairperson and board of trustees; powers; notice; contents; liability; limitation on action.

(1) The provisions of this section shall govern annexation by a city of the second class or village located in whole or in part within the boundaries of a county having a population in excess of one hundred thousand inhabitants but less than two hundred thousand inhabitants.

(2) The mayor and council of any city of the second class or the chairperson and members of the board of trustees of any village described in subsection (1) of this section may by ordinance, except as provided in sections 13-1111 to 13-1118, at any time include within the corporate limits of such city or village any contiguous or adjacent lands, lots, tracts, streets, or highways as are urban or suburban in character and in such direction as may be deemed proper. Such grant of power shall not be construed as conferring power to extend the limits

of any such municipality over any agricultural lands which are rural in character.

(3) Not later than fourteen days prior to the public hearing before the planning commission on a proposed annexation by the city or village, the city or village clerk shall send notice of the proposed annexation by certified mail, return receipt requested, to any of the following entities serving customers in such city or village or in the area proposed for annexation: Any natural gas public utility as defined in section 66-1802; any natural gas utility owned or operated by the city or village; any metropolitan utilities district; any public power district; any public power and irrigation district; any municipality; any electric cooperative; and any other governmental entity providing electric service. Such notice shall include a copy of the proposed annexation ordinance, the date, time, and place of the public hearing before the planning commission on the proposed annexation ordinance, and a map showing the boundaries of the area proposed for annexation.

(4) Prior to the final adoption of the annexation ordinance, the minutes of the city council or village board meeting at which such final adoption was considered shall reflect formal compliance with the provisions of subsection (3) of this section.

(5) No additional or further notice beyond that required by subsection (3) of this section shall be necessary in the event (a) that the scheduled city council or village board public hearing on the proposed annexation is adjourned, continued, or postponed until a later date or (b) that subsequent to providing such notice the ordinance regarding such proposed annexation was amended, changed, or rejected by action of the city council or village board prior to formal passage of the annexation ordinance.

(6) Except for a willful or deliberate failure to cause notice to be given, no annexation decision made by a city of the second class or village either to accept or reject a proposed annexation, either in whole or in part, shall be void, invalidated, or affected in any way because of any irregularity, defect, error, or failure on the part of the city or village or its employees to cause notice to be given as required by this section if a reasonable attempt to comply with this section was made.

(7) Except for a willful or deliberate failure to cause notice to be given, the city or village and its employees shall not be liable for any damage to any person resulting from any failure to cause notice to be given as required by this section when a reasonable attempt was made to provide such notice. No action for damages resulting from the failure to cause notice to be provided as required by this section shall be filed more than one year following the date of the formal acceptance or rejection of the proposed annexation, either in whole or in part, by the city council or village board.

(8) No action to challenge the validity of the acceptance or rejection of a proposed annexation on the basis of this section shall be filed more than one year following the date of the formal acceptance or rejection of the annexation by the city council or village board.

Source: Laws 2009, LB495, § 7.

ARTICLE 5
GENERAL GRANT OF POWER

Section
17-526. Dogs and other animals; license tax; enforcement.
17-556. Public safety; firearms; explosives; riots; regulation.
17-563. Lots; drainage; weeds or litter; nuisance; noncompliance by owner; notice; assessment of cost; violation; penalty; civil action.
17-568.01. City or village engineer; public works; prepare estimate of cost; board of public works; powers; contracts; procedure; city council or village board; powers and duties; public emergency.

17-526 Dogs and other animals; license tax; enforcement.

Second-class cities and villages may, by ordinance entered at large on the proper journal or record of proceedings of such municipality, impose a license tax in an amount which shall be determined by the governing body of such second-class city or village for each dog or other animal, on the owners and harborers of dogs and other animals, and enforce the same by appropriate penalties, and cause the destruction of any dog or other animal, for which the owner or harborer shall refuse or neglect to pay such license tax. Any licensing provision shall comply with subsection (2) of section 54-603 for service animals. Such municipality may regulate, license, or prohibit the running at large of dogs and other animals and guard against injuries or annoyances therefrom and authorize the destruction of the same when running at large contrary to the provisions of any ordinance.

Source: Laws 1879, § 69, X, p. 213; Laws 1881, c. 23, § 8, X, p. 175; Laws 1885, c. 20, § 1, X, p. 165; Laws 1887, c. 12, § 1, X, p. 294; Laws 1899, c. 14, § 1, p. 79; R.S.1913, § 5116; C.S.1922, § 4289; C.S.1929, § 17-438; R.S.1943, § 17-526; Laws 1959, c. 59, § 2, p. 253; Laws 1976, LB 515, § 1; Laws 1981, LB 501, § 4; Laws 1997, LB 814, § 5; Laws 2008, LB806, § 4.

17-556 Public safety; firearms; explosives; riots; regulation.

Cities of the second class and villages shall have power to prevent and restrain riots, routs, noises, disturbances, or disorderly assemblages; to regulate, prevent, restrain, or remove nuisances in residential parts of municipalities and to designate what shall be considered a nuisance; to regulate, punish, and prevent the discharge of firearms, rockets, powder, fireworks, or any other dangerous combustible material in the streets, lots, grounds, alleys, or about or in the vicinity of any buildings; to regulate, prevent, and punish the carrying of concealed weapons, except the carrying of a concealed handgun in compliance with the Concealed Handgun Permit Act; and to arrest, regulate, punish, fine, or set at work on the streets or elsewhere all vagrants and persons found without means of support or some legitimate business.

Source: Laws 1879, § 69, XXV, p. 216; Laws 1881, c. 23, § 8, XXV, p. 184; Laws 1885, c. 20, § 1, XXV, p. 175; Laws 1887, c. 12, § 1, XXV, p. 303; R.S.1913, § 5130; C.S.1922, § 4305; C.S.1929, § 17-454; R.S.1943, § 17-556; Laws 2009, LB430, § 4.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

17-563 Lots; drainage; weeds or litter; nuisance; noncompliance by owner; notice; assessment of cost; violation; penalty; civil action.

(1) Except as provided in subsection (6) of this section, a city of the second class and village by ordinance (a) may require lots or pieces of ground within the city or village to be drained or filled so as to prevent stagnant water or any other nuisance accumulating thereon, (b) may require the owner or occupant of any lot or piece of ground within the city or village to keep the lot or piece of ground and the adjoining streets and alleys free of any growth of twelve inches or more in height of weeds, grasses, or worthless vegetation, and (c) may prohibit and control the throwing, depositing, or accumulation of litter on any lot or piece of ground within the city or village.

(2) Except as provided in subsection (6) of this section, any city of the second class and village may by ordinance declare it to be a nuisance to permit or maintain any growth of twelve inches or more in height of weeds, grasses, or worthless vegetation or to litter or cause litter to be deposited or remain thereon except in proper receptacles.

(3) Any owner or occupant of a lot or piece of ground shall, upon conviction of violating any ordinance authorized under this section, be guilty of a Class V misdemeanor.

(4) Notice to abate and remove such nuisance shall be given to each owner or owner's duly authorized agent and to the occupant, if any, by personal service or certified mail. If notice by personal service or certified mail is unsuccessful, notice shall be given by publication in a newspaper of general circulation in the city or by conspicuously posting the notice on the lot or ground upon which the nuisance is to be abated and removed. Within five days after receipt of such notice or publication or posting, whichever is applicable, if the owner or occupant of the lot or piece of ground does not request a hearing with the city or village or fails to comply with the order to abate and remove the nuisance, the city or village may have such work done. The costs and expenses of any such work shall be paid by the owner. If unpaid for two months after such work is done, the city or village may either (a) levy and assess the costs and expenses of the work upon the lot or piece of ground so benefited in the same manner as other special taxes for improvements are levied and assessed or (b) recover in a civil action the costs and expenses of the work upon the lot or piece of ground and the adjoining streets and alleys.

(5) For purposes of this section:

(a) Litter includes, but is not limited to: (i) Trash, rubbish, refuse, garbage, paper, rags, and ashes; (ii) wood, plaster, cement, brick, or stone building rubble; (iii) grass, leaves, and worthless vegetation; (iv) offal and dead animals; and (v) any machine or machines, vehicle or vehicles, or parts of a machine or vehicle which have lost their identity, character, utility, or serviceability as such through deterioration, dismantling, or the ravages of time, are inoperative or unable to perform their intended functions, or are cast off, discarded, or thrown away or left as waste, wreckage, or junk; and

(b) Weeds includes, but is not limited to, bindweed (Convolvulus arvensis), puncture vine (Tribulus terrestris), leafy spurge (Euphorbia esula), Canada thistle (Cirsium arvense), perennial peppergrass (Lepidium draba), Russian knapweed (Centaurea picris), Johnson grass (Sorghum halepense), nodding or musk thistle, quack grass (Agropyron repens), perennial sow thistle (Sonchus arvensis), horse nettle (Solanum carolinense), bull thistle (Cirsium lanceola-

tum), buckthorn (Rhamnus sp.) (tourn), hemp plant (Cannabis sativa), and ragweed (Ambrosiaceae).

(6) A city of the second class or village by ordinance may declare it to be a nuisance to permit or maintain any growth of eight inches or more in height of weeds, grasses, or worthless vegetation on any lot or piece of ground located within the corporate limits of the city or village during any calendar year if, within the same calendar year, the city has, pursuant to subsection (4) of this section, acted to remove weeds, grasses, or worthless vegetation exceeding twelve inches in height on the same lot or piece of ground and had to seek recovery of the costs and expenses of such work from the owner.

Source: Laws 1879, § 71, p. 219; R.S.1913, § 5137; C.S.1922, § 4312; C.S.1929, § 17-503; R.S.1943, § 17-563; Laws 1991, LB 330, § 2; Laws 1995, LB 42, § 3; Laws 2004, LB 997, § 2; Laws 2009, LB495, § 8.

17-568.01 City or village engineer; public works; prepare estimate of cost; board of public works; powers; contracts; procedure; city council or village board; powers and duties; public emergency.

(1) The city or village engineer shall, when requested by the mayor, city council, or village board, make estimates of the cost of labor and material which may be done or furnished by contract with the city or village and make all surveys, estimates, and calculations necessary to be made for the establishment of grades, the building of culverts, sewers, electric light system, waterworks, power plant, public heating system, bridges, curbing, and gutters, the improvement of streets, and the erection and repair of buildings and shall perform such other duties as the council or board may require. When a city has appointed a board of public works, and the mayor and city council have by ordinance so authorized, such board may utilize its own engineering staff and may hire consulting engineers for the design and installation of extensions and improvements of the works under the jurisdiction of the board of public works. Whenever the mayor and city council have authorized the same, the board of public works may purchase material and employ labor for the enlargement or improvement of the systems and works under the jurisdiction of the board.

(2) Except as provided in section 18-412.01, no contract for enlargement or general improvements, such as water extensions, sewers, public heating system, bridges, work on streets, or any other work or improvement when the cost of such enlargement or improvement is assessed to the property, costing over thirty thousand dollars shall be made unless it is first approved by the city council or village board.

(3) Except as provided in section 18-412.01, before the city council or village board makes any contract in excess of thirty thousand dollars for enlargement or general improvements, such as water extensions, sewers, public heating system, bridges, work on streets, or any other work or improvement when the cost of such enlargement or improvement is assessed to the property, an estimate of the cost shall be made by the city or village engineer and submitted to the council or village board. In advertising for bids as provided in subsections (4) and (6) of this section, the city council or village board may publish the amount of the estimate.

(4) Advertisements for bids shall be required for any contract costing over thirty thousand dollars entered into (a) for enlargement or general improve-

ments, such as water extensions, sewers, public heating system, bridges, work on streets, or any other work or improvement when the cost of such enlargement or improvement is assessed to the property, or (b) for the purchase of equipment used in the construction of such enlargement or general improvements.

(5) A municipal electric utility may enter into a contract for the enlargement or improvement of the electric system or for the purchase of equipment used for such enlargement or improvement without advertising for bids if the price is: (a) Thirty thousand dollars or less; (b) sixty thousand dollars or less and the municipal electric utility has gross annual revenue from retail sales in excess of one million dollars; (c) ninety thousand dollars or less and the municipal electric utility has gross annual revenue from retail sales in excess of five million dollars; or (d) one hundred twenty thousand dollars or less and the municipal electric utility has gross annual revenue from retail sales in excess of ten million dollars.

(6) The advertisement provided for in subsections (3) and (4) of this section shall be published at least seven days prior to the bid closing in a legal newspaper published in or of general circulation in the city or village and, if there is no legal newspaper published in or of general circulation in such city or village, then in some newspaper of general circulation published in the county wherein such city or village is located, and if there is no legal newspaper of general circulation published in the county wherein such city or village is located then in a newspaper, designated by the county board, having a general circulation within the county where bids are required, and if no newspaper is published in the city, village, or county, or if no newspaper has general circulation in the county, then by posting a written or printed copy thereof in each of three public places in the city or village at least seven days prior to the bid closing. In case of a public emergency resulting from infectious or contagious diseases, destructive windstorms, floods, snow, war, or an exigency or pressing necessity or unforeseen need calling for immediate action or remedy to prevent a serious loss of, or serious injury or damage to, life, health, or property, estimates of costs and advertising for bids may be waived in the emergency ordinance authorized by section 17-613 when adopted by a three-fourths vote of the council or board of trustees and entered of record.

(7) If, after advertising for bids as provided in subsections (3), (4), and (6) of this section, the city council or village board receives fewer than two bids on a contract or if the bids received by the city council or village board contain a price which exceeds the estimated cost, the mayor and the city council or village board may negotiate a contract in an attempt to complete the proposed enlargement or general improvements at a cost commensurate with the estimate given.

(8) If the materials are of such a nature that, in the opinion of the manufacturer and with the concurrence of the city council, village board, or board of public works, no cost can be estimated until the materials have been manufactured or assembled to the specific qualifications of the purchasing municipality, the city council, village board, or board of public works may authorize the manufacture and assemblage of such materials and may thereafter approve the estimated cost expenditure when it is provided by the manufacturer.

Source: Laws 1879, § 20, p. 197; R.S.1913, § 5011; Laws 1921, c. 183, § 1, p. 695; C.S.1922, § 4180; Laws 1925, c. 51, § 1, p. 202;

C.S.1929, § 17-119; Laws 1943, c. 25, § 1, p. 118; R.S.1943, § 17-568; Laws 1949, c. 25, § 1(2), p. 98; Laws 1951, c. 34, § 1, p. 134; Laws 1957, c. 32, § 1, p. 195; Laws 1959, c. 61, § 2, p. 277; Laws 1969, c. 78, § 2, p. 409; Laws 1975, LB 171, § 2; Laws 1979, LB 356, § 2; Laws 1983, LB 304, § 4; Laws 1984, LB 540, § 8; Laws 1997, LB 238, § 3; Laws 2008, LB947, § 2.

ARTICLE 6

ELECTIONS, OFFICERS, ORDINANCES

(b) OFFICERS

Section
17-607. Treasurer; depositories; qualification; bond; exemption of treasurer from liability; conflict of interest.

(b) OFFICERS

17-607 Treasurer; depositories; qualification; bond; exemption of treasurer from liability; conflict of interest.

(1) The treasurer of a city of the second class or village shall deposit, and at all times keep on deposit, for safekeeping, in banks, capital stock financial institutions, or qualifying mutual financial institutions of approved and responsible standing, all money collected, received, or held by him or her as city or village treasurer. Such deposits shall be subject to all regulations imposed by law or adopted by the city council or board of trustees for the receiving and holding thereof. The fact that a stockholder, director, or other officer of such bank, capital stock financial institution, or qualifying mutual financial institution is also serving as mayor, as a member of the city council, as a member of the board of trustees, as a member of a board of public works, or as any other officer of such municipality shall not disqualify such bank, capital stock financial institution, or qualifying mutual financial institution from acting as a depository for such municipal funds. 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.

(2) The council or board of trustees shall require from all banks, capital stock financial institutions, or qualifying mutual financial institutions (a) a bond in such penal sum as may be the maximum amount on deposit at any time less the amount insured or guaranteed by the Federal Deposit Insurance Corporation or, in lieu thereof, (b) security given as provided in the Public Funds Deposit Security Act, to secure the payment of all such deposits and accretions. The council or board shall approve such bond or giving of security. The city treasurer or village treasurer shall not be liable for any loss of any money sustained by reason of the failure of any such depository so designated and approved.

Source: Laws 1879, § 65, p. 209; R.S.1913, § 5149; Laws 1921, c. 304, § 1, p. 961; C.S.1922, § 4324; Laws 1927, c. 38, § 1, p. 168; Laws 1929, c. 45, § 1, p. 193; C.S.1929, § 17-515; Laws 1931, c. 33, § 1, p. 124; Laws 1935, c. 140, § 2, p. 515; Laws 1937, c. 31, § 1, p. 155; C.S.Supp.,1941, § 17-515; Laws 1943, c. 27, § 2(1), p. 121; R.S.1943, § 17-607; Laws 1957, c. 54, § 3, p. 264; Laws

1989, LB 33, § 22; Laws 1992, LB 757, § 19; Laws 1996, LB 1274, § 22; Laws 2001, LB 362, § 24; Laws 2003, LB 175, § 1; Laws 2009, LB259, § 10.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

ARTICLE 7
FISCAL MANAGEMENT

Section
17-720. Certificates of deposit; time deposits; security required.

17-720 Certificates of deposit; time deposits; security required.

The city or village treasurer of cities of the second class and villages may, upon resolution of the mayor and council or board of trustees authorizing the same, purchase certificates of deposit from and make time deposits in any bank, capital stock financial institution, or qualifying mutual financial institution in the State of Nebraska to the extent that such certificates of deposit or time deposits are insured or guaranteed by the Federal Deposit Insurance Corporation. Deposits may be made in excess of the amounts so secured by the corporation, and the amount of the excess deposit shall be secured by a bond or by security given in the same manner as is provided for cities of the first class in sections 16-714 to 16-716 as of the time the deposit is made. 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. 84, § 1, p. 424; Laws 1987, LB 440, § 8; Laws 1990, LB 825, § 1; Laws 1993, LB 157, § 3; Laws 1996, LB 1274, § 23; Laws 2001, LB 362, § 25; Laws 2009, LB259, § 11.

ARTICLE 9
PARTICULAR MUNICIPAL ENTERPRISES

(c) CEMETERIES

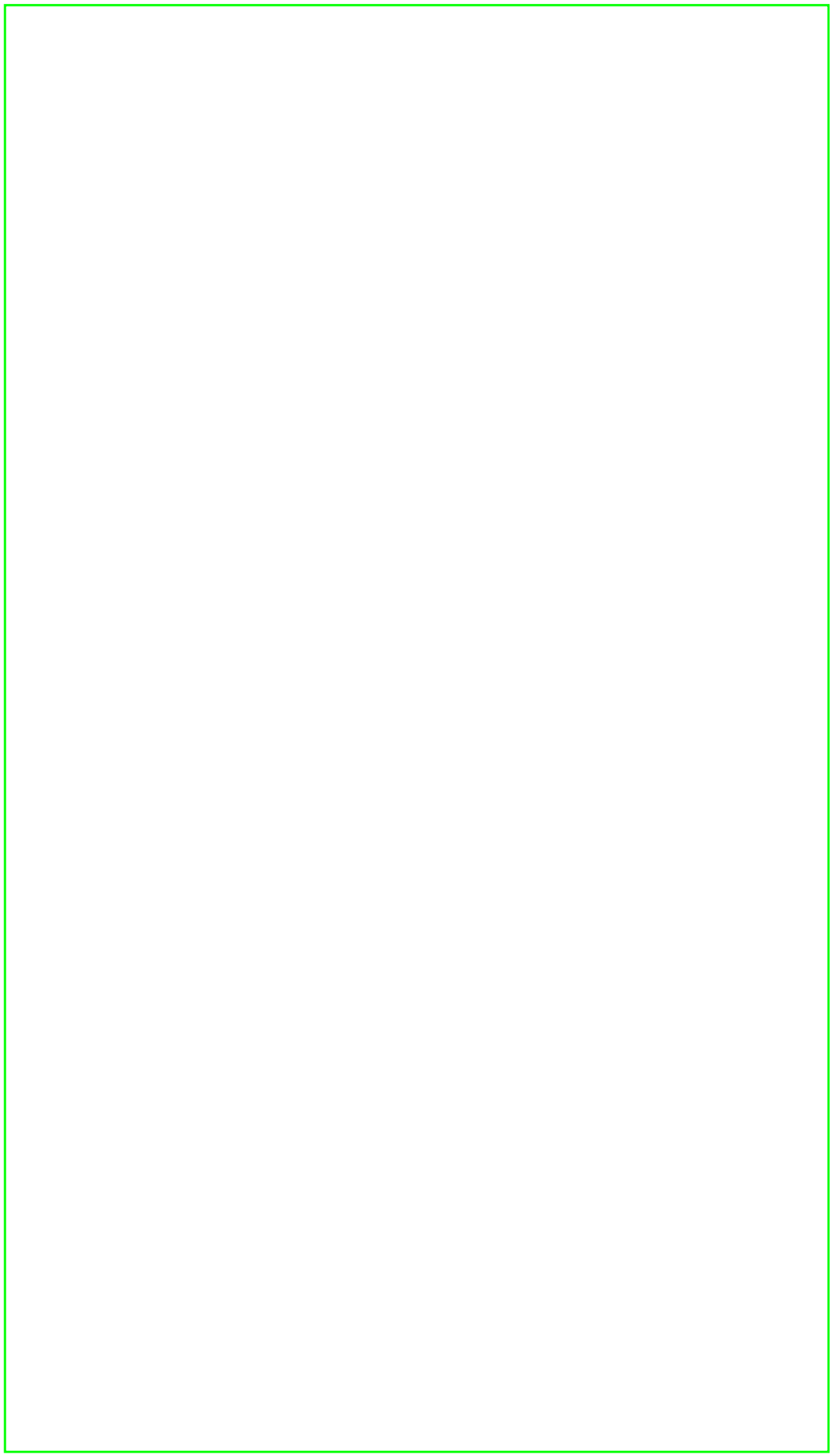
Section
17-936. Existing cemetery association; transfer of funds.

(c) CEMETERIES

17-936 Existing cemetery association; transfer of funds.

In case of the transfer of the management and control of such village or city cemetery, as provided in sections 17-934 and 17-935, the cemetery board erected under section 12-401 shall have no jurisdiction over the management and control of such cemetery after the transfer. In the event of such transfer, any funds or any money to the credit of the cemetery fund or any perpetual fund created under section 12-402, shall be paid over by the village treasurer of such village or by the city treasurer of such city to the treasurer of the cemetery association; and all endowments contemplated under section 12-301 to such village or city cemetery shall vest absolutely in the cemetery association to whom the control and management of such cemetery shall have been transferred.

Source: Laws 1929, c. 46, § 8, p. 199; C.S.1929, § 17-548; R.S.1943, § 17-936; Laws 1959, c. 49, § 3, p. 239; Laws 2009, LB500, § 3.



CHAPTER 18
CITIES AND VILLAGES; LAWS APPLICABLE TO ALL

Article.
12. Miscellaneous Taxes. 18-1214.
17. Miscellaneous. 18-1703 to 18-1741.02.
21. Community Development. 18-2102.01.
24. Municipal Cooperative Financing. 18-2442.
25. Initiative and Referendum. 18-2506.
27. Municipal Economic Development. 18-2720.
29. Urban Growth Districts. 18-2901.

ARTICLE 12
MISCELLANEOUS TAXES

Section
18-1214. Motor vehicles; local taxation; credited to road fund; use.

18-1214 Motor vehicles; local taxation; credited to road fund; use.

All cities and villages may levy a tax on all motor vehicles owned or used in such city or village. Until the implementation date designated by the Director of Motor Vehicles under section 23-186, the tax shall be paid to the designated county official of the county in which such city or village is located when the registration fees as provided in the Motor Vehicle Registration Act are paid. Such taxes shall be remitted to the county treasurer for credit to the road fund of such city or village. On and after the implementation date designated under section 23-186, the tax shall be paid to the county treasurer for credit to such road fund. Such funds shall be used by such city or village for constructing, resurfacing, maintaining, or improving streets, roads, alleys, public ways, or parts thereof or for the amortization of bonded indebtedness when created for such purposes.

Source: Laws 1963, c. 348, § 3, p. 1119; Laws 1988, LB 958, § 1; Laws 1989, LB 57, § 1; Laws 1993, LB 112, § 2; Laws 2005, LB 274, § 224; Laws 2009, LB49, § 1.

Cross References

Motor Vehicle Registration Act, see section 60-301.

ARTICLE 17
MISCELLANEOUS

Section
18-1703. Ownership, possession, and transportation of concealed handguns; power of cities and villages; existing ordinance, permit, or regulation; null and void.
18-1723. Firefighter; police officer; presumption of death or disability; rebuttable.
18-1739. Handicapped or disabled persons; parking; permits; contents; issuance; duplicate permit.

Section
18-1741.02. Handicapped parking infraction; penalties.

18-1703 Ownership, possession, and transportation of concealed handguns; power of cities and villages; existing ordinance, permit, or regulation; null and void.

Cities and villages shall not have the power to regulate the ownership, possession, or transportation of a concealed handgun, as such ownership, possession, or transportation is authorized under the Concealed Handgun Permit Act, except as expressly provided by state law, and shall not have the power to require registration of a concealed handgun owned, possessed, or transported by a permitholder under the act. Any existing city or village ordinance, permit, or regulation regulating the ownership, possession, or transportation of a concealed handgun, as such ownership, possession, or transportation is authorized under the act, except as expressly provided under state law, and any existing city or village ordinance, permit, or regulation requiring the registration of a concealed handgun owned, possessed, or transported by a permitholder under the act, is declared to be null and void as against any permitholder possessing a valid permit under the act.

Source: Laws 2009, LB430, § 5; Laws 2010, LB817, § 2.
Effective date July 15, 2010.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

18-1723 Firefighter; police officer; presumption of death or disability; rebuttable.

Whenever any firefighter who has served a total of five years as a member of a paid fire department of any city in this state or any police officer of any city or village, including any city having a home rule charter, shall suffer death or disability as a result of hypertension or heart or respiratory defect or disease, there shall be a rebuttable presumption that such death or disability resulted from accident or other cause while in the line of duty for all purposes of Chapter 15, article 10, sections 16-1001 to 16-1042, and any firefighter's or police officer's pension plan established pursuant to any home rule charter, the Legislature specifically finding the subject of this section to be a matter of general statewide concern. The rebuttable presumption shall apply to death or disability as a result of hypertension or heart or respiratory defect or disease after the firefighter or police officer separates from his or her applicable employment if the death or disability occurs within three months after such separation. Such rebuttable presumption shall apply in any action or proceeding arising out of death or disability incurred prior to December 25, 1969, and which has not been processed to final administrative or judicial conclusion prior to such date.

Source: Laws 1969, c. 281, § 1, p. 1048; Laws 1985, LB 3, § 3; Laws 2010, LB373, § 1.
Effective date July 15, 2010.

18-1739 Handicapped or disabled persons; parking; permits; contents; issuance; duplicate permit.

(1) The permit to be issued pursuant to section 18-1738 or 18-1738.01 shall be constructed of a durable plastic designed to resist normal wear or fading for the term of the permit's issuance and printed so as to minimize the possibility of alteration following issuance. The permit shall be of a design, size, configuration, color, and construction and contain such information as specified in the rules and regulations adopted and promulgated by the United States Department of Transportation in the Uniform System for Parking for Persons with Disabilities, 23 C.F.R. part 1235, as such regulations existed on January 1, 2010.

(2) In addition to the requirements of subsection (1) of this section, the permit shall show the expiration date and such identifying information with regard to the handicapped or disabled person or temporarily handicapped or disabled person to whom it is issued as is necessary to the enforcement of sections 18-1736 to 18-1741.07 as determined by the Department of Motor Vehicles. The expiration date information shall be distinctively color-coded so as to identify by color the year in which the permit is due to expire.

(3) No permit shall be issued to any person or for any motor vehicle if any parking permit has been issued to such person or for such motor vehicle and such permit has been suspended pursuant to section 18-1741. At the expiration of such suspension, a permit may be renewed in the manner provided for renewal in sections 18-1738, 18-1738.01, and 18-1740.

(4) A duplicate permit may be provided without cost if the original permit is destroyed, lost, or stolen. Such duplicate permit shall be issued in the same manner as the original permit, except that a newly completed medical form need not be provided if a completed medical form submitted at the time of the most recent application for a permit or its renewal is on file with the clerk or designated county official or the Department of Motor Vehicles. A duplicate permit shall be valid for the remainder of the period for which the original permit was issued.

Source: Laws 1977, LB 13, § 4; Laws 1979, LB 146, § 4; Laws 1980, LB 717, § 6; Laws 1984, LB 482, § 2; Laws 1987, LB 598, § 5; Laws 1989, LB 516, § 2; Laws 1992, LB 928, § 3; Laws 1995, LB 593, § 5; Laws 1996, LB 1211, § 6; Laws 2001, LB 31, § 1; Laws 2001, LB 809, § 6; Laws 2009, LB331, § 1; Laws 2010, LB805, § 1.
Effective date July 15, 2010.

18-1741.02 Handicapped parking infraction; penalties.

Any person found guilty of a handicapped parking infraction shall be fined (1) not more than one hundred fifty dollars for the first offense, (2) not more than three hundred dollars for a second offense within a one-year period, and (3) not more than five hundred dollars for a third or subsequent offense within a one-year period.

Source: Laws 1993, LB 632, § 2; Laws 2009, LB524, § 1.

ARTICLE 21
COMMUNITY DEVELOPMENT

Section
18-2102.01. Creation of authority or limited authority; name; membership; terms; optional election; officers and employees; quorum; interest in contracts; accounts; loan from city; finances; deposits; audit.

18-2102.01 Creation of authority or limited authority; name; membership; terms; optional election; officers and employees; quorum; interest in contracts; accounts; loan from city; finances; deposits; audit.

Cities of all classes and villages of this state are hereby granted power and authority to create community redevelopment authorities and limited community redevelopment authorities.

(1) Whenever an authority or limited authority is created it shall bear the name of the city creating it and shall be legally known as the Community Redevelopment Authority of the City (or Village) of . . . . . (name of city or village) or the Limited Community Redevelopment Authority of the City (or Village) of . . . . . (name of city or village).

(2) When it is determined by the governing body of any city by ordinance in the exercise of its discretion that it is expedient to create a community redevelopment authority or limited community redevelopment authority, the mayor of the city or, if the mayor shall fail to act within ninety days after the passage of the ordinance, the president or other presiding officer other than the mayor of the governing body, with the approval of the governing body of the city, shall appoint five or seven persons who shall constitute the authority or the limited authority. The terms of office of the members of a five-member authority initially appointed shall be for one year, two years, three years, four years, and five years, as designated by the mayor, president, other presiding officer, or city manager in making the respective appointments. The terms of office of the members of a seven-member authority initially appointed shall be one member each for one year, two years, and five years, and two members each for three years and four years, as designated by the mayor, president, other presiding officer, or city manager in making the respective appointments. As the terms of the members of the authority expire in cities not having the city manager form of government, the mayor, with the approval of the governing body of the city, shall appoint or reappoint a member of the authority for a term of five years to succeed the member whose term expires. In cities having the city manager form of government, the city manager shall appoint or reappoint the members with the approval of the governing body. The terms of office of the members of a limited community redevelopment authority shall be for the duration of only one single specific limited pilot project authorized in the ordinance creating the limited community redevelopment authority, and the terms of the members of a limited community redevelopment authority shall expire upon the completion of the single specific limited pilot project authorized in the ordinance creating the limited community redevelopment authority.

A governing body may at its option submit an ordinance which creates a community redevelopment authority or a limited community redevelopment authority to the electors of the city for approval by a majority vote of the electors voting on the ordinance. On submitting the ordinance for approval, the governing body is authorized to call, by the ordinance, a special or general election and to submit, after thirty days' notice of the time and place of holding the election and according to the manner and method otherwise provided by law for the calling, conducting, canvassing, and certifying of the result of city elections on the submission of propositions to the electors, the proposition to be stated on the ballot as follows:

Shall the City (or Village) of . . . . . (name of city or village) create a Community Redevelopment Authority of the City (or Village) of . . . . . (name of city or village)?

. . . Yes

. . . No.

When the ordinance submitted to the electors for approval by a majority vote of the electors voting on the ordinance is to create a limited community redevelopment authority the proposition shall be stated on the ballot as follows:

Shall the City (or Village) of . . . . . (name of city or village) create a Limited Community Redevelopment Authority of the City (or Village) of . . . . . (name of city or village)?

. . . Yes

. . . No.

Vacancies shall be filled for any unexpired term in the same manner as the original appointment. Members of the authority so appointed shall hold office until their successors have been appointed and qualified. Members of a limited authority shall hold office as provided in this section. All members of the authority shall serve without compensation, but shall be entitled to be reimbursed for all necessary expenses incurred.

(3) Any authority established under this section shall organize by electing one of its members chairperson and another vice-chairperson, shall have power to employ counsel, a director who shall be ex officio secretary of the authority, and such other officers and employees as may be desired, and shall fix the term of office, qualifications, and compensation of each. The holder of the office of community redevelopment administrator or coordinator of the city may, but need not, be appointed the director but at no additional compensation by the authority. Community redevelopment authorities of cities of the first and second class and villages may secure the services of a director, community redevelopment administrator, or coordinator, and other officers and employees as may be desired through contract with the Department of Economic Development upon terms which are mutually agreeable. Any authority established under this section may validly and effectively act on all matters requiring a resolution or other official action by the concurrence of three members of a five-member authority or four members of a seven-member authority present and voting at a meeting of the authority. Orders, requisitions, warrants, and other documents may be executed by the chairperson or vice-chairperson or by or with others designated in its bylaws.

(4) No member or employee of any authority established under this section shall have any interest directly or indirectly in any contract for property, materials, or services to be required by such authority.

(5) The authority shall keep an accurate account of all its activities and of all receipts and disbursements and make an annual report of such activities, receipts, and disbursements to the governing body of the city.

(6) The governing body of a city creating a community redevelopment authority or a limited community redevelopment authority is hereby authorized to appropriate and loan to the authority a sum not exceeding ten thousand dollars for the purposes of paying expenses of organizing and supervising the work of the authority at the beginning of its activities. The loan shall be authorized by resolution of the governing body which shall set forth the terms

and time of the repayment of the loan. The loan may be appropriated out of the general funds or any sinking fund.

(7) All income, revenue, profits, and other funds received by any authority established under this section from whatever source derived, or appropriated by the city, or realized from tax receipts or comprised in the special revenue fund of the city designated for the authority or from the proceeds of bonds, or otherwise, shall be deposited with the city treasurer as ex officio treasurer of the authority without commingling the money with any other money under his or her control and disbursed by him or her by check, draft, or order only upon warrants, orders, or requisitions by the chairperson of the authority or other person authorized by the authority which shall state distinctly the purpose for which the same are drawn. A permanent record shall be kept by the authority of all warrants, orders, or requisitions so drawn, showing the date, amount, consideration, and to whom payable. When paid, the same shall be canceled and kept on file by the city treasurer. The books of any authority established under this section shall from time to time be audited upon the order of the governing body of the municipality in such manner as it may direct, and all books and records of the authority shall at all times be open to public inspection. The authority may contract with the holders of any of its bonds or notes 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 notes or in any way to secure bonds or notes. The authority may carry out the contract notwithstanding that such contract may be inconsistent with the previous provisions of this subdivision. All banks, capital stock financial institutions, qualifying mutual financial institutions, and trust companies are hereby authorized to give security for the deposits of money of any authority established under the provisions of this section pursuant to the Public Funds Deposit Security Act. Section 77-2366 applies to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1957, c. 52, § 3, p. 248; Laws 1961, c. 61, § 2, p. 224; Laws 1963, c. 89, § 9, p. 307; R.S.Supp.,1963, § 19-2602.01; Laws 1965, c. 74, § 2, p. 300; Laws 1967, c. 87, § 1, p. 273; Laws 1969, c. 106, § 1, p. 484; Laws 1969, c. 107, § 1, p. 499; Laws 1989, LB 33, § 23; Laws 1997, LB 875, § 4; Laws 1999, LB 396, § 19; Laws 2001, LB 362, § 26; Laws 2009, LB339, § 1.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

ARTICLE 24

MUNICIPAL COOPERATIVE FINANCING

Section
18-2442. Construction and other contracts; cost estimate; sealed bids; when; exceptions.

18-2442 Construction and other contracts; cost estimate; sealed bids; when; exceptions.

(1) An agency shall cause estimates of the costs to be made by some competent engineer or engineers before the agency enters into any contract for:

(a) The construction, reconstruction, remodeling, building, alteration, maintenance, repair, extension, or improvement, for the use of the agency, of any:

(i) Power project, power plant, or system;

(ii) Irrigation works; or

(iii) Part or section of a project, plant, system, or works described in subdivision (i) or (ii) of this subdivision; or

(b) The purchase of any materials, machinery, or apparatus to be used in a project, plant, system, or works described in subdivision (1)(a) of this section.

(2) If the estimated cost exceeds the sum of one hundred thousand dollars, no such contract shall be entered into without advertising for sealed bids.

(3)(a) The provisions of subsection (2) of this section and sections 18-2443 and 18-2444 relating to sealed bids shall not apply to contracts entered into by an agency in the exercise of its rights and powers relating to (i) radioactive material or the energy therefrom, (ii) any technologically complex or unique equipment, (iii) equipment or supplemental labor procurement from an electric utility or from or through an electric utility alliance, or (iv) any maintenance or repair, if the requirements of subdivisions (b) and (c) of this subsection are met.

(b) A contract described in subdivision (a) of this subsection need not comply with subsection (2) of this section or sections 18-2443 and 18-2444 if:

(i) The engineer or engineers certify that, by reason of the nature of the subject matter of the contract, compliance with subsection (2) of this section would be impractical or not in the public interest;

(ii) The engineer's certification is approved by a two-thirds vote of the board; and

(iii) The agency advertises notice of its intention to enter into such contract, the general nature of the proposed work, and the name of the person to be contacted for additional information by anyone interested in contracting for such work.

(c) Any contract for which the board has approved an engineer's certificate described in subdivision (b) of this subsection shall be advertised in three issues, not less than seven days between issues, in one or more newspapers of general circulation in the municipality or county where the principal office or place of business of the agency is located, or if no newspaper is so published then in a newspaper qualified to carry legal notices having general circulation therein, and in such additional newspapers or trade or technical periodicals as may be selected by the board in order to give proper notice of its intention to enter into such contract, and any such contract shall not be entered into prior to twenty days after the last advertisement.

(4) The provisions of subsection (2) of this section and sections 18-2443 and 18-2444 shall not apply to contracts in excess of one hundred thousand dollars entered into for the purchase of any materials, machinery, or apparatus to be used in projects, plants, systems, or works described in subdivision (1)(a) of this section if, after advertising for sealed bids:

(a) No responsive bids are received; or

(b) The board of directors of such agency determines that all bids received are in excess of the fair market value of the subject matter of such bids.

(5) Notwithstanding any other provision of subsection (2) of this section or sections 18-2443 and 18-2444, an agency may, without advertising or sealed

bidding, purchase replacement parts or services relating to such replacement parts for any generating unit, transformer, or other transmission and distribution equipment from the original manufacturer of such equipment upon certification by an engineer or engineers that such manufacturer is the only available source of supply for such replacement parts or services and that such purchase is in compliance with standards established by the board. A written statement containing such certification and a description of the resulting purchase of replacement parts or services from the original manufacturer shall be submitted to the board by the engineer or engineers certifying the purchase for the board's approval. After such certification, but not necessarily before the board's review, notice of any such purchase shall be published once a week for at least three consecutive weeks in one or more newspapers of general circulation in the municipality or county where the principal office or place of business of the agency is located and published in such additional newspapers or trade or technical periodicals as may be selected by the board in order to give proper notice of such purchase.

(6) Notwithstanding any other provision of subsection (2) of this section or sections 18-2443 and 18-2444, an agency may, without advertising or sealed bidding, purchase used equipment and materials on a negotiated basis upon certification by an engineer that such equipment is or such materials are in compliance with standards established by the board. A written statement containing such certification shall be submitted to the board by the engineer for the board's approval.

Source: Laws 1981, LB 132, § 42; Laws 1999, LB 566, § 1; Laws 2007, LB636, § 5; Laws 2008, LB939, § 2.

ARTICLE 25

INITIATIVE AND REFERENDUM

Section
18-2506. Measure, defined.

18-2506 Measure, defined.

Measure means an ordinance, charter provision, or resolution which is within the legislative authority of the governing body of a municipal subdivision to pass and which is not excluded from the operation of referendum by the exceptions in section 18-2528. Measure does not include any action permitted by the Nebraska Advantage Transformational Tourism and Redevelopment Act.

Source: Laws 1982, LB 807, § 6; Laws 1984, LB 1010, § 2; Laws 2010, LB1018, § 36.
Effective date July 15, 2010.

Cross References

Nebraska Advantage Transformational Tourism and Redevelopment Act, see section 77-1001.

ARTICLE 27

MUNICIPAL ECONOMIC DEVELOPMENT

Section
18-2720. Loan fund program; loan servicing requirements.

18-2720 Loan fund program; loan servicing requirements.

(1) If the economic development program involves the establishment of a loan fund, the governing body of the city shall designate an appropriate individual to assume primary responsibility for loan servicing and shall provide such other assistance or additional personnel as may be required. The individual may be an employee of the city, or the city may contract with an appropriate business or financial institution for loan servicing functions. The governing body of the city shall be provided with an account of the status of each loan outstanding, program income, and current investments of unexpended funds on a monthly basis. Program income shall mean payments of principal and interest on loans made from the loan fund and the interest earned on these funds.

(2) Records kept on such accounts and reports made to the governing body of the city shall include, but not be limited to, the following information: (a) The name of the borrower; (b) the purpose of the loan; (c) the date the loan was made; (d) the amount of the loan; (e) the basic terms of the loan, including the interest rate, the maturity date, and the frequency of payments; and (f) the payments made to date and the current balance due.

(3) The individual responsible for loan servicing shall monitor the status of each loan and, with the cooperation of the governing body of the city and the primary lender or lenders, take appropriate action when a loan becomes delinquent. The governing body shall establish standards for the determination of loan delinquency, when a loan shall be declared to be in default, and what action shall be taken to deal with the default to protect the interests of the qualifying business, third parties, and the city. The governing body shall establish a process to provide for consultation, agreement, and joint action between the city and the primary lender or lenders in pursuing appropriate remedies following the default of a qualifying business in order to collect amounts owed under the loan.

Source: Laws 1991, LB 840, § 21; Laws 2008, LB895, § 1.

ARTICLE 29

URBAN GROWTH DISTRICTS

Section
18-2901. Urban growth district; authorized; urban growth bonds and refunding bonds.

18-2901 Urban growth district; authorized; urban growth bonds and refunding bonds.

(1) The Legislature recognizes that there is a growing concern among municipalities that infrastructure costs and needs are great, especially in areas that are on the edge of or near the municipal boundaries and in need of development resources, and the governing bodies of municipalities must identify and develop financing mechanisms to respond to all infrastructure needs in an effective and efficient manner. The authorization of urban growth bonds, with local option sales and use tax revenue identified as the source of financing for the bonds, will encourage municipalities to use such revenue to bond infrastructure needs.

(2) The governing body of a municipality may create one or more urban growth districts for the purpose of using local option sales and use tax revenue to finance municipal infrastructure needs. An urban growth district may be in an area along the edge of a municipality's boundary or in any other growth

area designated by the governing body, except that the territory of each urban growth district shall be (a) within the municipality's corporate limits and (b) outside the municipality's corporate limits as they existed as of the date twenty years prior to the issuance of any urban growth bonds by a municipality under the authority of this section.

(3) The governing body shall establish an urban growth district by ordinance. The ordinance shall include:

(a) A description of the boundaries of the proposed district; and

(b) The local option sales tax rate and estimated urban growth local option sales and use tax revenue anticipated to be identified as a result of the creation of the district.

(4) Any municipality that has established an urban growth district may, by ordinance approved by a vote of two-thirds of the members of its governing body, issue urban growth bonds and refunding bonds to finance and refinance the construction or improvement of roads, streets, streetscapes, bridges, and related structures within the urban growth district and in any other area of the municipality. The bonds shall be secured as to payment by a pledge, as determined by the municipality, of the urban growth local option sales and use tax revenue and shall mature not later than twenty-five years after the date of issuance. Annual debt service on all bonds issued with respect to an urban growth district pursuant to this section shall not exceed the urban growth local option sales and use tax revenue with respect to such district for the fiscal year prior to the fiscal year in which the current series of such bonds are issued. For purposes of this section, urban growth local option sales and use tax revenue means the municipality's total local option sales and use tax revenue multiplied by the ratio of the area included in the urban growth district to the total area of the municipality.

(5) The issuance of urban growth bonds by any municipality under the authority of this section shall not be subject to any charter or statutory limitations of indebtedness or be subject to any restrictions imposed upon or conditions precedent to the exercise of the powers of municipalities to issue bonds or evidences of indebtedness which may be contained in such charters or other statutes. Any municipality which issues urban growth bonds under the authority of this section shall levy property taxes upon all the taxable property in the municipality at such rate or rates within any applicable charter, statutory, or constitutional limitations as will provide funds which, together with the urban growth local option sales and use tax revenue pledged to the payment of such bonds and any other money made available and used for that purpose, will be sufficient to pay the principal of and interest on such urban growth bonds as they severally mature.

Source: Laws 2009, LB85, § 1.

CHAPTER 19

CITIES AND VILLAGES; LAWS APPLICABLE TO MORE THAN ONE AND LESS THAN ALL CLASSES

Article.
9. City Planning, Zoning. (Applicable to cities of the first or second class and villages.) 19-903 to 19-923.
18. Civil Service Act. 19-1825 to 19-1848.
24. Municipal Improvements. (Applicable to cities of the first or second class and villages.) 19-2424.
50. Annexation. (Applicable to cities of the first or second class and villages.) 19-5001.
51. Investment of Public Endowment Funds. (Applicable to cities of more than 5,000 population.) 19-5101.

ARTICLE 9

CITY PLANNING, ZONING

(Applicable to cities of the first or second class and villages.)

Section
19-903. Comprehensive development plan; requirements; regulations and restrictions made in accordance with plan; considerations.
19-916. Additions; subdivision or platting; procedure; rights and privileges of inhabitants; powers of legislative body; approval required; effect; filing and recording.
19-923. Municipality; notify board of education; when; notice to military installation.

19-903 Comprehensive development plan; requirements; regulations and restrictions made in accordance with plan; considerations.

The regulations and restrictions authorized by sections 19-901 to 19-915 shall be in accordance with a comprehensive development plan which shall consist of both graphic and textual material and shall be designed to accommodate anticipated long-range future growth which shall be based upon documented population and economic projections. The comprehensive development plan shall, among other possible elements, include:

(1) A land-use element which designates the proposed general distributions, general location, and extent of the uses of land for agriculture, housing, commerce, industry, recreation, education, public buildings and lands, and other categories of public and private use of land;

(2) The general location, character, and extent of existing and proposed major roads, streets, and highways, and air and other transportation routes and facilities;

(3) The general location, type, capacity, and area served of present and projected or needed community facilities including recreation facilities, schools, libraries, other public buildings, and public utilities and services;

(4) When a new comprehensive plan or a full update to an existing comprehensive plan is developed on or after July 15, 2010, but not later than January 1, 2015, an energy element which: Assesses energy infrastructure and energy

use by sector, including residential, commercial, and industrial sectors; evaluates utilization of renewable energy sources; and promotes energy conservation measures that benefit the community. This subdivision shall not apply to villages; and

(5)(a) When next amended after January 1, 1995, an identification of sanitary and improvement districts, subdivisions, industrial tracts, commercial tracts, and other discrete developed areas which are or in the future may be appropriate subjects for annexation and (b) a general review of the standards and qualifications that should be met to enable the municipality to undertake annexation of such areas. Failure of the plan to identify subjects for annexation or to set out standards or qualifications for annexation shall not serve as the basis for any challenge to the validity of an annexation ordinance.

Regulations shall be designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to secure safety from flood; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; to protect property against blight and depreciation; to protect the tax base; to secure economy in governmental expenditures; and to preserve, protect, and enhance historic buildings, places, and districts.

Such regulations shall be made with reasonable consideration, among other things, for the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

Source: Laws 1927, c. 43, § 3, p. 183; C.S.1929, § 19-903; R.S.1943, § 19-903; Laws 1967, c. 430, § 2, p. 1318; Laws 1967, c. 92, § 2, p. 283; Laws 1975, LB 410, § 12; Laws 1994, LB 630, § 4; Laws 2010, LB997, § 3.
Effective date July 15, 2010.

19-916 Additions; subdivision or platting; procedure; rights and privileges of inhabitants; powers of legislative body; approval required; effect; filing and recording.

(1) The local legislative body shall have power by ordinance to provide the manner, plan, or method by which land within the corporate limits of any such municipality, or land within the area designated by a city of the first class pursuant to subsection (1) of section 16-902 or within the area designated by a city of the second class or village pursuant to subsection (1) of section 17-1002, may be subdivided, platted, or laid out, including a plan or system for the avenues, streets, or alleys to be laid out within or across such land, and to compel the owners of any such land that are subdividing, platting, or laying out such land to conform to the requirements of the ordinance and to lay out and dedicate the avenues, streets, and alleys in accordance with the ordinance as provided in sections 16-901 to 16-905 and sections 17-1001 to 17-1004. No addition shall have any validity, right, or privileges as an addition, and no plat of land or, in the absence of a plat, no instrument subdividing land within the corporate limits of any such municipality or of any land within the area designated by a city of the first class pursuant to subsection (1) of section 16-902 or within the area designated by a city of the second class or village

pursuant to subsection (1) of section 17-1002, shall be recorded or have any force or effect, unless the plat or instrument is approved by the legislative body, or its designated agent, and the legislative body's or agent's approval is endorsed on such plat or instrument.

(2) The legislative body may designate by ordinance an employee of such city or village to approve further subdivision of existing lots and blocks whenever all required public improvements have been installed, no new dedication of public rights-of-way or easements is involved, and such subdivision complies with the ordinance requirements concerning minimum areas and dimensions of such lots and blocks.

(3) All additions laid out contiguous or adjacent to the corporate limits may be included within the corporate limits and become a part of such municipality for all purposes whatsoever if approved by the legislative body of the city or village under this subsection. The proprietor or proprietors of any land within the corporate limits of any city of the first or second class or village, or of any land contiguous or adjacent to the corporate limits, may lay out such land into lots, blocks, streets, avenues, alleys, and other grounds under the name of . . . . . Addition to the City or Village of . . . . . , and shall cause an accurate map or plat thereof to be made out, designating explicitly the land so laid out and particularly describing the lots, blocks, streets, avenues, alleys, and other grounds belonging to such addition. The lots shall be designated by numbers, and streets, avenues, and other grounds, by names or numbers. Such plat shall be acknowledged before some officer authorized to take the acknowledgments of deeds, shall contain a dedication of the streets, alleys, and public grounds therein to the use and benefit of the public, and shall have appended a survey made by some competent surveyor with a certificate attached, certifying that he or she has accurately surveyed such addition and that the lots, blocks, streets, avenues, alleys, parks, commons, and other grounds are well and accurately staked off and marked. The addition may become part of the municipality at such time as the addition is approved by the legislative body if (a) after giving notice of the time and place of the hearing as provided in section 19-904, the planning commission and the legislative body both hold public hearings on the inclusion of the addition within the corporate limits and (b) the legislative body votes to approve the inclusion of the addition within the corporate boundaries of the municipality in a separate vote from the vote approving the addition. Such hearings shall be separate from the public hearings held regarding approval of the addition. If the legislative body includes the addition within the corporate limits, the inhabitants of such addition shall be entitled to all the rights and privileges and shall be subject to all the laws, ordinances, rules, and regulations of the municipality to which such land is an addition. When such map or plat is made out, acknowledged, and certified, and has been approved by the local legislative body, the map or plat shall be filed and recorded in the office of the register of deeds and county assessor of the county. If the legislative body includes the addition within the corporate limits, such map or plat shall be equivalent to a deed in fee simple absolute to the municipality from the proprietor of all streets, avenues, alleys, public squares, parks, and commons, and of such portion of the land as is therein set apart for public and municipal use, or is dedicated to charitable, religious, or educational purposes.

Source: Laws 1901, c. 18, § 6, p. 228; R.S.1913, § 4811; C.S.1922, § 3979; C.S.1929, § 16-108; R.S.1943, § 16-112; Laws 1967, c.

66, § 1, p. 215; Laws 1974, LB 757, § 3; R.R.S.1943, § 16-112; Laws 1975, LB 410, § 2; Laws 1983, LB 71, § 10; Laws 2001, LB 210, § 1; Laws 2009, LB495, § 9.

19-923 Municipality; notify board of education; when; notice to military installation.

(1) In order to provide for orderly school planning and development, a municipality considering the adoption or amendment of a zoning ordinance or approval of the platting or replatting of any development of real estate shall notify the board of education of each school district in which the real estate, or some part thereof, to be affected by such a proposal lies, of the next regular meeting of the planning commission at which such proposal is to be considered and shall submit a copy of the proposal to the board of education at least ten days prior to such meeting.

(2) When a municipality is considering the adoption or amendment of a zoning ordinance or the approval of the platting or replatting of any development of real estate, the municipality shall notify any military installation which is located within the corporate boundary limits or the extraterritorial zoning jurisdiction of the municipality if the municipality has received a written request for such notification from the military installation. The municipality shall deliver the notification to the military installation at least ten days prior to the meeting of the planning commission at which the proposal is to be considered.

(3) The provisions of this section shall not apply to zoning, rezoning, or approval of plats by any city of the metropolitan or primary class, which has adopted a comprehensive subdivision ordinance pursuant to sections 14-115 and 14-116, or Chapter 15, articles 9 and 11. Plats of subdivisions approved by the agent of a municipality designated pursuant to section 19-916 shall not be subject to the notice requirements in this section.

Source: Laws 1963, c. 463, § 1, p. 1491; Laws 1969, c. 722, § 1, p. 2752; R.S.1943, (1981), § 79-4,151; Laws 1983, LB 71, § 14; Laws 2010, LB279, § 3.
Effective date July 15, 2010.

ARTICLE 18

CIVIL SERVICE ACT

Section
19-1825. Act, how cited.
19-1826. Terms, defined.
19-1848. Merger of commissions; agreement; applicability of act; exceptions.

19-1825 Act, how cited.

Sections 19-1825 to 19-1848 shall be known and may be cited as the Civil Service Act.

Source: Laws 1985, LB 372, § 4; Laws 2010, LB943, § 1.
Effective date April 2, 2010.

19-1826 Terms, defined.

As used in the Civil Service Act, unless the context otherwise requires:

(1) Commission shall mean a civil service commission created pursuant to the Civil Service Act, and commissioner shall mean a member of such commission;

(2) Appointing authority shall mean: (a) In a mayor and council form of government, the mayor with the approval of the council, except to the extent that the appointing authority is otherwise designated by ordinance to be the mayor or city administrator; (b) in a commission form of government, the mayor and city council or village board; (c) in a village form of government, the village board; and (d) in a city manager plan of government, the city manager;

(3) Appointment shall mean all means of selecting, appointing, or employing any person to hold any position or employment subject to civil service;

(4) Municipality shall mean all cities and villages specified in subsection (1) of section 19-1827 having full-time police officers or full-time firefighters;

(5) Governing body shall mean: (a) In a mayor and council form of government, the mayor and council; (b) in a commission form of government, the mayor and council or village board; (c) in a village form of government, the village board; and (d) in a city manager plan of government, the mayor and council;

(6) Full-time police officers shall mean police officers in positions which require certification by the Nebraska Law Enforcement Training Center, created pursuant to section 81-1402, who have the power of arrest, who are paid regularly by a municipality, and for whom law enforcement is a full-time career, but shall not include clerical, custodial, or maintenance personnel;

(7) Full-time firefighter shall mean duly appointed firefighters who are paid regularly by a municipality and for whom firefighting is a full-time career, but shall not include clerical, custodial, or maintenance personnel who are not engaged in fire suppression;

(8) Promotion or demotion shall mean changing from one position to another, accompanied by a corresponding change in current rate of pay;

(9) Position shall mean an individual job which is designated by an official title indicative of the nature of the work;

(10) Merged commission shall mean a civil service commission resulting from the merger of two or more commissions pursuant to section 19-1848;

(11) Agreement shall mean an agreement pursuant to the Interlocal Cooperation Act; and

(12) Existing commission shall mean a civil service commission of a city of the first class as it existed immediately prior to the effective creation of a merged commission.

Source: Laws 1943, c. 29, § 23, p. 138; R.S.1943, § 19-1823; Laws 1957, c. 48, § 7, p. 236; R.S.1943, (1983), § 19-1823; Laws 1985, LB 372, § 5; Laws 2010, LB943, § 2.
Effective date April 2, 2010.

Cross References

Interlocal Cooperation Act, see section 13-801.

19-1848 Merger of commissions; agreement; applicability of act; exceptions.

(1) Any two or more cities of the first class which have civil service commissions may merge their commissions by an agreement.

(2) The agreement shall state the date of creation of the merged commission. Upon the date of creation of the merged commission, the existing commissions shall be dissolved without further action by the governing body. The dissolution of an existing commission and the resulting loss of authority by the members of the existing commissions shall not be deemed a removal from office under subsection (3) of section 19-1827. Members of the existing commissions are eligible for appointment to the merged commission.

(3) The Civil Service Act shall be applicable to a merged commission except as provided in the following provisions:

(a) A merged commission shall consist of three, five, seven, or nine members, as provided in the agreement;

(b) Each city participating in the agreement shall appoint at least one member to the merged commission;

(c) Each member of such merged commission shall be a resident of one of the cities participating in the agreement for at least three years immediately preceding his or her appointment;

(d) The term of office of each member of the merged commission shall be as provided in the agreement, except that such term shall not exceed six years. The agreement may provide for staggered terms of office for the initial members of the merged commission;

(e) At the time of appointment, not more than four members of a seven-member commission nor more than five members of a nine-member commission shall be of the same political party; and

(f) The appointing authority for purposes of appointing members to the merged commission shall be as defined in the act. The agreement shall provide for the appointing authority for the purpose of exercising all other powers of the appointing authority as described in the act.

Source: Laws 2010, LB943, § 3.
Effective date April 2, 2010.

ARTICLE 24

MUNICIPAL IMPROVEMENTS

(Applicable to cities of the first or second class and villages.)

Section
19-2424. City or village clerk; prepare transcript; cost; indigent appellant.

19-2424 City or village clerk; prepare transcript; cost; indigent appellant.

(1) Upon the request of the owner appealing a special assessment and the payment by him or her of the estimated cost of preparation of the transcript to the city or village clerk or such clerk's designee, the city or village clerk shall cause a complete transcript of the proceedings before such city or village to be prepared. The cost of preparing the transcript shall be calculated in the same manner as the calculation of the fee for a court reporter for the preparation of a bill of exceptions as specified by rules of practice prescribed by the Supreme Court. At such time as the completed transcript is provided to the appellant, the appellant shall pay the amount of the cost of preparation which is in excess of the estimated cost already paid or shall receive a refund of any amount in excess of the actual cost. An appellant determined to be indigent shall not be required to pay any costs associated with such transcript preparation.

(2) For purposes of this section, indigent means the inability to financially pursue the appeal without prejudicing the appellant's ability to provide economic necessities for the appellant or the appellant's family. Indigency shall be determined by the court having jurisdiction over the appeal upon motion of the appellant. The court shall make a reasonable inquiry to determine the appellant's financial condition and shall consider such factors as the appellant's income, the availability to the appellant of other resources, including real and personal property, bank accounts, social security benefits, and unemployment or other benefits, the appellant's normal living expenses, the appellant's outstanding debts, the number and age of the appellant's dependents, and other relevant circumstances.

Source: Laws 1975, LB 468, § 3; Laws 2009, LB441, § 5.

ARTICLE 50

ANNEXATION

(Applicable to cities of the first or second class and villages.)

Section
19-5001. Written notice of proposed annexation; manner; contents; liability; limitation on action.

19-5001 Written notice of proposed annexation; manner; contents; liability; limitation on action.

(1) A city of the first or second class or village shall provide written notice of a proposed annexation to the owners of property within the area proposed for annexation in the manner set out in this section.

(2) Initial notice of the proposed annexation shall be sent to the owners of property within the area proposed for annexation by regular United States mail, postage prepaid, to the address of each owner of such property as it appears in the records of the office of the register of deeds or as the address is determined from another official source, postmarked at least ten working days prior to the planning commission's public hearing on the proposed change with a certified letter to the clerk of any sanitary and improvement district if the annexation includes property located within the boundaries of such district. Such notice shall describe the area proposed for annexation, including a map showing the boundaries of the area proposed for annexation, and shall contain the date, time, and location of the planning commission's hearing and how further information regarding the annexation can be obtained, including the telephone number of the pertinent city or village official and an electronic mail or Internet address if available.

(3) A second notice of the proposed annexation shall be sent to the same owners of property who were provided with notice under subsection (2) of this section. Such notice shall be sent by regular United States mail, postage prepaid, to the owner's address as it appears in the records of the office of the register of deeds or as the address is determined from another official source, postmarked at least ten working days prior to the public hearing of the city council or village board on the annexation. Such notice shall describe the area proposed for annexation, including a map showing the boundaries of the area proposed for annexation, and shall contain the date, time, and location of the hearing and how further information regarding the annexation can be obtained,

including the telephone number of the pertinent city or village official and an electronic mail or Internet address if available.

(4) No additional or further notice beyond that required by subsections (2) and (3) of this section shall be necessary if the scheduled public hearing by the planning commission or city council or village board on the proposed annexation is adjourned, continued, or postponed until a later date.

(5) Except for a willful or deliberate failure to cause notice to be given, no annexation decision made by a city of the first or second class or village to accept or reject a proposed annexation, either in whole or in part, shall be void, invalidated, or affected in any way because of any irregularity, defect, error, or failure on the part of the city or village or its employees to cause notice to be given as required by this section if a reasonable attempt to comply with this section was made. No action to challenge the validity of the acceptance or rejection of a proposed annexation on the basis of this section shall be filed more than one year following the date after the formal acceptance or rejection of the annexation by the city council or village board.

(6) Except for a willful or deliberate failure to cause notice to be given, the city of the first or second class or village and its employees shall not be liable for any damage to any person resulting from failure to cause notice to be given as required by this section if a reasonable attempt was made to provide such notice. No action for damages resulting from the failure to cause notice to be provided as required by this section shall be filed more than one year following the date of the formal acceptance or rejection of the proposed annexation, either in whole or in part, by the city council or village board.

(7) For purposes of this section, owner means the owner of a piece of property as indicated on the records of the office of the register of deeds as provided to or made available to the city of the first or second class or village no earlier than the last business day before the twenty-fifth day preceding the public hearing by the planning commission on the annexation proposed for the subject property.

Source: Laws 2009, LB495, § 1.

ARTICLE 51

INVESTMENT OF PUBLIC ENDOWMENT FUNDS

(Applicable to cities of more than 5,000 population.)

Section
19-5101. Investment of public endowment funds; manner.

19-5101 Investment of public endowment funds; manner.

Pursuant to Article XI, section 1, of the Constitution of Nebraska, the Legislature authorizes the investment of public endowment funds by any city having a population of more than five thousand inhabitants in the manner required of a prudent investor who shall act with care, skill, and diligence under the prevailing circumstance and in such investments as the governing body of such city, acting in a fiduciary capacity for the exclusive purpose of protecting and benefiting such investment, may determine.

Source: Laws 2009, LB402, § 3.

CHAPTER 20
CIVIL RIGHTS

Article.
1. Individual Rights.
   (b) Persons with Disabilities. 20-126.01 to 20-131.04.
   (g) Interpreters. 20-156.
5. Racial Profiling. 20-504, 20-506.

ARTICLE 1
INDIVIDUAL RIGHTS

(b) PERSONS WITH DISABILITIES

Section
20-126.01. Physically disabled person, defined.
20-127. Rights enumerated.
20-128. Pedestrian using cane or service animal; driver of vehicle; duties; violation; damages.
20-129. Denying or interfering with admittance to public facilities; penalty.
20-131.02. Housing accommodations; terms, defined.
20-131.04. Service animal; access to housing accommodations; terms and conditions.

(g) INTERPRETERS

20-156. Commission; interpreters; licensure; requirements; fees; roster; disciplinary actions; review; injunctions authorized.

(b) PERSONS WITH DISABILITIES

20-126.01 Physically disabled person, defined.

For purposes of sections 20-126 to 20-131, physically disabled person means a person with a physical disability other than hearing impairment, blindness, or visual handicap.

Source: Laws 1997, LB 254, § 1; Laws 2008, LB806, § 5.

20-127 Rights enumerated.

(1) A blind, visually handicapped, deaf or hard of hearing, or physically disabled person has the same right as any other person to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.

(2) A blind, visually handicapped, deaf or hard of hearing, or physically disabled person is entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats, any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.

(3) A totally or partially blind person, deaf or hard of hearing person, or physically disabled person has the right to be accompanied by a service animal,

especially trained for the purpose, and a bona fide trainer of a service animal has the right to be accompanied by such animal in training in any of the places listed in subsection (2) of this section without being required to pay an extra charge for the service animal. Such person shall be liable for any damage done to the premises or facilities or to any person by such animal.

(4) A totally or partially blind person has the right to make use of a white cane in any of the places listed in subsection (2) of this section.

Source: Laws 1971, LB 496, § 2; R.S.Supp.,1971, § 43-634; Laws 1980, LB 932, § 2; Laws 1997, LB 254, § 3; Laws 2003, LB 667, § 1; Laws 2008, LB806, § 6.

20-128 Pedestrian using cane or service animal; driver of vehicle; duties; violation; damages.

In addition to the provisions of sections 28-1313 and 28-1314, the driver of a vehicle approaching a totally or partially blind pedestrian who is carrying a cane predominantly white or metallic in color or using a service animal or a hearing-impaired or physically disabled pedestrian who is using a service animal shall take all necessary precautions to avoid injury to such pedestrian, and any driver who fails to take such precautions shall be liable in damages for any injury caused such pedestrian. A totally or partially blind pedestrian not carrying such a cane or using a service animal or a hearing-impaired or physically disabled pedestrian not using a service animal in any of the places, accommodations, or conveyances listed in section 20-127 shall have all of the rights and privileges conferred by law upon other persons, and the failure of a totally or partially blind pedestrian to carry such a cane or to use a service animal or the failure of a hearing-impaired or physically disabled pedestrian to use a service animal in any such places, accommodations, or conveyances does not constitute and is not evidence of contributory negligence.

Source: Laws 1971, LB 496, § 3; R.S.Supp.,1971, § 43-635; Laws 1978, LB 748, § 2; Laws 1980, LB 932, § 3; Laws 1997, LB 254, § 4; Laws 2008, LB806, § 7.

20-129 Denying or interfering with admittance to public facilities; penalty.

(1) Any person or agent of such person who denies or interferes with admittance to or enjoyment of the public facilities enumerated in section 20-127 or otherwise interferes with the rights of a totally or partially blind, deaf or hard of hearing, or physically disabled person under section 20-127 or sections 20-131.01 to 20-131.04 is guilty of a Class III misdemeanor.

(2) Any person or agent of such person who denies or interferes with admittance to or enjoyment of the public facilities enumerated in section 20-127 or otherwise interferes with the rights of a bona fide trainer of a service animal when training such animal under section 20-127 is guilty of a Class III misdemeanor.

Source: Laws 1971, LB 496, § 4; R.S.Supp.,1971, § 43-636; Laws 1975, LB 83, § 5; Laws 1977, LB 40, § 76; Laws 1980, LB 932, § 4; Laws 1997, LB 254, § 5; Laws 2003, LB 667, § 2; Laws 2008, LB806, § 8.

20-131.02 Housing accommodations; terms, defined.

For purposes of sections 20-131.01 to 20-131.04, unless the context otherwise requires:

(1) Housing accommodations means any real property which is used or occupied or is intended, arranged, or designed to be used or occupied as the home, residence, or sleeping place of one or more human beings. Housing accommodations does not include any single-family residence in which the owner lives and in which any room is rented, leased, or provided for compensation to persons other than the owner or primary tenant; and

(2) Physically disabled person means a person with a physical disability other than hearing impairment, blindness, or visual handicap.

Source: Laws 1975, LB 83, § 2; Laws 1997, LB 254, § 6; Laws 2008, LB806, § 9.

20-131.04 Service animal; access to housing accommodations; terms and conditions.

Every totally or partially blind person, hearing-impaired person, or physically disabled person who has a service animal or obtains a service animal shall have full and equal access to all housing accommodations with such animal as prescribed in sections 20-131.01 to 20-131.04. Such person shall not be required to pay extra compensation for such animal. Such person shall be liable for any damage done to such premises by such animal. Any person who rents, leases, or provides housing accommodations for compensation to any totally or partially blind person, hearing-impaired person, or physically disabled person who has or obtains a service animal shall not charge an additional deposit for such animal.

Source: Laws 1975, LB 83, § 4; Laws 1980, LB 932, § 6; Laws 1997, LB 254, § 7; Laws 2008, LB806, § 10.

(g) INTERPRETERS

20-156 Commission; interpreters; licensure; requirements; fees; roster; disciplinary actions; review; injunctions authorized.

(1) The Commission for the Deaf and Hard of Hearing shall license and evaluate licensed interpreters. The commission shall create the Interpreter Review Board pursuant to section 71-4728.05 to set policies, standards, and procedures for evaluation and licensing of interpreters. The commission may recognize evaluation and certification programs as a means to carry out the duty of evaluating interpreters' skills. The commission may define and establish different levels or types of licensure to reflect different levels of proficiency and different specialty areas.

(2) The commission shall establish and charge reasonable fees for licensure of interpreters, including applications, initial competency assessments, renewals, modifications, record keeping, approval, conduct, and sponsorship of continuing education, and assessment of continuing competency pursuant to sections 20-150 to 20-159. All fees collected pursuant to this section by the commission shall be remitted to the State Treasurer for credit to the Commission for the Deaf and Hard of Hearing Fund. Such fees shall be disbursed for payment of expenses related to this section.

(3) The commission shall prepare and maintain a roster of licensed interpreters as provided by section 71-4728. Nothing in sections 20-150 to 20-159 shall

be construed to prevent any appointing authority from contracting with a licensed interpreter on a full-time employment basis.

(4) The commission may deny, refuse to renew, limit, revoke, suspend, or take other disciplinary actions against a license when the applicant or licensee is found to have violated any provision of sections 20-150 to 20-159 or 71-4728 to 71-4732, or any rule or regulation of the commission adopted and promulgated pursuant to such sections, including rules and regulations governing unprofessional conduct. The Interpreter Review Board shall investigate complaints regarding the use of interpreters by any appointing authority, or the providing of interpreting services by any interpreter, alleged to be in violation of sections 20-150 to 20-159 or rules and regulations of the commission. The commission shall notify in writing an appointing authority determined to be employing interpreters in violation of sections 20-150 to 20-159 or rules and regulations of the commission and shall monitor such appointing authority to prevent future violations.

(5) Any decision of the commission pursuant to this section shall be subject to review according to the Administrative Procedure Act.

(6) After June 30, 2007, any person providing interpreting services pursuant to sections 20-150 to 20-159 without a license issued pursuant to this section may be restrained by temporary and permanent injunctions.

Source: Laws 1987, LB 376, § 7; Laws 1997, LB 752, § 78; Laws 1997, LB 851, § 8; Laws 2002, LB 22, § 6; Laws 2006, LB 87, § 3; Laws 2010, LB706, § 1.
Effective date July 15, 2010.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 5
RACIAL PROFILING

Section
20-504. Written policy; records maintained; immunity.
20-506. Racial Profiling Advisory Committee; created; members; duties.

20-504 Written policy; records maintained; immunity.

(1) On or before January 1, 2002, the Nebraska State Patrol, the county sheriffs, all city and village police departments, and any other law enforcement agency in this state shall adopt a written policy that prohibits the detention of any person or a motor vehicle stop when such action is motivated by racial profiling and the action would constitute a violation of the civil rights of the person.

(2) With respect to a motor vehicle stop, on and after January 1, 2002, and until January 1, 2014, the Nebraska State Patrol, the county sheriffs, all city and village police departments, and any other law enforcement agency in this state shall record and retain the following information using the form developed and promulgated pursuant to section 20-505:

(a) The number of motor vehicle stops;

(b) The characteristics of race or ethnicity of the person stopped. The identification of such characteristics shall be based on the observation and

perception of the law enforcement officer responsible for reporting the motor vehicle stop and the information shall not be required to be provided by the person stopped;

(c) If the stop is for a law violation, the nature of the alleged law violation that resulted in the motor vehicle stop;

(d) Whether a warning or citation was issued, an arrest made, or a search conducted as a result of the motor vehicle stop. Search does not include a search incident to arrest or an inventory search; and

(e) Any additional information that the Nebraska State Patrol, the county sheriffs, all city and village police departments, or any other law enforcement agency in this state, as the case may be, deems appropriate.

(3) The Nebraska Commission on Law Enforcement and Criminal Justice may develop a uniform system for receiving allegations of racial profiling. The Nebraska State Patrol, the county sheriffs, all city and village police departments, and any other law enforcement agency in this state shall provide to the commission (a) a copy of each allegation of racial profiling received and (b) written notification of the review and disposition of such allegation. No information revealing the identity of the law enforcement officer involved in the stop shall be used, transmitted, or disclosed in violation of any collective-bargaining agreement provision or personnel rule under which such law enforcement officer is employed. No information revealing the identity of the complainant shall be used, transmitted, or disclosed in the form alleging racial profiling.

(4) Any law enforcement officer who in good faith records information on a motor vehicle stop pursuant to this section shall not be held civilly liable for the act of recording such information unless the law enforcement officer's conduct was unreasonable or reckless or in some way contrary to law.

(5) On or before October 1, 2002, and annually thereafter until January 1, 2014, the Nebraska State Patrol, the county sheriffs, all city and village police departments, and all other law enforcement agencies in this state shall provide to the commission, in such form as the commission prescribes, a summary report of the information recorded pursuant to subsection (2) of this section.

(6) On and after January 1, 2002, and until April 1, 2014, the commission may, within the limits of its existing appropriations, provide for a review of the prevalence and disposition of motor vehicle stops based on racial profiling and allegations reported pursuant to this section. The results of such review shall be reported annually to the Governor and the Legislature beginning on or before April 1, 2004, until April 1, 2014.

Source: Laws 2001, LB 593, § 4; Laws 2004, LB 1162, § 2; Laws 2006, LB 1113, § 19; Laws 2010, LB746, § 1.
Effective date July 15, 2010.

20-506 Racial Profiling Advisory Committee; created; members; duties.

(1) The Racial Profiling Advisory Committee is created.

(2)(a) The committee shall consist of:

(i) The executive director of the Nebraska Commission on Law Enforcement and Criminal Justice, who also shall be the chairperson of the committee;

(ii) The Superintendent of Law Enforcement and Public Safety or his or her designee;

(iii) The director of the Commission on Latino-Americans or his or her designee; and

(iv) The executive director of the Commission on Indian Affairs or his or her designee.

(b) The committee shall also consist of the following persons, each appointed by the Governor from a list of three names submitted to the Governor for each position:

(i) A representative of the Fraternal Order of Police;

(ii) A representative of the Nebraska County Sheriffs Association;

(iii) A representative of the Police Officers Association of Nebraska;

(iv) A representative of the American Civil Liberties Union of Nebraska;

(v) A representative of the AFL-CIO;

(vi) A representative of the Police Chiefs Association of Nebraska;

(vii) A representative of the Nebraska branches of the National Association for the Advancement of Colored People; and

(viii) A representative of the Nebraska State Bar Association appointed by the Governor from a list of attorneys submitted by the executive council of the Nebraska State Bar Association.

(3) The committee shall meet and organize within thirty days after the appointment of the members. The committee shall meet semiannually at a time and place to be fixed by the committee. Special meetings may be called by the chairperson or at the request of two or more members of the committee.

(4) The committee shall advise the executive director of the commission in the conduct of his or her duties regarding the review required pursuant to subsection (6) of section 20-504, provide an analysis of the review, and make policy recommendations with respect to racial profiling.

Source: Laws 2004, LB 1162, § 5; Laws 2010, LB746, § 2.
Effective date July 15, 2010.

CHAPTER 21
CORPORATIONS AND OTHER COMPANIES

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ARTICLE 1
NEBRASKA UNIFORM LIMITED LIABILITY COMPANY ACT

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(a) GENERAL PROVISIONS

21-101 Act, how cited.

(ULLCA 101) Sections 21-101 to 21-197 shall be known and may be cited as the Nebraska Uniform Limited Liability Company Act.

Source: Laws 2010, LB888, § 1.
Operative date January 1, 2011.

21-102 Terms, defined.

(ULLCA 102) In the Nebraska Uniform Limited Liability Company Act:

(1) Certificate of organization means the certificate required by section 21-117. The term includes the certificate as amended or restated.

(2) Certificate of registration means either a document prepared and issued by a regulatory body or the electronic accessing of the regulatory body's licensing records by the Secretary of State.

(3) Contribution means any benefit provided by a person to a limited liability company:

(A) in order to become a member upon formation of the company and in accordance with an agreement between or among the persons that have agreed to become the initial members of the company;

(B) in order to become a member after formation of the company and in accordance with an agreement between the person and the company; or

(C) in the person's capacity as a member and in accordance with the operating agreement or an agreement between the member and the company.

(4) Debtor in bankruptcy means a person that is the subject of:

(A) an order for relief under Title 11 of the United States Code or a successor statute of general application; or

(B) a comparable order under federal, state, or foreign law governing insolvency.

(5) Designated office means:

(A) the office that a limited liability company is required to designate and maintain under section 21-113; or

(B) the principal office of a foreign limited liability company.

(6) Distribution, except as otherwise provided in subsection (g) of section 21-134, means a transfer of money or other property from a limited liability company to another person on account of a transferable interest.

(7) Effective, with respect to a record required or permitted to be delivered to the Secretary of State for filing under the Nebraska Uniform Limited Liability Company Act, means effective under subsection (c) of section 21-121.

(8) Foreign limited liability company means an unincorporated entity formed under the law of a jurisdiction other than this state and denominated by that law as a limited liability company.

(9) Limited liability company, except in the phrase foreign limited liability company, means an entity formed under the Nebraska Uniform Limited Liability Company Act.

(10) Manager means a person that under the operating agreement of a manager-managed limited liability company is responsible, alone or in concert with others, for performing the management functions stated in subsection (c) of section 21-136.

(11) Manager-managed limited liability company means a limited liability company that qualifies under subsection (a) of section 21-136.

(12) Member means a person that has become a member of a limited liability company under section 21-130 and has not dissociated under section 21-145.

(13) Member-managed limited liability company means a limited liability company that is not a manager-managed limited liability company.

(14) Operating agreement means the agreement, whether or not referred to as an operating agreement and whether oral, in a record, implied, or in any combination thereof, of all the members of a limited liability company, including a sole member. The term includes the agreement as amended or restated.

(15) Organizer means a person that acts under section 21-117 to form a limited liability company.

(16) Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(17) Principal office means the principal executive office of a limited liability company or foreign limited liability company, whether or not the office is located in this state.

(18) Professional service means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and which includes, but is not limited to, personal services rendered by a certified public accountant, dentist, osteopathic physician, physician and surgeon, veterinarian, real estate broker, associate real estate broker, real estate salesperson, or attorney at law. For purposes of the act, those professions pertaining to the diagnosis, care, and treatment of humans shall be considered to be of the same profession.

(19) Record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(20) Regulatory body means a board, commission, court, or governmental authority which is charged with licensing or regulating the rendering of a professional service in this state.

(21) Sign means, with the present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(22) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(23) Transfer includes an assignment, conveyance, deed, bill of sale, lease, mortgage, trust deed, security interest, encumbrance, gift, and transfer by operation of law.

(24) Transferable interest means the right, as originally associated with a person's capacity as a member, to receive distributions from a limited liability company in accordance with the operating agreement, whether or not the person remains a member or continues to own any part of the right.

(25) Transferee means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a member.

Source: Laws 2010, LB888, § 2.
Operative date January 1, 2011.

21-103 Knowledge; notice.

(ULLCA 103) (a) A person knows a fact when the person:

(1) has actual knowledge of it; or

(2) is deemed to know it under subdivision (d)(1) of this section or law other than the Nebraska Uniform Limited Liability Company Act.

(b) A person has notice of a fact when the person:

(1) has reason to know the fact from all of the facts known to the person at the time in question; or

(2) is deemed to have notice of the fact under subdivision (d)(2) of this section.

(c) A person notifies another of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person knows the fact.

(d) A person that is not a member is deemed:

(1) to know of a limitation on authority to transfer real property as provided in subsection (g) of section 21-127; and

(2) to have notice of a limited liability company's:

(A) dissolution, ninety days after a statement of dissolution under subdivision (b)(1)(B) of section 21-148 becomes effective;

(B) termination, ninety days after a statement of termination under subdivision (b)(2)(E) of section 21-148 becomes effective; and

(C) merger, conversion, or domestication, ninety days after articles of merger, conversion, or domestication under sections 21-170 to 21-184 become effective.

Source: Laws 2010, LB888, § 3.
Operative date January 1, 2011.

21-104 Nature, purpose and duration of limited liability company; classification for tax purposes.

(ULLCA 104) (a) A limited liability company is an entity distinct from its members.

(b) A limited liability company may have any lawful purpose.

(c) A limited liability company has perpetual duration.

(d) A limited liability company shall be classified for state income tax purposes in the same manner as it is classified for federal income tax purposes.

Source: Laws 2010, LB888, § 4.
Operative date January 1, 2011.

21-105 Powers.

(ULLCA 105) A limited liability company has the capacity to sue and be sued in its own name and the power to do all things necessary or convenient to carry on its activities, including the power to render a professional service within or without this state.

Source: Laws 2010, LB888, § 5.
Operative date January 1, 2011.

21-106 Governing law.

(ULLCA 106) The law of this state governs:

(1) the internal affairs of a limited liability company; and

(2) the liability of a member as member and a manager as manager for the debts, obligations, or other liabilities of a limited liability company.

Source: Laws 2010, LB888, § 6.
Operative date January 1, 2011.

21-107 Supplemental principles of law.

(ULLCA 107) Unless displaced by particular provisions of the Nebraska Uniform Limited Liability Company Act, the principles of law and equity supplement the act.

Source: Laws 2010, LB888, § 7.
Operative date January 1, 2011.

21-108 Name.

(ULLCA 108) (a) The name of a limited liability company must contain the words limited liability company or limited company or the abbreviation L.L.C., LLC, L.C., or LC. Limited may be abbreviated as Ltd., and company may be abbreviated as Co.

(b) Unless authorized by subsection (c) of this section, the name of a limited liability company must not be the same as or deceptively similar to, in the records of the Secretary of State:

(1) the name of each person that is not an individual and that is incorporated, organized, or authorized to transact business in this state; and

(2) each name reserved under section 21-109 or other state laws allowing the reservation or registration of business names, including fictitious or assumed name statutes.

(c) A limited liability company may apply to the Secretary of State for authorization to use a name that is deceptively similar to, upon the records of

the Secretary of State, one or more of the names described in subsection (b) of this section. The Secretary of State shall authorize use of the name applied for if, as to each noncomplying name:

(1) the present user, registrant, or owner of the noncomplying name consents in a signed record to the use; or

(2) the applicant delivers to the Secretary of State a certified copy of the final judgment of a court establishing the applicant's right to use in this state the name applied for.

(d) Subject to section 21-159, this section applies to a foreign limited liability company transacting business in this state which has a certificate of authority to transact business in this state or which has applied for a certificate of authority.

Source: Laws 2010, LB888, § 8.
Operative date January 1, 2011.

21-109 Reservation of name.

(ULLCA 109) (a) A person may reserve the exclusive use of the name of a limited liability company, including a fictitious or assumed name for a foreign limited liability company whose name is not available, by delivering an application to the Secretary of State for filing. The application must state the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the name applied for is available, it must be reserved for the applicant's exclusive use for a one-hundred-twenty-day period.

(b) The owner of a name reserved for a limited liability company may transfer the reservation to another person by delivering to the Secretary of State for filing a signed notice of the transfer which states the name and address of the transferee.

Source: Laws 2010, LB888, § 9.
Operative date January 1, 2011.

21-110 Operating agreement; scope, function, and limitations.

(ULLCA 110) (a) To the extent the operating agreement does not otherwise provide for a matter, the Nebraska Uniform Limited Liability Company Act governs the matter.

(b) An operating agreement may not:

(1) vary a limited liability company's capacity under section 21-105 to sue and be sued in its own name;

(2) vary the law applicable under section 21-106;

(3) vary the power of the court under section 21-120;

(4) subject to subsections (c) through (f) of this section, eliminate the duty of loyalty or the duty of care;

(5) subject to subsections (c) through (f) of this section, eliminate the contractual obligation of good faith and fair dealing under subsection (d) of section 21-138;

(6) unreasonably restrict the duties and rights stated in section 21-139;

(7) vary the power of a court to decree dissolution in the circumstances specified in subdivisions (a)(4) and (5) of section 21-147;

(8) vary the requirement to wind up a limited liability company's business as specified in subsection (a) and subdivision (b)(1)(A) of section 21-148;

(9) unreasonably restrict the right of a member to maintain an action under sections 21-164 to 21-169;

(10) except as otherwise provided in section 21-183, restrict the right to approve a merger, conversion, or domestication of a member that will have personal liability with respect to a surviving, converted, or domesticated organization; or

(11) except as otherwise provided in subsection (b) of section 21-112, restrict the rights under the act of a person other than a member or manager.

(c) If not manifestly unreasonable, the operating agreement may:

(1) restrict or eliminate the duty:

(A) as required in subdivision (b)(1) and subsection (g) of section 21-138, to account to the limited liability company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or winding up of the company's business, from a use by the member of the company's property, or from the appropriation of a limited liability company opportunity;

(B) as required in subdivision (b)(2) and subsection (g) of section 21-138, to refrain from dealing with the company in the conduct or winding up of the company's business as or on behalf of a party having an interest adverse to the company; and

(C) as required by subdivision (b)(3) and subsection (g) of section 21-138, to refrain from competing with the company in the conduct of the company's business before the dissolution of the company;

(2) identify specific types or categories of activities that do not violate the duty of loyalty;

(3) alter the duty of care, except to authorize intentional misconduct or knowing violation of law;

(4) alter any other fiduciary duty, including eliminating particular aspects of that duty; and

(5) prescribe the standards by which to measure the performance of the contractual obligation of good faith and fair dealing under subsection (d) of section 21-138.

(d) The operating agreement may specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts.

(e) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of a responsibility that the member would otherwise have under the Nebraska Uniform Limited Liability Company Act and imposes the responsibility on one or more other members, the operating agreement may, to the benefit of the member that the operating agreement relieves of the responsibility, also eliminate or limit any fiduciary duty that would have pertained to the responsibility.

(f) The operating agreement may alter or eliminate the indemnification for a member or manager provided by subsection (a) of section 21-137 and may eliminate or limit a member's or manager's liability to the limited liability company and members for money damages, except for:

(1) breach of the duty of loyalty;

(2) a financial benefit received by the member or manager to which the member or manager is not entitled;

(3) a breach of a duty under section 21-135;

(4) intentional infliction of harm on the company or a member; or

(5) an intentional violation of criminal law.

(g) The court shall decide any claim under subsection (c) of this section that a term of an operating agreement is manifestly unreasonable. The court:

(1) shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time; and

(2) may invalidate the term only if, in light of the purposes and activities of the limited liability company, it is readily apparent that:

(A) the objective of the term is unreasonable; or

(B) the term is an unreasonable means to achieve the provision's objective.

Source: Laws 2010, LB888, § 10.
Operative date January 1, 2011.

21-111 Operating agreement; effect on limited liability company and persons becoming members; preformation agreement.

(ULLCA 111) (a) A limited liability company is bound by and may enforce the operating agreement, whether or not the company has itself manifested assent to the operating agreement.

(b) A person that becomes a member of a limited liability company is deemed to assent to the operating agreement.

(c) Two or more persons intending to become the initial members of a limited liability company may make an agreement providing that upon the formation of the company the agreement will become the operating agreement. One person intending to become the initial member of a limited liability company may assent to terms providing that upon the formation of the company the terms will become the operating agreement.

Source: Laws 2010, LB888, § 11.
Operative date January 1, 2011.

21-112 Operating agreement; effect on third parties and relationship to records effective on behalf of limited liability company.

(ULLCA 112) (a) An operating agreement may specify that its amendment requires the approval of a person that is not a party to the operating agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

(b) The obligations of a limited liability company and its members to a person in the person's capacity as a transferee or dissociated member are governed by the operating agreement. Subject only to any court order issued under subdivision (b)(2) of section 21-142 to effectuate a charging order, an amendment to the operating agreement made after a person becomes a transferee or dissociated member is effective with regard to any debt, obligation, or other liability of

the limited liability company or its members to the person in the person's capacity as a transferee or dissociated member.

(c) If a record that has been delivered by a limited liability company to the Secretary of State for filing and has become effective under the Nebraska Uniform Limited Liability Company Act contains a provision that would be ineffective under subsection (b) of section 21-110 if contained in the operating agreement, the provision is likewise ineffective in the record.

(d) Subject to subsection (c) of this section, if a record that has been delivered by a limited liability company to the Secretary of State for filing and has become effective under the act conflicts with a provision of the operating agreement:

(1) the operating agreement prevails as to members, dissociated members, transferees, and managers; and

(2) the record prevails as to other persons to the extent they reasonably rely on the record.

Source: Laws 2010, LB888, § 12.
Operative date January 1, 2011.

21-113 Office and agent for service of process.

(ULLCA 113) (a) A limited liability company shall designate and continuously maintain in this state:

(1) an office, which need not be a place of its activity in this state; and

(2) an agent for service of process.

(b) A foreign limited liability company that has a certificate of authority under section 21-156 shall designate and continuously maintain in this state an agent for service of process.

(c) An agent for service of process of a limited liability company or foreign limited liability company must be an individual who is a resident of this state or other person with authority to transact business in this state.

Source: Laws 2010, LB888, § 13.
Operative date January 1, 2011.

21-114 Change of designated office or agent for service of process.

(ULLCA 114) (a) A limited liability company or foreign limited liability company may change its designated office, its agent for service of process, or the address of its agent for service of process by delivering to the Secretary of State for filing a statement of change containing:

(1) the name of the company;

(2) the street and mailing addresses of its current designated office;

(3) if the current designated office is to be changed, the street and mailing addresses of the new designated office;

(4) the name and street and mailing addresses and post office box number, if any, of its current agent for service of process; and

(5) if the current agent for service of process or an address of the agent is to be changed, the new information.

(b) Subject to subsection (c) of section 21-121, a statement of change is effective when filed by the Secretary of State.

Source: Laws 2010, LB888, § 14.
Operative date January 1, 2011.

21-115 Resignation of agent for service of process.

(ULLCA 115) (a) To resign as an agent for service of process of a limited liability company or foreign limited liability company, the agent must deliver to the Secretary of State for filing a statement of resignation containing the company name and stating that the agent is resigning.

(b) The Secretary of State shall file a statement of resignation delivered under subsection (a) of this section and mail or otherwise provide or deliver a copy to the designated office of the limited liability company or foreign limited liability company and another copy to the principal office of the company if the mailing addresses of the principal office appears in the records of the Secretary of State and is different from the mailing address of the designated office.

(c) An agency for service of process terminates on the earlier of:

(1) the thirty-first day after the Secretary of State files the statement of resignation; or

(2) when a record designating a new agent for service of process is delivered to the Secretary of State for filing on behalf of the limited liability company and becomes effective.

Source: Laws 2010, LB888, § 15.
Operative date January 1, 2011.

21-116 Service of process.

(ULLCA 116) (a) An agent for service of process appointed by a limited liability company or foreign limited liability company is an agent of the company for service of any process, notice, or demand required or permitted by law to be served on the company.

(b) If a limited liability company or foreign limited liability company does not appoint or maintain an agent for service of process in this state or the agent for service of process cannot with reasonable diligence be found at the agent's street address, service of any process, notice, or demand on the limited liability company or foreign limited liability company may be made by registered or certified mail, return receipt requested, to the company at its designated office.

(c) Service is effected under subsection (b) of this section at the earliest of:

(1) the date the limited liability company or foreign limited liability company receives the process, notice, or demand;

(2) the date shown on the return receipt, if signed on behalf of the company; or

(3) five days after the process, notice, or demand is deposited with the United States Postal Service, if correctly addressed and with sufficient postage.

(d) This section does not affect the right to serve process, notice, or demand in any other manner provided by law.

Source: Laws 2010, LB888, § 16.
Operative date January 1, 2011.

(b) FORMATION; CERTIFICATE OF ORGANIZATION AND OTHER FILINGS

21-117 Formation; certificate of organization and other filings.

(ULLCA 201) (a) One or more persons may act as organizers to form a limited liability company by signing and delivering to the Secretary of State for filing a certificate of organization and, if applicable, a current certificate of registration as provided in sections 21-185 to 21-189.

(b) A certificate of organization must state:

(1) the name of the limited liability company, which must comply with section 21-108;

(2) the street and mailing addresses of the initial designated office and the name and street and mailing addresses and post office box number, if any, of the initial agent for service of process of the company; and

(3) if the company is organized to render a professional service, the professional service its members, managers, professional employees, and agents are licensed or otherwise legally authorized to render in this state.

(c) Subject to subsection (c) of section 21-112, a certificate of organization may also contain statements as to matters other than those required by subsection (b) of this section. However, a statement in a certificate of organization is not effective as a statement of authority.

(d) The following rules apply to the filing of a certificate of organization:

(1) A limited liability company is formed when the Secretary of State has filed the certificate of organization and a certificate of registration, if applicable, and the company has at least one member, unless the certificate states a delayed effective date pursuant to subsection (c) of section 21-121.

(2) If the certificate states a delayed effective date, a limited liability company is not formed if, before the certificate takes effect, a statement of cancellation is signed and delivered to the Secretary of State for filing and the Secretary of State files the certificate.

(3) Subject to any delayed effective date and except in a proceeding by this state to dissolve a limited liability company, the filing of the certificate of organization by the Secretary of State is conclusive proof that the organizer satisfied all conditions to the formation of a limited liability company.

Source: Laws 2010, LB888, § 17.
Operative date January 1, 2011.

21-118 Amendment or restatement of certificate of organization.

(ULLCA 202) (a) A certificate of organization may be amended or restated at any time.

(b) To amend its certificate of organization, a limited liability company must deliver to the Secretary of State for filing an amendment stating:

(1) the name of the company;

(2) the date of filing of its certificate of organization; and

(3) the changes the amendment makes to the certificate as most recently amended or restated.

(c) To restate its certificate of organization, a limited liability company must deliver to the Secretary of State for filing a restatement, designated as such in its heading, stating:

(1) in the heading or an introductory paragraph, the company's present name and the date of the filing of the company's initial certificate of organization;

(2) if the company's name has been changed at any time since the company's formation, each of the company's former names; and

(3) the changes the restatement makes to the certificate as most recently amended or restated.

(d) Subject to subsection (c) of section 21-112 and subsection (c) of section 21-121, an amendment to or restatement of a certificate of organization is effective when filed by the Secretary of State.

(e) If a member of a member-managed limited liability company, or a manager of a manager-managed limited liability company, knows that any information in a filed certificate of organization was inaccurate when the certificate was filed or has become inaccurate owing to changed circumstances, the member or manager shall promptly:

(1) cause the certificate to be amended; or

(2) if appropriate, deliver to the Secretary of State for filing a statement of change under section 21-114 or a statement of correction under section 21-122.

Source: Laws 2010, LB888, § 18.
Operative date January 1, 2011.

21-119 Signing of records to be delivered for filing to Secretary of State.

(ULLCA 203) (a) A record delivered to the Secretary of State for filing pursuant to the Nebraska Uniform Limited Liability Company Act must be signed as follows:

(1) Except as otherwise provided in subdivisions (2) and (3) of this subsection, a record signed on behalf of a limited liability company must be signed by a person authorized by the company.

(2) A limited liability company's initial certificate of organization must be signed by at least one person acting as an organizer.

(3) A record filed on behalf of a dissolved limited liability company that has no members must be signed by the person winding up the company's activities under subsection (c) of section 21-148 or a person appointed under subsection (d) of such section to wind up those activities.

(4) A statement of cancellation under subdivision (d)(2) of section 21-117 must be signed by each organizer that signed the initial certificate of organization, but a personal representative of a deceased or incompetent organizer may sign in the place of the decedent or incompetent.

(5) A statement of denial by a person under section 21-128 must be signed by that person.

(6) Any other record must be signed by the person on whose behalf the record is delivered to the Secretary of State.

(b) Any record filed under the act may be signed by an agent.

Source: Laws 2010, LB888, § 19.
Operative date January 1, 2011.

21-120 Signing and filing pursuant to judicial order.

(ULLCA 204) (a) If a person required by the Nebraska Uniform Limited Liability Company Act to sign a record or deliver a record to the Secretary of State for filing under the act does not do so, any other person that is aggrieved may petition the district court to order:

(1) the person to sign the record;

(2) the person to deliver the record to the Secretary of State for filing; or

(3) the Secretary of State to file the record unsigned.

(b) If a petitioner under subsection (a) of this section is not the limited liability company or foreign limited liability company to which the record pertains, the petitioner shall make the company a party to the action.

Source: Laws 2010, LB888, § 20.
Operative date January 1, 2011.

21-121 Delivery to and filing of records by Secretary of State; effective time and date.

(ULLCA 205) (a) A record authorized or required to be delivered to the Secretary of State for filing under the Nebraska Uniform Limited Liability Company Act must be captioned to describe the record's purpose, be in a medium permitted by the Secretary of State, and be delivered to the Secretary of State. If the filing fees have been paid, unless the Secretary of State determines that a record does not comply with the filing requirements of the act, the Secretary of State shall file the record and:

(1) for a statement of denial under section 21-128, send a copy of the filed statement and a receipt for the fees to the person on whose behalf the statement was delivered for filing and to the limited liability company; and

(2) for all other records, send a copy of the filed record and a receipt for the fees to the person on whose behalf the record was filed.

(b) Upon request and payment of the requisite fee, the Secretary of State shall send to the requester a certified copy of a requested record.

(c) Except as otherwise provided in sections 21-115 and 21-122, a record delivered to the Secretary of State for filing under the act may specify an effective time and a delayed effective date. Subject to section 21-115, subdivision (d)(1) of section 21-117, and section 21-122, a record filed by the Secretary of State is effective:

(1) if the record does not specify either an effective time or a delayed effective date, on the date and at the time the record is filed as evidenced by the Secretary of State's endorsement of the date and time on the record;

(2) if the record specifies an effective time but not a delayed effective date, on the date the record is filed at the time specified in the record;

(3) if the record specifies a delayed effective date but not an effective time, at 12:01 a.m. on the earlier of:

(A) the specified date; or

(B) the ninetieth day after the record is filed; or

(4) if the record specifies an effective time and a delayed effective date, at the specified time on the earlier of:

(A) the specified date; or

(B) the ninetieth day after the record is filed.

Source: Laws 2010, LB888, § 21.
Operative date January 1, 2011.

21-122 Correcting filed record.

(ULLCA 206) (a) A limited liability company or foreign limited liability company may deliver to the Secretary of State for filing a statement of correction to correct a record previously delivered by the company to the Secretary of State and filed by the Secretary of State, if at the time of filing the record contained inaccurate information or was defectively signed.

(b) A statement of correction under subsection (a) of this section may not state a delayed effective date and must:

(1) describe the record to be corrected, including its filing date, or attach a copy of the record as filed;

(2) specify the inaccurate information and the reason it is inaccurate or the manner in which the signing was defective; and

(3) correct the defective signature or inaccurate information.

(c) When filed by the Secretary of State, a statement of correction under subsection (a) of this section is effective retroactively as of the effective date of the record the statement corrects, but the statement is effective when filed:

(1) for the purposes of subsection (d) of section 21-103; and

(2) as to persons that previously relied on the uncorrected record and would be adversely affected by the retroactive effect.

Source: Laws 2010, LB888, § 22.
Operative date January 1, 2011.

21-123 Liability for inaccurate information in filed record.

(ULLCA 207) (a) If a record delivered to the Secretary of State for filing under the Nebraska Uniform Limited Liability Company Act and filed by the Secretary of State contains inaccurate information, a person that suffers a loss by reliance on the information may recover damages for the loss from:

(1) a person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be inaccurate at the time the record was signed; and

(2) subject to subsection (b) of this section, a member of a member-managed limited liability company or the manager of a manager-managed limited liability company, if:

(A) the record was delivered for filing on behalf of the company; and

(B) the member or manager had notice of the inaccuracy for a reasonably sufficient time before the information was relied upon so that, before the reliance, the member or manager reasonably could have:

(i) effected an amendment under section 21-118;

(ii) filed a petition under section 21-120; or

(iii) delivered to the Secretary of State for filing a statement of change under section 21-114 or a statement of correction under section 21-122.

(b) To the extent that the operating agreement of a member-managed limited liability company expressly relieves a member of responsibility for maintaining

the accuracy of information contained in records delivered on behalf of the company to the Secretary of State for filing under the act and imposes that responsibility on one or more other members, the liability stated in subdivision (a)(2) of this section applies to those other members and not to the member that the operating agreement relieves of the responsibility.

(c) An individual who signs a record authorized or required to be filed under the act affirms under penalty of perjury that the information stated in the record is accurate.

Source: Laws 2010, LB888, § 23.
Operative date January 1, 2011.

21-124 Certificate of existence or authorization.

(ULLCA 208) (a) The Secretary of State, upon request and payment of the requisite fee, shall furnish to any person a certificate of existence for a limited liability company if the records filed in the office of the Secretary of State show that the company has been formed under section 21-117 and the Secretary of State has not filed a statement of termination pertaining to the company. A certificate of existence must state:

(1) the company's name;

(2) that the company was duly formed under the laws of this state and the date of formation;

(3) whether all fees, taxes, and penalties due under the Nebraska Uniform Limited Liability Company Act or other law to the Secretary of State have been paid;

(4) whether the company's most recent biennial report required by section 21-125 has been filed by the Secretary of State;

(5) whether the Secretary of State has administratively dissolved the company;

(6) whether the company has delivered to the Secretary of State for filing a statement of dissolution;

(7) that a statement of termination has not been filed by the Secretary of State; and

(8) other facts of record in the office of the Secretary of State which are specified by the person requesting the certificate.

(b) The Secretary of State, upon request and payment of the requisite fee, shall furnish to any person a certificate of authorization for a foreign limited liability company if the records filed in the office of the Secretary of State show that the Secretary of State has filed a certificate of authority, has not revoked the certificate of authority, and has not filed a notice of cancellation. A certificate of authorization must state:

(1) the company's name and any alternate name adopted under subsection (a) of section 21-159 for use in this state;

(2) that the company is authorized to transact business in this state;

(3) whether all fees, taxes, and penalties due under the act or other law to the Secretary of State have been paid;

(4) whether the company's most recent biennial report required by section 21-125 has been filed by the Secretary of State;

(5) that the Secretary of State has not revoked the company's certificate of authority and has not filed a notice of cancellation; and

(6) other facts of record in the office of the Secretary of State which are specified by the person requesting the certificate.

(c) Subject to any qualification stated in the certificate, a certificate of existence or certificate of authorization issued by the Secretary of State is conclusive evidence that the limited liability company is in existence or the foreign limited liability company is authorized to transact business in this state.

Source: Laws 2010, LB888, § 24.
Operative date January 1, 2011.

21-125 Biennial report.

(ULLCA 209) (a) Each odd-numbered year, a limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the Secretary of State for filing a biennial report that states:

(1) the name of the company;

(2) the street and mailing addresses of the company's designated office and the name and street and mailing addresses and post office box number, if any, of its agent for service of process in this state;

(3) the street and mailing addresses of its principal office; and

(4) in the case of a foreign limited liability company, the state or other jurisdiction under whose law the company is formed and any alternate name adopted under subsection (a) of section 21-159.

(b) Information in a biennial report under this section must be current as of the date the report is delivered to the Secretary of State for filing.

(c) The first biennial report under this section must be delivered to the Secretary of State between January 1 and April 1 of the odd-numbered year following the calendar year in which a limited liability company was formed or a foreign limited liability company was authorized to transact business. A report must be delivered to the Secretary of State between January 1 and April 1 of each subsequent odd-numbered calendar year.

(d) If a biennial report under this section does not contain the information required in subsection (a) of this section, the Secretary of State shall promptly notify the reporting limited liability company or foreign limited liability company and return the report to it for correction. If the report is corrected to contain the information required in subsection (a) of this section and delivered to the Secretary of State within thirty days after the effective date of the notice, it is timely delivered.

Source: Laws 2010, LB888, § 25.
Operative date January 1, 2011.

(c) RELATIONS OF MEMBERS AND MANAGERS TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY

21-126 No agency power of member as member.

(ULLCA 301) (a) A member is not an agent of a limited liability company solely by reason of being a member.

(b) A person's status as a member does not prevent or restrict law other than the Nebraska Uniform Limited Liability Company Act from imposing liability on a limited liability company because of the person's conduct.

Source: Laws 2010, LB888, § 26.
Operative date January 1, 2011.

21-127 Statement of authority.

(ULLCA 302) (a) A limited liability company may deliver to the Secretary of State for filing a statement of authority. The statement:

(1) must include the name of the company and the street and mailing addresses of its designated office;

(2) with respect to any position that exists in or with respect to the company, may state the authority, or limitations on the authority, of all persons holding the position to:

(A) execute an instrument transferring real property held in the name of the company; or

(B) enter into other transactions on behalf of, or otherwise act for or bind, the company; and

(3) may state the authority, or limitations on the authority, of a specific person to:

(A) execute an instrument transferring real property held in the name of the company; or

(B) enter into other transactions on behalf of, or otherwise act for or bind, the company.

(b) To amend or cancel a statement of authority filed by the Secretary of State under subsection (a) of section 21-121, a limited liability company must deliver to the Secretary of State for filing an amendment or cancellation stating:

(1) the name of the company;

(2) the street and mailing addresses of the company's designated office;

(3) the caption of the statement being amended or canceled and the date the statement being affected became effective; and

(4) the contents of the amendment or a declaration that the statement being affected is canceled.

(c) A statement of authority affects only the power of a person to bind a limited liability company to persons that are not members.

(d) Subject to subsection (c) of this section and subsection (d) of section 21-103 and except as otherwise provided in subsections (f), (g), and (h) of this section, a limitation on the authority of a person or a position contained in an effective statement of authority is not by itself evidence of knowledge or notice of the limitation by any person.

(e) Subject to subsection (c) of this section, a grant of authority not pertaining to transfers of real property and contained in an effective statement of authority is conclusive in favor of a person that gives value in reliance on the grant, except to the extent that when the person gives value:

(1) the person has knowledge to the contrary;

(2) the statement has been canceled or restrictively amended under subsection (b) of this section; or

(3) a limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective.

(f) Subject to subsection (c) of this section, an effective statement of authority that grants authority to transfer real property held in the name of the limited liability company and that is recorded by certified copy in the office for recording transfers of the real property is conclusive in favor of a person that gives value in reliance on the grant without knowledge to the contrary, except to the extent that when the person gives value:

(1) the statement has been canceled or restrictively amended under subsection (b) of this section and a certified copy of the cancellation or restrictive amendment has been recorded in the office for recording transfers of the real property; or

(2) a limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective and a certified copy of the later-effective statement is recorded in the office for recording transfers of the real property.

(g) Subject to subsection (c) of this section, if a certified copy of an effective statement containing a limitation on the authority to transfer real property held in the name of a limited liability company is recorded in the office for recording transfers of that real property, all persons are deemed to know of the limitation.

(h) Subject to subsection (i) of this section, an effective statement of dissolution or termination is a cancellation of any filed statement of authority for the purposes of subsection (f) of this section and is a limitation on authority for the purposes of subsection (g) of this section.

(i) After a statement of dissolution becomes effective, a limited liability company may deliver to the Secretary of State for filing and, if appropriate, may record a statement of authority that is designated as a post-dissolution statement of authority. The statement operates as provided in subsections (f) and (g) of this section.

(j) Unless earlier canceled, an effective statement of authority is canceled by operation of law five years after the date on which the statement, or its most recent amendment, becomes effective. This cancellation operates without need for any recording under subsection (f) or (g) of this section.

(k) An effective statement of denial operates as a restrictive amendment under this section and may be recorded by certified copy for the purposes of subdivision (f)(1) of this section.

Source: Laws 2010, LB888, § 27.
Operative date January 1, 2011.

21-128 Statement of denial.

(ULLCA 303) A person named in a filed statement of authority granting that person authority may deliver to the Secretary of State for filing a statement of denial that:

(1) provides the name of the limited liability company and the caption of the statement of authority to which the statement of denial pertains; and

(2) denies the grant of authority.

Source: Laws 2010, LB888, § 28.
Operative date January 1, 2011.

21-129 Liability of members and managers.

(ULLCA 304) (a) The debts, obligations, or other liabilities of a limited liability company, whether arising in contract, tort, or otherwise:

(1) are solely the debts, obligations, or other liabilities of the company; and

(2) do not become the debts, obligations, or other liabilities of a member or manager solely by reason of the member acting as a member or manager acting as a manager.

(b) The mere failure of a limited liability company to observe any particular formalities relating to the exercise of its powers or management of its activities is not a ground for imposing liability on the members or managers for the debts, obligations, or other liabilities of the company.

(c) Any member, manager, or employee of a limited liability company with the duty to collect, account for, or pay over any taxes imposed upon a limited liability company or with the authority to decide whether the limited liability company will pay taxes imposed upon a limited liability company shall be personally liable for the payment of such taxes in the event of willful failure on his or her part to have a limited liability company perform such act. Such taxes shall be collected in the same manner as provided under section 77-1783.01.

Source: Laws 2010, LB888, § 29.
Operative date January 1, 2011.

(d) RELATION OF MEMBERS TO EACH OTHER AND TO LIMITED LIABILITY COMPANY

21-130 Becoming member.

(ULLCA 401) (a) If a limited liability company is to have only one member upon formation, the person becomes a member as agreed by that person and the organizer of the company. That person and the organizer may be, but need not be, different persons. If different, the organizer acts on behalf of the initial member.

(b) If a limited liability company is to have more than one member upon formation, those persons become members as agreed by the persons before the formation of the company. The organizer acts on behalf of the persons in forming the company and may be, but need not be, one of the persons.

(c) After formation of a limited liability company, a person becomes a member:

(1) as provided in the operating agreement;

(2) as the result of a transaction effective under sections 21-170 to 21-184;

(3) with the consent of all the members; or

(4) if, within ninety consecutive days after the company ceases to have any members:

(A) the last person to have been a member, or the legal representative of that person, designates a person to become a member; and

(B) the designated person consents to become a member.

(d) A person may become a member without acquiring a transferable interest and without making or being obligated to make a contribution to the limited liability company.

Source: Laws 2010, LB888, § 30.
Operative date January 1, 2011.

21-131 Form of contribution.

(ULLCA 402) A contribution may consist of tangible or intangible property or other benefit to a limited liability company, including money, services performed, promissory notes, other agreements to contribute money or property, and contracts for services to be performed.

Source: Laws 2010, LB888, § 31.
Operative date January 1, 2011.

21-132 Liability for contributions.

(ULLCA 403) (a) A person's obligation to make a contribution to a limited liability company is not excused by the person's death, disability, or other inability to perform personally. If a person does not make a required contribution, the person or the person's estate is obligated to contribute money equal to the value of the part of the contribution which has not been made, at the option of the company.

(b) A creditor of a limited liability company which extends credit or otherwise acts in actual reliance on an obligation described in subsection (a) of this section may enforce the obligation.

Source: Laws 2010, LB888, § 32.
Operative date January 1, 2011.

21-133 Sharing of and right to distributions before dissolution.

(ULLCA 404) (a) Any distributions made by a limited liability company before its dissolution and winding up must be in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under section 21-141 and any charging order in effect under section 21-142.

(b) A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the company decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.

(c) A person does not have a right to demand or receive a distribution from a limited liability company in any form other than money. Except as otherwise provided in subsection (c) of section 21-154, a limited liability company may distribute an asset in kind if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

(d) If a member or transferee becomes entitled to receive a distribution, the member or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.

Source: Laws 2010, LB888, § 33.
Operative date January 1, 2011.

21-134 Limitations on distribution.

(ULLCA 405) (a) A limited liability company may not make a distribution if after the distribution:

(1) the company would not be able to pay its debts as they become due in the ordinary course of the company's activities; or

(2) the company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the company were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of members whose preferential rights are superior to those of persons receiving the distribution.

(b) A limited liability company may base a determination that a distribution is not prohibited under subsection (a) of this section on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable under the circumstances.

(c) Except as otherwise provided in subsection (f) of this section, the effect of a distribution under subsection (a) of this section is measured:

(1) in the case of a distribution by purchase, redemption, or other acquisition of a transferable interest in the company, as of the date money or other property is transferred or debt incurred by the company; and

(2) in all other cases, as of the date:

(A) the distribution is authorized, if the payment occurs within one hundred twenty days after that date; or

(B) the payment is made, if the payment occurs more than one hundred twenty days after the distribution is authorized.

(d) A limited liability company's indebtedness to a member incurred by reason of a distribution made in accordance with this section is at parity with the company's indebtedness to its general, unsecured creditors.

(e) A limited liability company's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not a liability for purposes of subsection (a) of this section if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could be made to members under this section.

(f) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

(g) In subsection (a) of this section, distribution does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.

Source: Laws 2010, LB888, § 34.
Operative date January 1, 2011.

21-135 Liability for improper distributions.

(ULLCA 406) (a) Except as otherwise provided in subsection (b) of this section, if a member of a member-managed limited liability company or manager of a manager-managed limited liability company consents to a distri-

bution made in violation of section 21-134 and in consenting to the distribution fails to comply with section 21-138, the member or manager is personally liable to the company for the amount of the distribution that exceeds the amount that could have been distributed without the violation of section 21-134.

(b) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members, the liability stated in subsection (a) of this section applies to the other members and not the member that the operating agreement relieves of authority and responsibility.

(c) A person that receives a distribution knowing that the distribution to that person was made in violation of section 21-134 is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under section 21-134.

(d) A person against which an action is commenced because the person is liable under subsection (a) of this section may:

(1) implead any other person that is subject to liability under subsection (a) of this section and seek to compel contribution from the person; and

(2) implead any person that received a distribution in violation of subsection (c) of this section and seek to compel contribution from the person in the amount the person received in violation of subsection (c) of this section.

(e) An action under this section is barred if not commenced within two years after the distribution.

Source: Laws 2010, LB888, § 35.
Operative date January 1, 2011.

21-136 Management of limited liability company.

(ULLCA 407) (a) A limited liability company is a member-managed limited liability company unless the operating agreement:

(1) expressly provides that:

(A) the company is or will be manager-managed;

(B) the company is or will be managed by managers; or

(C) management of the company is or will be vested in managers; or

(2) includes words of similar import.

(b) In a member-managed limited liability company, the following rules apply:

(1) The management and conduct of the company are vested in the members.

(2) Each member has equal rights in the management and conduct of the company's activities.

(3) A difference arising among members as to a matter in the ordinary course of the activities of the company may be decided by a majority of the members.

(4) An act outside the ordinary course of the activities of the company may be undertaken only with the consent of all members.

(5) The operating agreement may be amended only with the consent of all members.

(c) In a manager-managed limited liability company, the following rules apply:

(1) Except as otherwise expressly provided in the Nebraska Uniform Limited Liability Company Act, any matter relating to the activities of the company is decided exclusively by the managers.

(2) Each manager has equal rights in the management and conduct of the activities of the company.

(3) A difference arising among managers as to a matter in the ordinary course of the activities of the company may be decided by a majority of the managers.

(4) The consent of all members is required to:

(A) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the company's property, with or without the goodwill, outside the ordinary course of the company's activities;

(B) approve a merger, conversion, or domestication under sections 21-170 to 21-184;

(C) undertake any other act outside the ordinary course of the company's activities; and

(D) amend the operating agreement.

(5) A manager may be chosen at any time by the consent of a majority of the members and remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed, or dies, or, in the case of a manager that is not an individual, terminates. A manager may be removed at any time by the consent of a majority of the members without notice or cause.

(6) A person need not be a member to be a manager, but the dissociation of a member that is also a manager removes the person as a manager. If a person that is both a manager and a member ceases to be a manager, that cessation does not by itself dissociate the person as a member.

(7) A person's ceasing to be a manager does not discharge any debt, obligation, or other liability to the limited liability company or members which the person incurred while a manager.

(d) An action requiring the consent of members under the Nebraska Uniform Limited Liability Company Act may be taken without a meeting, and a member may appoint a proxy or other agent to consent or otherwise act for the member by signing an appointing record, personally or by the member's agent.

(e) The dissolution of a limited liability company does not affect the applicability of this section. However, a person that wrongfully causes dissolution of the company loses the right to participate in management as a member and a manager.

(f) The Nebraska Uniform Limited Liability Company Act does not entitle a member to remuneration for services performed for a member-managed limited liability company, except for reasonable compensation for services rendered in winding up the activities of the company.

Source: Laws 2010, LB888, § 36.
Operative date January 1, 2011.

21-137 Indemnification and insurance.

(ULLCA 408) (a) A limited liability company shall reimburse for any payment made and indemnify for any debt, obligation, or other liability incurred by a member of a member-managed company or the manager of a manager-managed company in the course of the member's or manager's activities on behalf of the company, if, in making the payment or incurring the debt, obligation, or other liability, the member or manager complied with the duties stated in sections 21-134 and 21-138.

(b) A limited liability company may purchase and maintain insurance on behalf of a member or manager of the company against liability asserted against or incurred by the member or manager in that capacity or arising from that status even if, under subsection (f) of section 21-110, the operating agreement could not eliminate or limit the person's liability to the company for the conduct giving rise to the liability.

Source: Laws 2010, LB888, § 37.
Operative date January 1, 2011.

21-138 Standards of conduct for members and managers.

(ULLCA 409) (a) A member of a member-managed limited liability company owes to the company and, subject to subsection (b) of section 21-164, the other members the fiduciary duties of loyalty and care stated in subsections (b) and (c) of this section.

(b) The duty of loyalty of a member in a member-managed limited liability company includes the duties:

(1) to account to the company and to hold as trustee for it any property, profit, or benefit derived by the member:

(A) in the conduct or winding up of the company's activities;

(B) from a use by the member of the company's property; or

(C) from the appropriation of a limited liability company opportunity;

(2) to refrain from dealing with the company in the conduct or winding up of the company's activities as or on behalf of a person having an interest adverse to the company; and

(3) to refrain from competing with the company in the conduct of the company's activities before the dissolution of the company.

(c) Subject to the business judgment rule, the duty of care of a member of a member-managed limited liability company in the conduct and winding up of the company's activities is to act with the care that a person in a like position would reasonably exercise under similar circumstances and in a manner the member reasonably believes to be in the best interests of the company. In discharging this duty, a member may rely in good faith upon opinions, reports, statements, or other information provided by another person that the member reasonably believes is a competent and reliable source for the information.

(d) A member in a member-managed limited liability company or a manager-managed limited liability company shall discharge the duties under the Nebraska Uniform Limited Liability Company Act or under the operating agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

(e) It is a defense to a claim under subdivision (b)(2) of this section and any comparable claim in equity or at common law that the transaction was fair to the limited liability company.

(f) All of the members of a member-managed limited liability company or a manager-managed limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

(g) In a manager-managed limited liability company, the following rules apply:

(1) Subsections (a), (b), (c), and (e) of this section apply to the manager or managers and not the members.

(2) The duty stated under subdivision (b)(3) of this section continues until winding up is completed.

(3) Subsection (d) of this section applies to the members and managers.

(4) Subsection (f) of this section applies only to the members.

(5) A member does not have any fiduciary duty to the company or to any other member solely by reason of being a member.

Source: Laws 2010, LB888, § 38.
Operative date January 1, 2011.

21-139 Right of members, managers, and dissociated members to information.

(ULLCA 410) (a) In a member-managed limited liability company, the following rules apply:

(1) On reasonable notice, a member may inspect and copy during regular business hours, at a reasonable location specified by the company, any record maintained by the company regarding the company's activities, financial condition, and other circumstances, to the extent the information is material to the member's rights and duties under the operating agreement or the Nebraska Uniform Limited Liability Company Act.

(2) The company shall furnish to each member:

(A) without demand, any information concerning the company's activities, financial condition, and other circumstances which the company knows and is material to the proper exercise of the member's rights and duties under the operating agreement or the act, except to the extent the company can establish that it reasonably believes the member already knows the information; and

(B) on demand, any other information concerning the company's activities, financial condition, and other circumstances, except to the extent the demand or information demanded is unreasonable or otherwise improper under the circumstances.

(3) The duty to furnish information under subdivision (a)(2) of this section also applies to each member to the extent the member knows any of the information described in such subdivision.

(b) In a manager-managed limited liability company, the following rules apply:

(1) The informational rights stated in subsection (a) of this section and the duty stated in subdivision (a)(3) of this section apply to the managers and not the members.

(2) During regular business hours and at a reasonable location specified by the company, a member may obtain from the company and inspect and copy full information regarding the activities, financial condition, and other circumstances of the company as is just and reasonable if:

(A) the member seeks the information for a purpose material to the member's interest as a member;

(B) the member makes a demand in a record received by the company, describing with reasonable particularity the information sought and the purpose for seeking the information; and

(C) the information sought is directly connected to the member's purpose.

(3) Within ten days after receiving a demand pursuant to subdivision (b)(2)(B) of this section, the company shall in a record inform the member that made the demand:

(A) of the information that the company will provide in response to the demand and when and where the company will provide the information; and

(B) if the company declines to provide any demanded information, the company's reasons for declining.

(c) On ten days' demand made in a record received by a limited liability company, a dissociated member may have access to information to which the person was entitled while a member if the information pertains to the period during which the person was a member, the person seeks the information in good faith, and the person satisfies the requirements imposed on a member by subdivision (b)(2) of this section. The company shall respond to a demand made pursuant to this subsection in the manner provided in subdivision (b)(3) of this section.

(d) A limited liability company may charge a person that makes a demand under this section the reasonable costs of copying, limited to the costs of labor and material.

(e) A member or dissociated member may exercise rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the operating agreement or under subsection (g) of this section applies both to the agent or legal representative and the member or dissociated member.

(f) The rights under this section do not extend to a person as transferee.

(g) In addition to any restriction or condition stated in its operating agreement, a limited liability company, as a matter within the ordinary course of its activities, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the company has the burden of proving reasonableness.

Source: Laws 2010, LB888, § 39.
Operative date January 1, 2011.

(e) TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

21-140 Nature of transferable interest.

(ULLCA 501) A transferable interest is personal property.

Source: Laws 2010, LB888, § 40.
Operative date January 1, 2011.

21-141 Transfer of transferable interest.

(ULLCA 502) (a) A transfer, in whole or in part, of a transferable interest:

(1) is permissible;

(2) does not by itself cause a member's dissociation or a dissolution and winding up of the limited liability company's activities; and

(3) subject to section 21-143, does not entitle the transferee to:

(A) participate in the management or conduct of the company's activities; or

(B) except as otherwise provided in subsection (c) of this section, have access to records or other information concerning the company's activities.

(b) A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

(c) In a dissolution and winding up of a limited liability company, a transferee is entitled to an account of the company's transactions only from the date of dissolution.

(d) A transferable interest may be evidenced by a certificate of the interest issued by the limited liability company in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.

(e) A limited liability company need not give effect to a transferee's rights under this section until the company has notice of the transfer.

(f) A transfer of a transferable interest in violation of a restriction on transfer contained in the operating agreement is ineffective as to a person having notice of the restriction at the time of transfer.

(g) Except as otherwise provided in subdivision (4)(B) of section 21-145, when a member transfers a transferable interest, the transferor retains the rights of a member other than the interest in distributions transferred and retains all duties and obligations of a member.

(h) When a member transfers a transferable interest to a person that becomes a member with respect to the transferred interest, the transferee is liable for the member's obligations under section 21-132 and subsection (c) of section 21-135 known to the transferee when the transferee becomes a member.

Source: Laws 2010, LB888, § 41.
Operative date January 1, 2011.

21-142 Charging order.

(ULLCA 503) (a) On application by a judgment creditor of a member or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. A charging order constitutes a lien on a judgment debtor's transferable interest and requires the limited liability company to pay over to the person to which the

charging order was issued any distribution that would otherwise be paid to the judgment debtor.

(b) To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subsection (a) of this section, the court may:

(1) appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and

(2) make all other orders necessary to give effect to the charging order.

(c) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. The purchaser at the foreclosure sale only obtains the transferable interest, does not thereby become a member, and is subject to section 21-141.

(d) At any time before completion of the foreclosure sale under subsection (c) of this section, the member or transferee whose transferable interest is subject to a charging order under subsection (a) of this section may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(e) At any time before completion of the foreclosure sale under subsection (c) of this section, a limited liability company or one or more members whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

(f) The Nebraska Uniform Limited Liability Company Act does not deprive any member or transferee of the benefit of any exemption laws applicable to the member's or transferee's transferable interest.

(g) This section provides the exclusive remedy by which a person seeking to enforce a judgment against a member or transferee may, in the capacity of judgment creditor, satisfy the judgment from the judgment debtor's transferable interest.

Source: Laws 2010, LB888, § 42.
Operative date January 1, 2011.

21-143 Power of personal representative of deceased member.

(ULLCA 504) If a member dies, the deceased member's personal representative or other legal representative may exercise the rights of a transferee provided in subsection (c) of section 21-141 and, for the purposes of settling the estate, the rights of a current member under section 21-139.

Source: Laws 2010, LB888, § 43.
Operative date January 1, 2011.

(f) MEMBER'S DISSOCIATION

21-144 Member's power to dissociate; wrongful dissociation.

(ULLCA 601) (a) A person has the power to dissociate as a member at any time, rightfully or wrongfully, by withdrawing as a member by express will under subdivision (1) of section 21-145.

(b) A person's dissociation from a limited liability company is wrongful only if the dissociation:

(1) is in breach of an express provision of the operating agreement; or

(2) occurs before the termination of the company and:

(A) the person withdraws as a member by express will;

(B) the person is expelled as a member by judicial order under subdivision (5) of section 21-145;

(C) the person is dissociated under subdivision (7)(A) of section 21-145 by becoming a debtor in bankruptcy; or

(D) in the case of a person that is not a trust other than a business trust, an estate, or an individual, the person is expelled or otherwise dissociated as a member because it willfully dissolved or terminated.

(c) A person that wrongfully dissociates as a member is liable to the limited liability company and, subject to section 21-164, to the other members for damages caused by the dissociation. The liability is in addition to any other debt, obligation, or other liability of the member to the company or the other members.

Source: Laws 2010, LB888, § 44.
Operative date January 1, 2011.

21-145 Events causing dissociation.

(ULLCA 602) A person is dissociated as a member from a limited liability company when:

(1) the company has notice of the person's express will to withdraw as a member, but, if the person specified a withdrawal date later than the date the company had notice, on that later date;

(2) an event stated in the operating agreement as causing the person's dissociation occurs;

(3) the person is expelled as a member pursuant to the operating agreement;

(4) the person is expelled as a member by the unanimous consent of the other members if:

(A) it is unlawful to carry on the company's activities with the person as a member;

(B) there has been a transfer of all of the person's transferable interest in the company, other than:

(i) a transfer for security purposes; or

(ii) a charging order in effect under section 21-142 which has not been foreclosed;

(C) the person is a corporation and, within ninety days after the company notifies the person that it will be expelled as a member because the person has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the certificate of dissolution has not been revoked or its charter or right to conduct business has not been reinstated; or

(D) the person is a limited liability company or partnership that has been dissolved and whose business is being wound up;

(5) on application by the company, the person is expelled as a member by judicial order because the person:

(A) has engaged, or is engaging, in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, the company's activities;

(B) has willfully or persistently committed, or is willfully and persistently committing, a material breach of the operating agreement or the person's duties or obligations under section 21-138; or

(C) has engaged in, or is engaging in, conduct relating to the company's activities which makes it not reasonably practicable to carry on the activities with the person as a member;

(6) in the case of a person who is an individual:

(A) the person dies; or

(B) in a member-managed limited liability company:

(i) a guardian or general conservator for the person is appointed; or

(ii) there is a judicial order that the person has otherwise become incapable of performing the person's duties as a member under the Nebraska Uniform Limited Liability Company Act or the operating agreement;

(7) in a member-managed limited liability company, the person:

(A) becomes a debtor in bankruptcy;

(B) executes an assignment for the benefit of creditors; or

(C) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property;

(8) in the case of a person that is a trust or is acting as a member by virtue of being a trustee of a trust, the trust's entire transferable interest in the company is distributed;

(9) in the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the estate's entire transferable interest in the company is distributed;

(10) in the case of a member that is not an individual, partnership, limited liability company, corporation, trust, or estate, the termination of the member;

(11) the company participates in a merger under sections 21-170 to 21-184, if:

(A) the company is not the surviving entity; or

(B) otherwise as a result of the merger, the person ceases to be a member;

(12) the company participates in a conversion under sections 21-170 to 21-184;

(13) the company participates in a domestication under sections 21-170 to 21-184, if, as a result of the domestication, the person ceases to be a member; or

(14) the company terminates.

Source: Laws 2010, LB888, § 45.
Operative date January 1, 2011.

21-146 Effect of person's dissociation as member.

(ULLCA 603) (a) When a person is dissociated as a member of a limited liability company:

(1) the person's right to participate as a member in the management and conduct of the company's activities terminates;

(2) if the company is member-managed, the person's fiduciary duties as a member end with regard to matters arising and events occurring after the person's dissociation; and

(3) subject to section 21-143 and sections 21-170 to 21-184, any transferable interest owned by the person immediately before dissociation in the person's capacity as a member is owned by the person solely as a transferee.

(b) A person's dissociation as a member of a limited liability company does not of itself discharge the person from any debt, obligation, or other liability to the company or the other members which the person incurred while a member.

Source: Laws 2010, LB888, § 46.
Operative date January 1, 2011.

(g) DISSOLUTION AND WINDING UP

21-147 Events causing dissolution.

(ULLCA 701) (a) A limited liability company is dissolved, and its activities must be wound up, upon the occurrence of any of the following:

(1) an event or circumstance that the operating agreement states causes dissolution;

(2) the consent of all the members;

(3) the passage of ninety consecutive days during which the company has no members;

(4) on application by a member, the entry by the district court of an order dissolving the company on the grounds that:

(A) the conduct of all or substantially all of the company's activities is unlawful; or

(B) it is not reasonably practicable to carry on the company's activities in conformity with the certificate of organization and the operating agreement; or

(5) on application by a member, the entry by the district court of an order dissolving the company on the grounds that the managers or those members in control of the company:

(A) have acted, are acting, or will act in a manner that is illegal or fraudulent; or

(B) have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant.

(b) In a proceeding brought under subdivision (a)(5) of this section, the court may order a remedy other than dissolution.

Source: Laws 2010, LB888, § 47.
Operative date January 1, 2011.

21-148 Winding up.

(ULLCA 702) (a) A dissolved limited liability company shall wind up its activities, and the company continues after dissolution only for the purpose of winding up.

(b) In winding up its activities, a limited liability company:

(1) shall:

(A) discharge the company's debts, obligations, or other liabilities, settle and close the company's activities, and marshal and distribute the assets of the company; and

(B) deliver to the Secretary of State for filing a statement of dissolution stating the name of the company and that the company is dissolved; and

(2) may:

(A) preserve the company activities and property as a going concern for a reasonable time;

(B) prosecute and defend actions and proceedings, whether civil, criminal, or administrative;

(C) transfer the company's property;

(D) settle disputes by mediation or arbitration;

(E) deliver to the Secretary of State for filing a statement of termination stating the name of the company and that the company is terminated; and

(F) perform other acts necessary or appropriate to the winding up.

(c) If a dissolved limited liability company has no members, the legal representative of the last person to have been a member may wind up the activities of the company. If the person does so, the person has the powers of a sole manager under subsection (c) of section 21-136 and is deemed to be a manager for the purposes of subdivision (a)(2) of section 21-129.

(d) If the legal representative under subsection (c) of this section declines or fails to wind up the company's activities, a person may be appointed to do so by the consent of transferees owning a majority of the rights to receive distributions as transferees at the time the consent is to be effective. A person appointed under this subsection:

(1) has the powers of a sole manager under subsection (c) of section 21-136 and is deemed to be a manager for the purposes of subdivision (a)(2) of section 21-129; and

(2) shall promptly deliver to the Secretary of State for filing an amendment to the company's certificate of organization to:

(A) state that the company has no members;

(B) state that the person has been appointed pursuant to this subsection to wind up the company; and

(C) provide the street and mailing addresses of the person.

(e) The district court may order judicial supervision of the winding up of a dissolved limited liability company, including the appointment of a person to wind up the company's activities:

(1) on application of a member, if the applicant establishes good cause;

(2) on the application of a transferee, if:

(A) the company does not have any members;

(B) the legal representative of the last person to have been a member declines or fails to wind up the company's activities; and

(C) within a reasonable time following the dissolution a person has not been appointed pursuant to subsection (d) of this section; or

(3) in connection with a proceeding under subdivision (a)(4) or (5) of section 21-147.

Source: Laws 2010, LB888, § 48.
Operative date January 1, 2011.

21-149 Known claims against dissolved limited liability company.

(ULLCA 703) (a) Except as otherwise provided in subsection (d) of this section, a dissolved limited liability company may give notice of a known claim under subsection (b) of this section, which has the effect as provided in subsection (c) of this section.

(b) A dissolved limited liability company may in a record notify its known claimants of the dissolution. The notice must:

(1) specify the information required to be included in a claim;

(2) provide a mailing address to which the claim is to be sent;

(3) state the deadline for receipt of the claim, which may not be less than one hundred twenty days after the date the notice is received by the claimant; and

(4) state that the claim will be barred if not received by the deadline.

(c) A claim against a dissolved limited liability company is barred if the requirements of subsection (b) of this section are met and:

(1) the claim is not received by the specified deadline; or

(2) if the claim is timely received but rejected by the company:

(A) the company causes the claimant to receive a notice in a record stating that the claim is rejected and will be barred unless the claimant commences an action against the company to enforce the claim within ninety days after the claimant receives the notice; and

(B) the claimant does not commence the required action within the ninety days.

(d) This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that on that date is contingent.

Source: Laws 2010, LB888, § 49.
Operative date January 1, 2011.

21-150 Other claims against dissolved limited liability company.

(ULLCA 704) (a) A dissolved limited liability company shall publish notice of its dissolution and request persons having claims against the company to present them in accordance with the notice.

(b) The notice required by subsection (a) of this section must:

(1) be published three successive weeks in some legal newspaper of general circulation in the county in this state in which the dissolved limited liability company's principal office is located or, if it has none in this state, in the county in which the company's designated office is or was last located;

(2) describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent; and

(3) state that a claim against the company is barred unless an action to enforce the claim is commenced within five years after the publication date of the third required notice.

(c) If a dissolved limited liability company publishes a notice in accordance with subsection (b) of this section, unless the claimant commences an action to enforce the claim against the company within five years after the publication date of the third required notice, the claim of each of the following claimants is barred:

(1) a claimant that did not receive notice in a record under section 21-149;

(2) a claimant whose claim was timely sent to the company but not acted on; and

(3) a claimant whose claim is contingent at, or based on an event occurring after, the effective date of dissolution.

(d) A claim not barred under this section may be enforced:

(1) against a dissolved limited liability company, to the extent of its undistributed assets; and

(2) if assets of the company have been distributed after dissolution, against a member or transferee to the extent of that person's proportionate share of the claim or of the assets distributed to the member or transferee after dissolution, whichever is less, but a person's total liability for all claims under this subdivision does not exceed the total amount of assets distributed to the person after dissolution.

Source: Laws 2010, LB888, § 50.
Operative date January 1, 2011.

21-151 Administrative dissolution.

(ULLCA 705) (a) The Secretary of State may dissolve a limited liability company administratively if the company does not:

(1) pay, within sixty days after the due date, any fee, tax, or penalty due to the Secretary of State under the Nebraska Uniform Limited Liability Company Act or law other than the act; or

(2) deliver, within sixty days after the due date, its biennial report to the Secretary of State.

(b) If the Secretary of State determines that a ground exists for administratively dissolving a limited liability company, the Secretary of State shall file a record of the determination and serve the company with a copy of the filed record.

(c) If within sixty days after service of the copy pursuant to subsection (b) of this section a limited liability company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist, the Secretary of State shall dissolve the company administratively by preparing, signing, and filing a declaration of dissolution that states the grounds for dissolution. The Secretary of State shall serve the company with a copy of the filed declaration.

(d) A limited liability company that has been administratively dissolved continues in existence but, subject to section 21-152, may carry on only activities necessary to wind up its activities and liquidate its assets under sections 21-148 and 21-154 and to notify claimants under sections 21-149 and 21-150.

(e) The administrative dissolution of a limited liability company does not terminate the authority of its agent for service of process.

Source: Laws 2010, LB888, § 51.
Operative date January 1, 2011.

21-152 Reinstatement following administrative dissolution.

(ULLCA 706) (a) A limited liability company that has been administratively dissolved may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution. The application must be delivered to the Secretary of State for filing and state:

(1) the name of the company and the effective date of its dissolution;

(2) that the grounds for dissolution did not exist or have been eliminated; and

(3) that the company's name satisfies the requirements of section 21-108.

(b) If the Secretary of State determines that an application under subsection (a) of this section contains the required information and that the information is correct, the Secretary of State shall prepare a declaration of reinstatement that states this determination, sign and file the original of the declaration of reinstatement, and serve the limited liability company with a copy.

(c) When a reinstatement becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited liability company may resume its activities as if the dissolution had not occurred.

Source: Laws 2010, LB888, § 52.
Operative date January 1, 2011.

21-153 Appeal from rejection of reinstatement.

(ULLCA 707) (a) If the Secretary of State rejects a limited liability company's application for reinstatement following administrative dissolution, the Secretary of State shall prepare, sign, and file a notice that explains the reason for rejection and serve the company with a copy of the notice.

(b) Within thirty days after service of a notice of rejection of reinstatement under subsection (a) of this section, a limited liability company may appeal from the rejection by petitioning the district court of Lancaster County to set aside the dissolution. The petition must be served on the Secretary of State and contain a copy of the Secretary of State's declaration of dissolution, the company's application for reinstatement, and the Secretary of State's notice of rejection.

(c) The court may order the Secretary of State to reinstate a dissolved limited liability company or take other action the court considers appropriate.

Source: Laws 2010, LB888, § 53.
Operative date January 1, 2011.

21-154 Distribution of assets in winding up limited liability company's activities.

(ULLCA 708) (a) In winding up its activities, a limited liability company must apply its assets to discharge its obligations to creditors, including members that are creditors.

(b) After a limited liability company complies with subsection (a) of this section, any surplus must be distributed in the manner set forth in the

operating agreement or, if not so set forth, in the following order, subject, in any case, to any charging order in effect under section 21-142:

(1) to each person owning a transferable interest that reflects contributions made by a member and not previously returned, an amount equal to the value of the unreturned contributions; and

(2) in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under section 21-141.

(c) If a limited liability company does not have sufficient surplus to comply with subdivision (b)(1) of this section, any surplus must be distributed among the owners of transferable interests in proportion to the value of their respective unreturned contributions.

(d) All distributions made under subsections (b) and (c) of this section must be paid in money.

Source: Laws 2010, LB888, § 54.
Operative date January 1, 2011.

(h) FOREIGN LIMITED LIABILITY COMPANIES

21-155 Governing law.

(ULLCA 801) (a) The law of the state or other jurisdiction under which a foreign limited liability company is formed governs:

(1) the internal affairs of the company; and

(2) the liability of a member as member and a manager as manager for the debts, obligations, or other liabilities of the company.

(b) A foreign limited liability company may not transact business in this state until it qualifies with the Secretary of State as provided in sections 21-156 and 21-158. A foreign limited liability company may not be denied a certificate of authority by reason of any difference between the law of the jurisdiction under which the company is formed and the law of this state.

(c) A certificate of authority does not authorize a foreign limited liability company to engage in any business or exercise any power that a limited liability company may not engage in or exercise in this state.

Source: Laws 2010, LB888, § 55.
Operative date January 1, 2011.

21-156 Application for certificate of authority.

(ULLCA 802) (a) A foreign limited liability company must apply for a certificate of authority to transact business in this state by delivering an application and, if applicable, a current certificate of registration as provided in sections 21-185 to 21-189 and fees to the Secretary of State for filing. The application must state:

(1) the name of the company and, if the name does not comply with section 21-108, an alternate name adopted pursuant to subsection (a) of section 21-159;

(2) the name of the state or other jurisdiction under whose law the company is formed;

(3) the street and mailing addresses of the company's principal office and, if the law of the jurisdiction under which the company is formed requires the

company to maintain an office in that jurisdiction, the street and mailing addresses of the required office; and

(4) the name and street and mailing addresses and post office box number, if any, of the company's initial agent for service of process in this state.

(b) A foreign limited liability company shall deliver with a completed application under subsection (a) of this section a certificate of existence or a record of similar import signed by the Secretary of State or other official having custody of the company's publicly filed records in the state or other jurisdiction under whose law the company is formed.

Source: Laws 2010, LB888, § 56.
Operative date January 1, 2011.

21-157 Activities not constituting transacting business.

(ULLCA 803) (a) Activities of a foreign limited liability company which do not constitute transacting business in this state within the meaning of sections 21-155 to 21-163 include:

(1) maintaining, defending, or settling an action or proceeding;

(2) carrying on any activity concerning its internal affairs, including holding meetings of its members or managers;

(3) maintaining accounts in financial institutions;

(4) maintaining offices or agencies for the transfer, exchange, and registration of the company's own securities or maintaining trustees or depositories with respect to those securities;

(5) selling through independent contractors;

(6) soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(7) creating or acquiring indebtedness, mortgages, or security interests in real or personal property;

(8) securing or collecting debts or enforcing mortgages or other security interests in property securing the debts and holding, protecting, or maintaining property so acquired;

(9) conducting an isolated transaction that is completed within thirty days and is not in the course of similar transactions; and

(10) transacting business in interstate commerce.

(b) For purposes of sections 21-155 to 21-163, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection (a) of this section, constitutes transacting business in this state.

(c) This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process, taxation, or regulation under law of this state other than the Nebraska Uniform Limited Liability Company Act.

Source: Laws 2010, LB888, § 57.
Operative date January 1, 2011.

21-158 Filing of certificate of authority.

(ULLCA 804) Unless the Secretary of State determines that an application for a certificate of authority does not comply with the filing requirements of the Nebraska Uniform Limited Liability Company Act, the Secretary of State, upon payment of all filing fees, shall file the application of a foreign limited liability company, prepare, sign, and file a certificate of authority to transact business in this state, and send a copy of the filed certificate, together with a receipt for the fees, to the company or its representative.

Source: Laws 2010, LB888, § 58.
Operative date January 1, 2011.

21-159 Noncomplying name of foreign limited liability company.

(ULLCA 805) (a) A foreign limited liability company whose name does not comply with section 21-108 may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this state, an alternate name that complies with section 21-108. A foreign limited liability company that adopts an alternate name under this subsection and obtains a certificate of authority with the alternate name need not comply with any fictitious or assumed name statute. After obtaining a certificate of authority with an alternate name, a foreign limited liability company shall transact business in this state under the alternate name unless the company is authorized under any fictitious or assumed name statute to transact business in this state under another name.

(b) If a foreign limited liability company authorized to transact business in this state changes its name to one that does not comply with section 21-108, it may not thereafter transact business in this state until it complies with subsection (a) of this section and obtains an amended certificate of authority.

Source: Laws 2010, LB888, § 59.
Operative date January 1, 2011.

21-160 Revocation of certificate of authority.

(ULLCA 806) (a) A certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the Secretary of State in the manner provided in subsections (b) and (c) of this section if the company does not:

(1) pay, within sixty days after the due date, any fee, tax, or penalty due to the Secretary of State under the Nebraska Uniform Limited Liability Company Act or law other than the act;

(2) deliver, within sixty days after the due date, its biennial report required under section 21-125;

(3) appoint and maintain an agent for service of process as required by subsection (b) of section 21-113; or

(4) deliver for filing a statement of a change under section 21-114 within thirty days after a change has occurred in the name or address of the agent.

(b) To revoke a certificate of authority of a foreign limited liability company, the Secretary of State must prepare, sign, and file a notice of revocation and send a copy to the company's agent for service of process in this state, or if the company does not appoint and maintain a proper agent in this state, to the company's designated office. The notice must state:

(1) the revocation's effective date, which must be at least sixty days after the date the Secretary of State sends the copy; and

(2) the grounds for revocation under subsection (a) of this section.

(c) The authority of a foreign limited liability company to transact business in this state ceases on the effective date of the notice of revocation unless before that date the company cures each ground for revocation stated in the notice filed under subsection (b) of this section. If the company cures each ground, the Secretary of State shall file a record so stating.

Source: Laws 2010, LB888, § 60.
Operative date January 1, 2011.

21-161 Cancellation of certificate of authority.

(ULLCA 807) To cancel its certificate of authority to transact business in this state, a foreign limited liability company must deliver to the Secretary of State for filing a notice of cancellation stating the name of the company and that the company desires to cancel its certificate of authority. The certificate is canceled when the notice becomes effective.

Source: Laws 2010, LB888, § 61.
Operative date January 1, 2011.

21-162 Effect of failure to have certificate of authority.

(ULLCA 808) (a) A foreign limited liability company transacting business in this state may not maintain an action or proceeding in this state unless it has a certificate of authority to transact business in this state.

(b) The failure of a foreign limited liability company to have a certificate of authority to transact business in this state does not impair the validity of a contract or act of the company or prevent the company from defending an action or proceeding in this state.

(c) A member or manager of a foreign limited liability company is not liable for the debts, obligations, or other liabilities of the company solely because the company transacted business in this state without a certificate of authority.

Source: Laws 2010, LB888, § 62.
Operative date January 1, 2011.

21-163 Action by Attorney General.

(ULLCA 809) The Attorney General may maintain an action to enjoin a foreign limited liability company from transacting business in this state in violation of sections 21-155 to 21-163.

Source: Laws 2010, LB888, § 63.
Operative date January 1, 2011.

(i) ACTIONS BY MEMBERS

21-164 Direct action by member.

(ULLCA 901) (a) Subject to subsection (b) of this section, a member may maintain a direct action against another member, a manager, or the limited liability company to enforce the member's rights and otherwise protect the member's interests, including rights and interests under the operating agree-

ment or the Nebraska Uniform Limited Liability Company Act or arising independently of the membership relationship.

(b) A member maintaining a direct action under this section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company.

Source: Laws 2010, LB888, § 64.
Operative date January 1, 2011.

21-165 Derivative action.

(ULLCA 902) A member may maintain a derivative action to enforce a right of a limited liability company if:

(1) the member first makes a demand on the other members in a member-managed limited liability company, or the managers of a manager-managed limited liability company, requesting that they cause the company to bring an action to enforce the right, and the managers or other members do not bring the action within a reasonable time; or

(2) a demand under subdivision (1) of this section would be futile.

Source: Laws 2010, LB888, § 65.
Operative date January 1, 2011.

21-166 Proper plaintiff.

(ULLCA 903) (a) Except as otherwise provided in subsection (b) of this section, a derivative action under section 21-165 may be maintained only by a person that is a member at the time the action is commenced and remains a member while the action continues.

(b) If the sole plaintiff in a derivative action dies while the action is pending, the court may permit another member of the limited liability company to be substituted as plaintiff.

Source: Laws 2010, LB888, § 66.
Operative date January 1, 2011.

21-167 Complaint.

(ULLCA 904) In a derivative action under section 21-165, the complaint must state with particularity:

(1) the date and content of the plaintiff's demand and the response to the demand by the managers or other members; or

(2) if a demand has not been made, the reasons a demand under subdivision (1) of section 21-165 would be futile.

Source: Laws 2010, LB888, § 67.
Operative date January 1, 2011.

21-168 Special litigation committee.

(ULLCA 905) (a) If a limited liability company is named as or made a party in a derivative proceeding, the company may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the company. If the company appoints a special litigation committee, on motion by the committee made in the name of the company, except for good cause shown, the court shall stay

discovery for the time reasonably necessary to permit the committee to make its investigation. This subsection does not prevent the court from enforcing a person's right to information under section 21-139 or, for good cause shown, granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.

(b) A special litigation committee may be composed of one or more disinterested and independent individuals, who may be members.

(c) A special litigation committee may be appointed:

(1) in a member-managed limited liability company:

(A) by the consent of a majority of the members not named as defendants or plaintiffs in the proceeding; and

(B) if all members are named as defendants or plaintiffs in the proceeding, by a majority of the members named as defendants; or

(2) in a manager-managed limited liability company:

(A) by a majority of the managers not named as defendants or plaintiffs in the proceeding; and

(B) if all managers are named as defendants or plaintiffs in the proceeding, by a majority of the managers named as defendants.

(d) After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited liability company that the proceeding:

(1) continue under the control of the plaintiff;

(2) continue under the control of the committee;

(3) be settled on terms approved by the committee; or

(4) be dismissed.

(e) After making a determination under subsection (d) of this section, a special litigation committee shall file with the court a statement of its determination and its report supporting its determination, giving notice to the plaintiff. The court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve the stay of discovery entered under subsection (a) of this section and allow the action to proceed under the direction of the plaintiff.

Source: Laws 2010, LB888, § 68.
Operative date January 1, 2011.

21-169 Proceeds and expenses.

(ULLCA 906) (a) Except as otherwise provided in subsection (b) of this section:

(1) any proceeds or other benefits of a derivative action under section 21-165, whether by judgment, compromise, or settlement, belong to the limited liability company and not to the plaintiff; and

(2) if the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the company.

(b) If a derivative action under section 21-165 is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees and costs, from the recovery of the limited liability company.

Source: Laws 2010, LB888, § 69.
Operative date January 1, 2011.

(j) MERGER, CONVERSION, AND DOMESTICATION

21-170 Terms, defined.

(ULLCA 1001) In sections 21-170 to 21-184:

(1) Constituent limited liability company means a constituent organization that is a limited liability company.

(2) Constituent organization means an organization that is party to a merger.

(3) Converted organization means the organization into which a converting organization converts pursuant to sections 21-175 to 21-178.

(4) Converting limited liability company means a converting organization that is a limited liability company.

(5) Converting organization means an organization that converts into another organization pursuant to section 21-175.

(6) Domesticated company means the company that exists after a domesticating foreign limited liability company or limited liability company effects a domestication pursuant to sections 21-179 to 21-182.

(7) Domesticating company means the company that effects a domestication pursuant to sections 21-179 to 21-182.

(8) Governing statute means the statute that governs an organization's internal affairs.

(9) Organization means a general partnership, including a limited liability partnership, limited partnership, including a limited liability limited partnership, limited liability company, business trust, corporation, or any other person having a governing statute. The term includes a domestic or foreign organization.

(10) Organizational documents means:

(A) for a domestic or foreign general partnership, its partnership agreement;

(B) for a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement;

(C) for a domestic or foreign limited liability company, its certificate or articles of organization and operating agreement, or comparable records as provided in its governing statute;

(D) for a business trust, its agreement of trust and declaration of trust;

(E) for a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and other agreements among its shareholders which are authorized by its governing statute, or comparable records as provided in its governing statute; and

(F) for any other organization, the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it.

(11) Personal liability means liability for a debt, obligation, or other liability of an organization which is imposed on a person that co-owns, has an interest in, or is a member of the organization:

(A) by the governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization; or

(B) by the organization's organizational documents under a provision of the governing statute authorizing those documents to make one or more specified persons liable for all or specified debts, obligations, or other liabilities of the organization solely by reason of the person or persons co-owning, having an interest in, or being a member of the organization.

(12) Surviving organization means an organization into which one or more other organizations are merged whether the organization preexisted the merger or was created by the merger.

Source: Laws 2010, LB888, § 70.
Operative date January 1, 2011.

21-171 Merger.

(ULLCA 1002) (a) A limited liability company may merge with one or more other constituent organizations pursuant to this section, sections 21-172 to 21-174, and a plan of merger, if:

(1) the governing statute of each of the other organizations authorizes the merger;

(2) the merger is not prohibited by the law of a jurisdiction that enacted any of the governing statutes; and

(3) each of the other organizations complies with its governing statute in effecting the merger.

(b) A plan of merger must be in a record and must include:

(1) the name and form of each constituent organization;

(2) the name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;

(3) the terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration;

(4) if the surviving organization is to be created by the merger, the surviving organization's organizational documents that are proposed to be in a record; and

(5) if the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents that are, or are proposed to be, in a record.

Source: Laws 2010, LB888, § 71.
Operative date January 1, 2011.

21-172 Action on plan of merger by constituent limited liability company.

(ULLCA 1003) (a) Subject to section 21-183, a plan of merger must be consented to by all the members of a constituent limited liability company.

(b) Subject to section 21-183 and any contractual rights, after a merger is approved, and at any time before articles of merger are delivered to the Secretary of State for filing under section 21-173, a constituent limited liability company may amend the plan or abandon the merger:

(1) as provided in the plan; or

(2) except as otherwise prohibited in the plan, with the same consent as was required to approve the plan.

Source: Laws 2010, LB888, § 72.
Operative date January 1, 2011.

21-173 Filings required for merger; effective date.

(ULLCA 1004) (a) After each constituent organization has approved a merger, articles of merger must be signed on behalf of:

(1) each constituent limited liability company, as provided in subsection (a) of section 21-119; and

(2) each other constituent organization, as provided in its governing statute.

(b) Articles of merger under this section must include:

(1) the name and form of each constituent organization and the jurisdiction of its governing statute;

(2) the name and form of the surviving organization, the jurisdiction of its governing statute, and, if the surviving organization is created by the merger, a statement to that effect;

(3) the date the merger is effective under the governing statute of the surviving organization;

(4) if the surviving organization is to be created by the merger:

(A) if it will be a limited liability company, the company's certificate of organization; or

(B) if it will be an organization other than a limited liability company, the organizational document that creates the organization that is in a public record;

(5) if the surviving organization preexists the merger, any amendments provided for in the plan of merger for the organizational document that created the organization that are in a public record;

(6) a statement as to each constituent organization that the merger was approved as required by the organization's governing statute; and

(7) any additional information required by the governing statute of any constituent organization.

(c) Each constituent limited liability company shall deliver the articles of merger for filing in the office of the Secretary of State.

(d) A merger becomes effective under sections 21-170 to 21-184:

(1) if the surviving organization is a limited liability company, upon the later of:

(A) compliance with subsection (c) of this section; or

(B) subject to subsection (c) of section 21-121, as specified in the articles of merger; or

(2) if the surviving organization is not a limited liability company, as provided by the governing statute of the surviving organization.

Source: Laws 2010, LB888, § 73.
Operative date January 1, 2011.

21-174 Effect of merger.

(ULLCA 1005) (a) When a merger becomes effective:

(1) the surviving organization continues or comes into existence;

(2) each constituent organization that merges into the surviving organization ceases to exist as a separate entity;

(3) all property owned by each constituent organization that ceases to exist vests in the surviving organization;

(4) all debts, obligations, or other liabilities of each constituent organization that ceases to exist continue as debts, obligations, or other liabilities of the surviving organization;

(5) an action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;

(6) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;

(7) except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect; and

(8) except as otherwise agreed, if a constituent limited liability company ceases to exist, the merger does not dissolve the limited liability company for the purposes of sections 21-147 to 21-154;

(9) if the surviving organization is created by the merger:

(A) if it is a limited liability company, the certificate of organization becomes effective; or

(B) if it is an organization other than a limited liability company, the organizational document that creates the organization becomes effective; and

(10) if the surviving organization preexisted the merger, any amendments provided for in the articles of merger for the organizational document that created the organization become effective.

(b) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state on the debt, obligation, or other liability.

Source: Laws 2010, LB888, § 74.
Operative date January 1, 2011.

21-175 Conversion.

(ULLCA 1006) (a) An organization other than a limited liability company or a foreign limited liability company may convert to a limited liability company, and a limited liability company may convert to an organization other than a

foreign limited liability company pursuant to this section, sections 21-176 to 21-178, and a plan of conversion, if:

(1) the other organization's governing statute authorizes the conversion;

(2) the conversion is not prohibited by the law of the jurisdiction that enacted the other organization's governing statute; and

(3) the other organization complies with its governing statute in effecting the conversion.

(b) A plan of conversion must be in a record and must include:

(1) the name and form of the organization before conversion;

(2) the name and form of the organization after conversion;

(3) the terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration; and

(4) the organizational documents of the converted organization that are, or are proposed to be, in a record.

Source: Laws 2010, LB888, § 75.
Operative date January 1, 2011.

21-176 Action on plan of conversion by converting limited liability company.

(ULLCA 1007) (a) Subject to section 21-183, a plan of conversion must be consented to by all the members of a converting limited liability company.

(b) Subject to section 21-183 and any contractual rights, after a conversion is approved, and at any time before articles of conversion are delivered to the Secretary of State for filing under section 21-177, a converting limited liability company may amend the plan or abandon the conversion:

(1) as provided in the plan; or

(2) except as otherwise prohibited in the plan, by the same consent as was required to approve the plan.

Source: Laws 2010, LB888, § 76.
Operative date January 1, 2011.

21-177 Filings required for conversion; effective date.

(ULLCA 1008) (a) After a plan of conversion is approved:

(1) a converting limited liability company shall deliver to the Secretary of State for filing articles of conversion, which must be signed as provided in subsection (a) of section 21-119 and must include:

(A) a statement that the limited liability company has been converted into another organization;

(B) the name and form of the organization and the jurisdiction of its governing statute;

(C) the date the conversion is effective under the governing statute of the converted organization;

(D) a statement that the conversion was approved as required by the Nebraska Uniform Limited Liability Company Act; and

(E) a statement that the conversion was approved as required by the governing statute of the converted organization; and

(2) if the converting organization is not a converting limited liability company, the converting organization shall deliver to the Secretary of State for filing a certificate of organization, which must include, in addition to the information required by subsection (b) of section 21-117:

(A) a statement that the converted organization was converted from another organization;

(B) the name and form of that converting organization and the jurisdiction of its governing statute; and

(C) a statement that the conversion was approved in a manner that complied with the converting organization's governing statute.

(b) A conversion becomes effective:

(1) if the converted organization is a limited liability company, when the certificate of organization takes effect; and

(2) if the converted organization is not a limited liability company, as provided by the governing statute of the converted organization.

Source: Laws 2010, LB888, § 77.
Operative date January 1, 2011.

21-178 Effect of conversion.

(ULLCA 1009) (a) An organization that has been converted pursuant to sections 21-170 to 21-184 is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

(1) all property owned by the converting organization remains vested in the converted organization;

(2) all debts, obligations, or other liabilities of the converting organization continue as debts, obligations, or other liabilities of the converted organization;

(3) an action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;

(4) except as prohibited by law other than the Nebraska Uniform Limited Liability Company Act, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization;

(5) except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and

(6) except as otherwise agreed, the conversion does not dissolve a converting limited liability company for the purposes of sections 21-147 to 21-154.

(c) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability for which the converting limited liability company is liable if, before the conversion, the converting limited liability company was subject to suit in this state on the debt, obligation, or other liability.

Source: Laws 2010, LB888, § 78.
Operative date January 1, 2011.

21-179 Domestication.

(ULLCA 1010) (a) A foreign limited liability company may become a limited liability company pursuant to this section, sections 21-180 to 21-182, and a plan of domestication, if:

(1) the foreign limited liability company's governing statute authorizes the domestication;

(2) the domestication is not prohibited by the law of the jurisdiction that enacted the governing statute; and

(3) the foreign limited liability company complies with its governing statute in effecting the domestication.

(b) A limited liability company may become a foreign limited liability company pursuant to this section, sections 21-180 to 21-182, and a plan of domestication, if:

(1) the foreign limited liability company's governing statute authorizes the domestication;

(2) the domestication is not prohibited by the law of the jurisdiction that enacted the governing statute; and

(3) the foreign limited liability company complies with its governing statute in effecting the domestication.

(c) A plan of domestication must be in a record and must include:

(1) the name of the domesticating company before domestication and the jurisdiction of its governing statute;

(2) the name of the domesticated company after domestication and the jurisdiction of its governing statute;

(3) the terms and conditions of the domestication, including the manner and basis for converting interests in the domesticating company into any combination of money, interests in the domesticated company, and other consideration; and

(4) the organizational documents of the domesticated company that are, or are proposed to be, in a record.

Source: Laws 2010, LB888, § 79.
Operative date January 1, 2011.

21-180 Action on plan of domestication by domesticating limited liability company.

(ULLCA 1011) (a) A plan of domestication must be consented to:

(1) by all the members, subject to section 21-183, if the domesticating company is a limited liability company; and

(2) as provided in the domesticating company's governing statute, if the company is a foreign limited liability company.

(b) Subject to any contractual rights, after a domestication is approved, and at any time before articles of domestication are delivered to the Secretary of State for filing under section 21-181, a domesticating limited liability company may amend the plan or abandon the domestication:

(1) as provided in the plan; or

(2) except as otherwise prohibited in the plan, by the same consent as was required to approve the plan.

Source: Laws 2010, LB888, § 80.
Operative date January 1, 2011.

21-181 Filings required for domestication; effective date.

(ULLCA 1012) (a) After a plan of domestication is approved, a domesticating company shall deliver to the Secretary of State for filing articles of domestication, which must include:

(1) a statement, as the case may be, that the company has been domesticated from or into another jurisdiction;

(2) the name of the domesticating company and the jurisdiction of its governing statute;

(3) the name of the domesticated company and the jurisdiction of its governing statute;

(4) the date the domestication is effective under the governing statute of the domesticated company;

(5) if the domesticating company was a limited liability company, a statement that the domestication was approved as required by the Nebraska Uniform Limited Liability Company Act; and

(6) if the domesticating company was a foreign limited liability company, a statement that the domestication was approved as required by the governing statute of the other jurisdiction.

(b) A domestication becomes effective:

(1) when the certificate of organization takes effect, if the domesticated company is a limited liability company; and

(2) according to the governing statute of the domesticated company, if the domesticated organization is a foreign limited liability company.

Source: Laws 2010, LB888, § 81.
Operative date January 1, 2011.

21-182 Effect of domestication.

(ULLCA 1013) (a) When a domestication takes effect:

(1) the domesticated company is for all purposes the company that existed before the domestication;

(2) all property owned by the domesticating company remains vested in the domesticated company;

(3) all debts, obligations, or other liabilities of the domesticating company continue as debts, obligations, or other liabilities of the domesticated company;

(4) an action or proceeding pending by or against a domesticating company may be continued as if the domestication had not occurred;

(5) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the domesticating company remain vested in the domesticated company;

(6) except as otherwise provided in the plan of domestication, the terms and conditions of the plan of domestication take effect; and

(7) except as otherwise agreed, the domestication does not dissolve a domesticating limited liability company for the purposes of sections 21-147 to 21-154.

(b) A domesticated company that is a foreign limited liability company consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by the domesticating company, if, before the domestication, the domesticating company was subject to suit in this state on the debt, obligation, or other liability.

(c) If a limited liability company has adopted and approved a plan of domestication under section 21-179 providing for the company to be domesticated in a foreign jurisdiction, a statement surrendering the company's certificate of organization must be delivered to the Secretary of State for filing setting forth:

(1) the name of the company;

(2) a statement that the certificate of organization is being surrendered in connection with the domestication of the company in a foreign jurisdiction;

(3) a statement that the domestication was approved as required by the Nebraska Uniform Limited Liability Company Act; and

(4) the jurisdiction of formation of the domesticated foreign limited liability company.

Source: Laws 2010, LB888, § 82.
Operative date January 1, 2011.

21-183 Restrictions on approval of mergers, conversions, and domestications.

(ULLCA 1014) (a) If a member of a constituent, converting, or domesticating limited liability company will have personal liability with respect to a surviving, converted, or domesticated organization, approval or amendment of a plan of merger, conversion, or domestication are ineffective without the consent of the member, unless:

(1) the company's operating agreement provides for approval of a merger, conversion, or domestication with the consent of fewer than all the members; and

(2) the member has consented to the provision of the operating agreement.

(b) A member does not give the consent required by subsection (a) of this section merely by consenting to a provision of the operating agreement that permits the operating agreement to be amended with the consent of fewer than all the members.

Source: Laws 2010, LB888, § 83.
Operative date January 1, 2011.

21-184 Sections not exclusive.

(ULLCA 1015) Sections 21-170 to 21-184 do not preclude an entity from being merged, converted, or domesticated under law other than the Nebraska Uniform Limited Liability Company Act.

Source: Laws 2010, LB888, § 84.
Operative date January 1, 2011.

(k) PROFESSIONAL SERVICES AND CERTIFICATE OF REGISTRATION

21-185 Professional service; filing required; certificate of registration; contents.

(1) Each member, manager, professional employee, or agent of a limited liability company who renders a professional service shall hold a valid license or otherwise be duly authorized to render that professional service under the law of this state if such member, manager, professional employee, or agent renders a professional service within this state or under the law of the state or other jurisdiction in which such person renders the professional service.

(2) Before rendering a professional service, a limited liability company shall (a)(i) deliver to the Secretary of State for filing a certificate of registration issued to the limited liability company by the regulatory body of the particular profession for which the limited liability company is organized to do business, which certificate sets forth the name and residence address of every member, manager, professional employee, and agent of the limited liability company who is required by law to be licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business as of the last day of the month preceding the date of delivery of the certificate, and (ii) certify that all members, managers, professional employees, and agents of the limited liability company who are required by law to do so are duly licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business or (b) comply with and qualify under the procedures set forth in subsection (2) of section 21-186.

(3) The registration certificate requirements of this section and sections 21-186 to 21-188 shall apply to both limited liability companies and foreign limited liability companies.

Source: Laws 2010, LB888, § 85.
Operative date January 1, 2011.

21-186 Certificate of registration; application; contents; display; fee; electronic records; use; license verification fee; Secretary of State; duties.

(1)(a) An application for issuance of a certificate of registration shall be made by the limited liability company to the regulatory body in writing and shall contain the names of all members, managers, professional employees, and agents of the limited liability company who are required by law to be licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business, the street address at which the applicant proposes to render a professional service, and such other information as may be required by the regulatory body. If it appears to the regulatory body that each member, manager, professional employee, and agent of the applicant required by law to be licensed is licensed or otherwise authorized to practice the profession for which the applicant is organized to do business and that each member, manager, professional employee, or agent required by law to be licensed or otherwise authorized to practice the profession for which the applicant is organized to do business is not otherwise disqualified from rendering the professional service of the applicant, such regulatory body shall issue a certificate in duplicate upon a form bearing its date of issuance and prescribed by such regulatory body certifying that the proposed or existing limited liability company complies with the provisions of the Nebraska Uniform Limited

Liability Company Act and of the applicable rules and regulations of the regulatory body. Each applicant for such certificate shall pay the regulatory body a fee of twenty-five dollars for the issuance of the certificate.

(b) One copy of a certificate of registration issued pursuant to this subsection shall be prominently displayed to public view upon the premises of the principal place of business of the limited liability company, and, except as provided in subsection (2) of this section, one copy shall be delivered for filing to the Secretary of State who shall charge a fee of twenty-five dollars for filing the same. The certificate shall be delivered to the Secretary of State for filing with the certificate of organization. A certificate of registration bearing an issuance date more than twelve months old shall not be eligible for filing by the Secretary of State.

(2) When licensing records of regulatory bodies are electronically accessible to the Secretary of State, the Secretary of State shall access the records. The access of the records shall be made in lieu of a certificate of registration being prepared and issued by the regulatory body for delivery to the Secretary of State for filing. The limited liability company shall deliver to the Secretary of State for filing an application setting forth the names of all members, managers, professional employees, and agents of such limited liability company who are required by law to be licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business as of the last day of the month preceding the date of application and shall deliver to the Secretary of State for filing an annual update thereafter. The application shall be completed on a form prescribed by the Secretary of State and shall contain such other information as the Secretary of State may require. The application shall be accompanied by a license verification fee of fifty dollars.

The Secretary of State shall verify that all members, managers, professional employees, and agents who are required by law to do so are duly licensed or otherwise legally authorized to render the professional service for which the applicant is organized to do business or ancillary service as those which the limited liability company renders through electronic accessing of the regulatory body's records. If any member, manager, professional employee, or agent who is required by law to be licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business is not licensed or otherwise legally authorized to render the professional service for which the limited liability company is organized to do business, the limited liability company shall be suspended. The suspension shall remain in effect and a biennial report shall not be delivered to the Secretary of State for filing or filed by the Secretary of State until the limited liability company attests in writing that all members, managers, professional employees, or agents who are required by law to be licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business are duly licensed or otherwise legally authorized to render the professional service for which the limited liability company is organized to do business and that information is verified by the Secretary of State or all unlicensed or unauthorized members, managers, professional employees, or agents are no longer members, managers, professional employees, or agents of the limited liability company.

Source: Laws 2010, LB888, § 86.
Operative date January 1, 2011.

21-187 Certificate of registration; expiration; annual application.

Each certificate of registration issued to a limited liability company pursuant to section 21-186 shall expire by its own terms one year from the date of issuance and may not be renewed. Each limited liability company shall annually apply (1) to its regulatory body for a certificate in the manner provided in subsection (1) of section 21-186 or (2) to the Secretary of State pursuant to subsection (2) of section 21-186 if the records of the regulatory body are electronically accessible to the Secretary of State. A certificate or application shall be delivered annually to the Secretary of State for filing within thirty days before the expiration date of the last certificate or application on file in the office of the Secretary of State or the limited liability company shall be suspended. Certificates shall not be transferable or assignable.

Source: Laws 2010, LB888, § 87.
Operative date January 1, 2011.

21-188 Certificate of registration; suspension or revocation; procedure; notice.

A regulatory body may, upon a form prescribed by it, suspend or revoke any certificate of registration issued to any limited liability company pursuant to subsection (1) of section 21-186 upon the suspension or revocation of the license or other authorization to render a professional service by any member, manager, professional employee, or agent of the limited liability company who is required by law to be licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business. Notice of such suspension or revocation shall be provided to the limited liability company affected by sending by certified or registered mail a certified copy of such suspension or revocation to the limited liability company at its principal place of business set forth in the certificate so suspended or revoked. At the same time, the regulatory body shall forward by regular mail a certified copy of such suspension or revocation to the Secretary of State who shall remove the suspended or revoked registration certificate from his or her files and deliver it to the regulatory body.

Source: Laws 2010, LB888, § 88.
Operative date January 1, 2011.

21-189 Authority and duty of regulatory body licensing professionals.

Nothing in the Nebraska Uniform Limited Liability Company Act is intended to restrict or limit in any manner the authority and duty of any regulatory body licensing professionals within the state to license such persons rendering a professional service or to regulate the practice of any profession that is within the jurisdiction of the regulatory body licensing such professionals within the state notwithstanding that the person is a member, manager, professional employee, or agent of a limited liability company and rendering a professional service or engaging in the practice of the profession through a limited liability company.

Source: Laws 2010, LB888, § 89.
Operative date January 1, 2011.

21-190 Professional service; limitation.

(1) A limited liability company which renders a professional service shall render only one type of professional service and such services as may be ancillary thereto and shall not render any other type of professional service or engage in any other profession. No limited liability company may render a professional service except through its members, managers, professional employees, and agents who are duly licensed or otherwise legally authorized to render such professional service within this state.

(2) This section shall not be interpreted to include in the term professional employee, as used in the Nebraska Uniform Limited Liability Company Act, clerks, secretaries, bookkeepers, technicians, and other assistants who are not usually and ordinarily considered by custom and practice to be rendering a professional service to the public for which a license or other legal authorization is required.

Source: Laws 2010, LB888, § 90.
Operative date January 1, 2011.

21-191 Applicability to attorneys at law.

The provisions of the Nebraska Uniform Limited Liability Company Act shall be applicable to attorneys at law only to the extent and under such terms and conditions as the Supreme Court determines to be necessary and appropriate. Certificates of organization of limited liability companies organized to practice law shall contain such provisions as may be appropriate to comply with applicable rules of the court.

Source: Laws 2010, LB888, § 91.
Operative date January 1, 2011.

(l) FEES

21-192 Fees.

(1) The filing fee for all filings under the Nebraska Uniform Limited Liability Company Act, including amendments and name reservation, shall be ten dollars plus the recording fees set forth in subdivision (4) of section 33-101, except that the filing fee for filing a certificate of organization under section 21-117 and for filing an application for a certificate of authority to transact business in this state as a foreign limited liability company under section 21-156 shall be one hundred dollars plus such recording fees and ten dollars for a certificate. There shall be no recording fee collected for the filing of a biennial report required by section 21-125 or any corrections or amendments thereto.

(2) A fee of one dollar per page plus ten dollars per certificate shall be paid for a certified copy of any document on file under the act.

(3) The fees for filings under the act shall be paid to the Secretary of State and remitted by him or her to the State Treasurer. The State Treasurer shall credit two-thirds of the fees to the General Fund and one-third of the fees to the Corporation Cash Fund.

Source: Laws 2010, LB888, § 92.
Operative date January 1, 2011.

(m) NOTICE

21-193 Notice; publication required; filing.

(1) Notice of organization, amendment, merger, conversion, or domestication must be published three successive weeks in some legal newspaper of general circulation near the designated office of the limited liability company. A notice of organization must show (a) the name of the limited liability company, (b) the address of the designated office, (c) the general nature of the business to be transacted, (d) the time of commencement and termination, if any, of the limited liability company, and (e) by what members or managers the affairs of the limited liability company are to be conducted. A brief resume of any amendment, merger, conversion, or domestication of the limited liability company shall be published in the same manner and for the same period of time as notice of organization is required to be published.

(2) Whenever any limited liability company is voluntarily dissolved, notice of the dissolution shall be published as required by section 21-150.

(3) Proof of publication of any of the notices shall be filed in the office of the Secretary of State. In the event any notice described in subsection (1) of this section and required to be given pursuant to this section is not given, but is subsequently published for the required time, and proof of the publication thereof is filed in the office of the Secretary of State, the acts of the limited liability company prior to, as well as after, such publication shall be valid.

Source: Laws 2010, LB888, § 93.
Operative date January 1, 2011.

(n) MISCELLANEOUS PROVISIONS

21-194 Uniformity of application and construction.

(ULLCA 1101) In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: Laws 2010, LB888, § 94.
Operative date January 1, 2011.

21-195 Relation to Electronic Signatures in Global and National Commerce Act.

(ULLCA 1102) The Nebraska Uniform Limited Liability Company Act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

Source: Laws 2010, LB888, § 95.
Operative date January 1, 2011.

21-196 Effect on certain actions, proceedings, and rights.

(ULLCA 1103) The Nebraska Uniform Limited Liability Company Act does not affect an action commenced, proceeding brought, or right accrued before January 1, 2011.

Source: Laws 2010, LB888, § 96.
Operative date January 1, 2011.

21-197 Application to existing relationships.

(ULLCA 1104) (a) Before January 1, 2013, the Nebraska Uniform Limited Liability Company Act governs only:

(1) a limited liability company formed on or after January 1, 2011; and

(2) except as otherwise provided in subsection (c) of this section, a limited liability company formed before January 1, 2011, which elects, in the manner provided in its operating agreement or by law for amending the operating agreement, to be subject to the act and which delivers to the Secretary of State for filing a statement of election to be subject to the act pursuant to this subdivision.

(b) Except as otherwise provided in subsection (c) of this section, on and after January 1, 2013, the act governs all limited liability companies.

(c) For the purposes of applying the act to a limited liability company formed before January 1, 2011:

(1) the company's articles of organization are deemed to be the company's certificate of organization; and

(2) for the purposes of applying subdivision (11) of section 21-102 and subject to subsection (d) of section 21-112, language in the company's articles of organization designating the company's management structure operates as if that language were in the operating agreement.

Source: Laws 2010, LB888, § 97.
Operative date January 1, 2011.

ARTICLE 3

OCCUPATION TAX

Section
21-301. Domestic corporations; biennial report and fee; procedure.
21-302. Domestic corporations; biennial report; contents.
21-304. Foreign corporations; biennial report and fee; procedure.
21-305. Foreign corporations; biennial report; contents.

21-301 Domestic corporations; biennial report and fee; procedure.

(1) Each corporation organized under the laws of this state, for profit, shall make a report in writing to the Secretary of State, as of January 1, of each even-numbered year, in such form as the Secretary of State may prescribe. The report shall be signed by one of the following: The president, a vice president, a secretary, or a treasurer of the corporation. The signature may be digital or electronic if it conforms to section 86-611. The report and biennial fee shall be submitted to the Secretary of State. The report and fee shall be due on March 1 of each even-numbered year and shall become delinquent if not filed and paid by April 15 of each even-numbered year. If the Secretary of State finds that such report and biennial fee conform to the requirements of the law, the Secretary of State shall file the report. If the Secretary of State finds that the report or fee does not conform, the Secretary of State shall not file the report or accept the fee but shall return the report and fee to the corporation for any necessary corrections. A correction or amendment to the biennial report may be filed at any time.

(2) In each even-numbered year, the Secretary of State shall cause a notice to be sent either by United States mail or electronically transmitted to each

corporation for which a report and fee as described in this section has not been received as of March 1. The notice shall state that the report has not been received, that the report and fee are due on March 1, and that the corporation will be dissolved if the report and proper fee are not received by April 15.

Source: Laws 1913, c. 240, § 1, p. 745; R.S.1913, § 761; C.S.1922, § 679; C.S.1929, § 24-1701; R.S.1943, § 21-301; Laws 1967, c. 101, § 1, p. 309; Laws 1969, c. 124, § 1, p. 567; Laws 1982, LB 928, § 6; Laws 2002, LB 989, § 1; Laws 2003, LB 524, § 1; Laws 2006, LB 647, § 1; Laws 2008, LB379, § 1.

21-302 Domestic corporations; biennial report; contents.

The biennial report required under section 21-301 from a domestic corporation subject to the Business Corporation Act shall show:

(1) The exact corporate name of the corporation;

(2) The street address of the corporation's registered office and the name of its current registered agent at that office in this state. A post office box number may be provided in addition to the street address;

(3) The street address of the corporation's principal office;

(4) The names and street addresses of the corporation's directors and principal officers, which shall include the president, secretary, and treasurer;

(5) A brief description of the nature of the corporation's business;

(6) The amount of paid-up capital stock; and

(7) The change or changes, if any, in the above particulars made since the last biennial report.

Source: Laws 1913, c. 240, § 2, p. 745; R.S.1913, § 762; C.S.1922, § 680; C.S.1929, § 24-1702; R.S.1943, § 21-302; Laws 1967, c. 101, § 2, p. 309; Laws 1995, LB 109, § 195; Laws 2003, LB 524, § 2; Laws 2008, LB379, § 2.

Cross References

Business Corporation Act, see section 21-2001.

21-304 Foreign corporations; biennial report and fee; procedure.

(1) Each foreign corporation for profit, doing business in this state, owning or using a part or all of its capital or plant in this state, and subject to compliance with all other provisions of law shall, in addition to all other statements required by law, make a biennial report to the Secretary of State, as of January 1 of each even-numbered year, in such form as the Secretary of State may prescribe. The report shall be signed by one of the following: The president, a vice president, a secretary, or a treasurer of the corporation. The signature may be digital or electronic if it conforms to section 86-611. The report and biennial fee shall be submitted to the Secretary of State. The report and fee shall be due on March 1 of each even-numbered year and shall become delinquent if not filed and paid by April 15 of each even-numbered year. If the Secretary of State finds that such report and biennial fee conform to the requirements of the law, the Secretary of State shall file the report. If the Secretary of State finds that the report and fee do not conform, the Secretary of State shall not file the report or accept the fee but shall return the report and fee to the corporation

for any necessary corrections. A correction or amendment to the biennial report may be filed at any time.

(2) In each even-numbered year, the Secretary of State shall cause a notice to be sent either by United States mail or electronically transmitted to each corporation for which a report and fee as described in this section has not been received as of March 1. The notice shall state that the report has not been received, that the report and fee are due on March 1, and that the corporation will be dissolved if the report and proper fee are not received by April 15 of each even-numbered year.

Source: Laws 1913, c. 240, § 4, p. 748; R.S.1913, § 764; C.S.1922, § 682; C.S.1929, § 24-1704; R.S.1943, § 21-304; Laws 1955, c. 63, § 3, p. 203; Laws 1967, c. 101, § 4, p. 313; Laws 1969, c. 124, § 3, p. 571; Laws 1982, LB 928, § 8; Laws 2002, LB 989, § 2; Laws 2003, LB 524, § 4; Laws 2006, LB 647, § 2; Laws 2008, LB379, § 3.

21-305 Foreign corporations; biennial report; contents.

The biennial report required under section 21-304 from a foreign corporation subject to the Business Corporation Act shall show:

(1) The exact corporate name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(2) The street address of the foreign corporation's registered office and the name of its current registered agent at that office in this state. A post office box number may be provided in addition to the street address;

(3) The street address of the foreign corporation's principal office;

(4) The names and street addresses of the foreign corporation's directors and principal officers which shall include the president, secretary, and treasurer;

(5) A brief description of the nature of the foreign corporation's business;

(6) The value of the property owned and used by the foreign corporation in Nebraska and where such property is situated; and

(7) The change or changes, if any, in the above particulars made since the last annual report.

Source: Laws 1913, c. 240, § 5, p. 749; R.S.1913, § 765; C.S.1922, § 683; C.S.1929, § 24-1705; R.S.1943, § 21-305; Laws 1967, c. 101, § 5, p. 313; Laws 1995, LB 109, § 196; Laws 2003, LB 524, § 5; Laws 2008, LB379, § 4.

Cross References

Business Corporation Act, see section 21-2001.

ARTICLE 13

COOPERATIVE COMPANIES

(a) GENERAL PROVISIONS

Section
21-1302. Cooperative corporation; articles of incorporation; contents.

(a) GENERAL PROVISIONS

21-1302 Cooperative corporation; articles of incorporation; contents.

Every such cooperative company shall provide in its articles of incorporation:

(1) That the word cooperative shall be included in its corporate name and that it proposes to organize as a cooperative corporation;

(2) That dividends on the capital stock shall be fixed but shall not exceed eight percent per annum of the amount actually paid thereon;

(3) That the net earnings or savings of the company remaining after making the distribution provided in subdivision (2) of this section, if any, shall be distributed on the basis of or in proportion to the amount or value of property bought from or sold to members, or members and other patrons, or of labor performed or other services rendered to the corporation. This subdivision shall not be so interpreted as to prevent a cooperative company from declaring patronage dividends at different rates upon different classes or kinds or varieties of goods handled. This subdivision and subdivision (2) of this section shall not be so interpreted as to prevent a company from appropriating funds for the promotion of cooperation and improvement in agriculture;

(4) That the articles of incorporation or the bylaws of the company shall give a detailed statement of the method followed in distributing earnings or savings;

(5) The registered office and street address of such registered office;

(6) The current registered agent and the name and street address of such registered agent. A post office box number may be provided in addition to the street address; and

(7) The name and street address of each incorporator.

Source: Laws 1921, c. 28, § 2, p. 161; C.S.1922, § 643; Laws 1925, c. 79, § 2, p. 243; C.S.1929, § 24-1302; R.S.1943, § 21-1302; Laws 1963, c. 102, § 2, p. 423; Laws 1967, c. 103, § 1, p. 318; Laws 2008, LB379, § 5.

ARTICLE 14

NONSTOCK COOPERATIVE MARKETING COMPANIES

Section
21-1403. Articles of incorporation; contents.

21-1403 Articles of incorporation; contents.

Every nonstock cooperative association organized under the provisions of Chapter 21, article 14, shall provide in its articles of incorporation: (1) That the words nonstock cooperative shall be included in its corporate name and that it proposes to organize as a cooperative association; (2) the objects or purposes for which it is formed; (3) that the net earnings or savings of the association, if any, shall be distributed on the basis of, or in proportion to, the amount or value of property bought from or sold to members, or members and other patrons, or of labor performed or other services rendered to the corporation, except that this subdivision shall not be so interpreted as to prevent a cooperative company from declaring patronage dividends at different rates upon different classes or kinds or varieties of goods handled; (4) that the articles of incorporation or the bylaws of the company shall give a detailed statement of the method followed in distributing earnings or savings; (5) the registered office

and street address of such registered office; (6) the current registered agent and the name and street address of such registered agent. A post office box number may be provided in addition to the street address; and (7) the name and street address of each incorporator.

Source: Laws 1925, c. 80, § 3, p. 248; C.S.1929, § 24-1403; R.S.1943, § 21-1403; Laws 1967, c. 104, § 1, p. 320; Laws 1981, LB 283, § 3; Laws 2008, LB379, § 6.

ARTICLE 17

CREDIT UNIONS

(a) CREDIT UNION ACT

Section
21-1725.01. New credit union; branch credit union; application; procedure; hearing.
21-17,115. Credit union organized under laws of Nebraska; rights, powers, privileges, and immunities of federal credit union; exception.

(a) CREDIT UNION ACT

21-1725.01 New credit union; branch credit union; application; procedure; hearing.

(1) Upon receiving an application to establish a new credit union, 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 credit union. 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 filing the application 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 to establish a branch of a credit union, 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 credit union warrants a hearing. If the director determines that the condition of the credit union 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 would be located and (b) give notice of such application to all financial institutions located within the county where the proposed credit union branch would be located and to such other interested parties as the director may determine. If the director receives any substantive objection to the proposed credit union 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 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 filing of the application unless the applicant agrees to a later date.

(3) The director may, in his or her discretion, hold a public hearing on amendments to a credit union's articles of association or bylaws which are brought before the department.

(4) 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.

(5) The expense of any publication and mailing required by this section shall be paid by the applicant.

Source: Laws 2002, LB 957, § 17; Laws 2003, LB 217, § 30; Laws 2005, LB 533, § 30; Laws 2010, LB890, § 13.
Operative date July 15, 2010.

21-17,115 Credit union organized under laws of Nebraska; rights, powers, privileges, and immunities of federal credit union; exception.

Notwithstanding any of the other provisions of the Credit Union Act or any other Nebraska statute, any credit union incorporated under the laws of the State of Nebraska and organized under the provisions of the act shall have all the rights, powers, privileges, benefits, and immunities which may be exercised as of January 1, 2010, by a federal credit union doing business in Nebraska on the condition that such rights, powers, privileges, benefits, and immunities shall not relieve such credit union from payment of state taxes assessed under any applicable laws of this state.

Source: Laws 1977, LB 246, § 5; Laws 1978, LB 772, § 1; Laws 1979, LB 307, § 1; Laws 1980, LB 793, § 1; Laws 1981, LB 60, § 1; Laws 1982, LB 775, § 2; Laws 1983, LB 143, § 1; Laws 1984, LB 643, § 1; Laws 1985, LB 430, § 1; Laws 1986, LB 963, § 1; Laws 1987, LB 197, § 1; Laws 1988, LB 957, § 1; Laws 1989, LB 126, § 1; Laws 1990, LB 1017, § 1; Laws 1991, LB 97, § 1; Laws 1992, LB 984, § 1; Laws 1993, LB 122, § 1; Laws 1994, LB 878, § 1; Laws 1995, LB 76, § 1; R.S.Supp.,1995, § 21-17,120.01; Laws 1996, LB 948, § 115; Laws 1997, LB 152, § 1; Laws 1998, LB 1321, § 75; Laws 1999, LB 278, § 1; Laws 2000, LB 932, § 27; Laws 2001, LB 53, § 26; Laws 2002, LB 957, § 20; Laws 2003, LB 217, § 32; Laws 2004, LB 999, § 21; Laws 2005, LB 533, § 32; Laws 2006, LB 876, § 24; Laws 2007, LB124, § 21; Laws 2008, LB851, § 17; Laws 2009, LB327, § 15; Laws 2010, LB890, § 14.
Operative date March 4, 2010.

ARTICLE 19

NEBRASKA NONPROFIT CORPORATION ACT

(a) GENERAL PROVISIONS

Section
21-1905. Fees.

(b) ORGANIZATION

21-1921. Articles of incorporation.

(e) OFFICE AND AGENT

21-1934. Registered office; registered agent.

Section
21-1935. Change of registered office or registered agent.

(n) FOREIGN CORPORATIONS

21-19,148. Foreign corporation; application for certificate of authority.
21-19,152. Foreign corporation; registered office; registered agent.
21-19,153. Foreign corporation; change of registered office or registered agent.
21-19,161. Foreign corporation; domestication procedure.

(o) RECORDS AND REPORTS

21-19,172. Biennial report; contents.

(a) GENERAL PROVISIONS

21-1905 Fees.

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered for filing:

(1)(i) Articles of incorporation or (ii) documents relating to domestication...$10.00

(2) Application for reserved name...$25.00

(3) Notice of transfer of reserved name...$25.00

(4) Application for registered name...$25.00

(5) Application for renewal of registered name...$25.00

(6) Corporation's statement of change of registered agent or registered office or both...$5.00

(7) Agent's statement of change of registered office for each affected corporation...$25.00 (not to exceed a total of $1,000)

(8) Agent's statement of resignation...no fee

(9) Amendment of articles of incorporation...$5.00

(10) Restatement of articles of incorporation with amendments...$5.00

(11) Articles of merger...$5.00

(12) Articles of dissolution...$5.00

(13) Articles of revocation of dissolution...$5.00

(14) Certificate of administrative dissolution...no fee

(15) Application for reinstatement following administrative dissolution...$5.00

(16) Certificate of reinstatement...no fee

(17) Certificate of judicial dissolution...no fee

(18) Certificate of authority...$10.00

(19) Application for amended certificate of authority...$5.00

(20) Application for certificate of withdrawal...$5.00

(21) Certificate of revocation of authority to transact business...no fee

(22) Biennial report...$20.00

(23) Articles of correction...$5.00

(24) Application for certificate of good standing...$10.00

(25) Any other document required or permitted to be filed by the Nebraska Nonprofit Corporation Act...$5.00

(i) Amendments...$5.00

(ii) Mergers...$5.00

(b) The Secretary of State shall collect a recording fee of five dollars per page in addition to the fees set forth in subsection (a) of this section.

(c) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

(1) $1.00 per page; and

(2) $10.00 for the certificate.

(d) All fees set forth in this section shall be collected by the Secretary of State and remitted to the State Treasurer and credited two-thirds to the General Fund and one-third to the Corporation Cash Fund.

Source: Laws 1996, LB 681, § 5; Laws 2008, LB907, § 1.

(b) ORGANIZATION

21-1921 Articles of incorporation.

(a) The articles of incorporation shall set forth:

(1) A corporate name for the corporation that satisfies the requirements of section 21-1931;

(2) One of the following statements:

(i) This corporation is a public benefit corporation;

(ii) This corporation is a mutual benefit corporation; or

(iii) This corporation is a religious corporation;

(3) The street address of the corporation's initial registered office and the name of its initial registered agent at that office. A post office box number may be provided in addition to the street address;

(4) The name and street address of each incorporator;

(5) Whether or not the corporation will have members; and

(6) Provisions not inconsistent with law regarding the distribution of assets on dissolution.

(b) The articles of incorporation may set forth:

(1) The purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;

(2) The names and street addresses of the individuals who are to serve as the initial directors;

(3) Provisions not inconsistent with law regarding:

(i) Managing and regulating the affairs of the corporation;

(ii) Defining, limiting, and regulating the powers of the corporation, its board of directors, and members (or any class of members); and

(iii) The characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members.

(4) Any provision that under the Nebraska Nonprofit Corporation Act is required or permitted to be set forth in the bylaws.

(c) Each incorporator and director named in the articles must sign the articles.

(d) The articles of incorporation need not set forth any of the corporate powers enumerated in the act.

Source: Laws 1996, LB 681, § 21; Laws 2008, LB379, § 7.

(e) OFFICE AND AGENT

21-1934 Registered office; registered agent.

Each corporation must continuously maintain in this state:

(1) A registered office with the same street address as that of the registered agent. A post office box number may be provided in addition to the street address of the registered agent; and

(2) A registered agent, who may be:

(i) An individual who resides in this state and whose office is identical with the registered office;

(ii) A domestic business or nonprofit corporation whose office is identical with the registered office; or

(iii) A foreign business or nonprofit corporation authorized to transact business in this state whose office is identical with the registered office.

Source: Laws 1996, LB 681, § 34; Laws 2008, LB379, § 8.

21-1935 Change of registered office or registered agent.

(a) A corporation may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(1) The name of the corporation;

(2) The street address of its current registered office;

(3) If the current registered office is to be changed, the street address of the new registered office;

(4) The name and street address of its current registered agent. A post office box number may be provided in addition to the street address;

(5) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and

(6) That after the change or changes are made, the addresses of its registered office and the office of its registered agent will be identical.

(b) If the street address or post office box number of a registered agent's office is changed, the registered agent may change the street address, or, if one exists, the post office box number, of the registered office of any corporation for which the registered agent is the registered agent by notifying the corporation in writing of the change and by signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (a) of this section and recites that the corporation has been notified of the change.

Source: Laws 1996, LB 681, § 35; Laws 2008, LB379, § 9.

(n) FOREIGN CORPORATIONS

21-19,148 Foreign corporation; application for certificate of authority.

(a) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State. The application must set forth:

(1) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section 21-19,151;

(2) The name of the state or country under whose law it is incorporated;

(3) The date of incorporation and period of duration;

(4) The street address of its principal office;

(5) The street address of its registered office in this state and the name of its current registered agent at that office. A post office box number may be provided in addition to the street address;

(6) The names and street addresses of its current directors and officers;

(7) Whether the foreign corporation has members; and

(8) Whether the corporation, if it had been incorporated in this state, would be a public benefit, mutual benefit, or religious corporation.

(b) The foreign corporation shall deliver with the completed application a certificate of existence (or a document of similar import) duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose law it is incorporated. Such certificate or document shall not bear a date of more than sixty days prior to the date the application is filed in this state.

Source: Laws 1996, LB 681, § 148; Laws 2008, LB379, § 10.

21-19,152 Foreign corporation; registered office; registered agent.

Each foreign corporation authorized to transact business in this state must continuously maintain in this state:

(1) A registered office with the same address as that of its current registered agent. A post office box number may be provided in addition to the street address of the registered agent; and

(2) A registered agent, who may be:

(i) An individual who resides in this state and whose office is identical with the registered office;

(ii) A domestic business or nonprofit corporation whose office is identical with the registered office; or

(iii) A foreign business or nonprofit corporation authorized to transact business in this state whose office is identical with the registered office.

Source: Laws 1996, LB 681, § 152; Laws 2008, LB379, § 11.

21-19,153 Foreign corporation; change of registered office or registered agent.

(a) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(1) Its name;

(2) The street address of its current registered office;

(3) If the current registered office is to be changed, the street address of its new registered office;

(4) The name and street address of its current registered agent. A post office box number may be provided in addition to the street address;

(5) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and

(6) That after the change or changes are made, the street addresses of its registered office and the office of its registered agent will be identical.

(b) If a registered agent changes the street address of its business office, the agent may change the address of the registered office of any foreign corporation for which the agent is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement of change that complies with the requirements of subsection (a) of this section and recites that the corporation has been notified of the change.

Source: Laws 1996, LB 681, § 153; Laws 2008, LB379, § 12.

21-19,161 Foreign corporation; domestication procedure.

In lieu of compliance with section 21-19,146, relating to the authorization of foreign corporations to transact business in this state, any corporation organized under the laws of any other state or states, which has heretofore filed, or which may hereafter file, with the Secretary of State of this state, a copy certified by the Secretary of State or other proper officer of the state or country under the laws of which such foreign corporation is formed, of its charter or articles of association or incorporation, together with all amendments to such date and the street address of its registered office in this state and the name and street address and, if one exists, a post office box number, of its current registered agent at that office, on filing with the Secretary of State a certified copy of a resolution adopted by its board of directors, including the date the resolution was adopted, accepting and agreeing to be bound by the provisions of the Nebraska Nonprofit Corporation Act, with respect to its property and business operations within this state, shall become and be a body corporate of this state.

Source: Laws 1996, LB 681, § 161; Laws 2008, LB379, § 13.

(o) RECORDS AND REPORTS

21-19,172 Biennial report; contents.

(a) Commencing in 1999 and each odd-numbered year thereafter, each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the Secretary of State a biennial report on a form prescribed and furnished by the Secretary of State that sets forth:

(1) The name of the corporation and the state or country under whose law it is incorporated;

(2) The street address of its registered office and the name of its current registered agent at the office in this state. A post office box number may be provided in addition to the street address;

(3) The street address of its principal office;

(4) The names and business or residence addresses of its directors and principal officers;

(5) A brief description of the nature of its activities;

(6) Whether or not it has members;

(7) If it is a domestic corporation, whether it is a public benefit, mutual benefit, or religious corporation; and

(8) If it is a foreign corporation, whether it would be a public benefit, mutual benefit, or religious corporation had it been incorporated in this state.

(b) The information in the biennial report must be current on the date the biennial report is executed on behalf of the corporation.

(c) The first biennial report must be delivered to the Secretary of State between January 1 and April 1 of the odd-numbered year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent biennial reports must be delivered to the Secretary of State between January 1 and April 1 of the following odd-numbered years. For purposes of the Nebraska Nonprofit Corporation Act, the biennial report is due on April 1 of the odd-numbered year in which it must be delivered to the Secretary of State as required by this section.

(d) If a biennial report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within thirty days after the effective date of notice, it is deemed to be timely filed.

(e) Upon the delivery of the biennial report as provided in this section, the Secretary of State shall charge and collect a fee as prescribed in section 21-1905. For purposes of the Nebraska Nonprofit Corporation Act, the fee is due on April 1 of the odd-numbered year in which the biennial report must be delivered to the Secretary of State as required by this section.

(f) Biennial reports shall be filed in 1997 pursuant to sections 21-1981 and 21-1982 (Reissue 1991) as if such sections had not been repealed by Laws 1996, LB 681. Fees, including penalties, due or delinquent prior to 1999 shall be paid pursuant to section 21-1982 (Reissue 1991) as if such section had not been repealed by Laws 1996, LB 681.

Source: Laws 1996, LB 681, § 172; Laws 2008, LB379, § 14.

ARTICLE 20

BUSINESS CORPORATION ACT

Cross References

For provisions relating to disclosure of confidential information, see section 8-1401.

(a) GENERAL PROVISIONS

Section
21-2003. Filing requirements.
21-2005. Fees.
21-2014. Terms, defined.
21-2015. Notice.

(b) INCORPORATION

21-2018. Articles of incorporation.

Section

(e) OFFICE AND AGENT

21-2032. Change of registered office or registered agent.

(g) SHAREHOLDERS

21-2060. Proxies.

(n) FOREIGN CORPORATIONS

21-20,170. Foreign corporation; certificate of authority; application.
21-20,175. Foreign corporation; change of registered office or registered agent.
21-20,177. Foreign corporation; service; consent to service of search warrant or subpoena.
21-20,179. Foreign corporation; revocation of certificate of authority; grounds.
21-20,181.01. Foreign corporation; domestication; procedure.

(o) RECORDS AND REPORTS

21-20,186. Financial statements for shareholders.

(a) GENERAL PROVISIONS

21-2003 Filing requirements.

(1) A document shall satisfy the requirements of this section and of any other provision of law that adds to or varies these requirements to be entitled to filing by the Secretary of State.

(2) The Business Corporation Act shall require or permit filing the document in the office of the Secretary of State.

(3) The document shall contain the information required by the act. It may contain other information as well.

(4) The document shall be typewritten or printed.

(5) The document shall be in the English language. A corporate name shall not be required to be in English if written in English letters or Arabic or Roman numerals. The certificate of existence required of foreign corporations shall not be required to be in English if accompanied by a reasonably authenticated English translation.

(6) The document shall be executed:

(a) By the chairperson of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(b) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(7) The person executing the document shall sign it and state beneath or opposite his or her signature his or her name and the capacity in which he or she signs. The document may, but shall not be required to, contain (a) the corporate seal, (b) an attestation by the secretary or an assistant secretary, and (c) an acknowledgment, verification, or proof.

(8) If the Secretary of State has prescribed a mandatory form for the document under section 21-2004, the document shall be in or on the prescribed form.

(9) The document shall be delivered to the Secretary of State for filing and shall be accompanied by one exact or conformed copy, except as provided in

sections 21-2033 and 21-20,176, the correct filing fee, and any tax, license fee, or penalty required by law.

Source: Laws 1995, LB 109, § 3; Laws 2009, LB528, § 1; Laws 2010, LB791, § 2.
Effective date July 15, 2010.

Cross References

Occupation tax, see Chapter 21, article 3.

21-2005 Fees.

(1) The Secretary of State shall collect the fees prescribed by this section when the documents described in this subsection are delivered to him or her for filing:

(a) Articles of incorporation or documents relating to domestication:

(i) If the capital stock is $10,000 or less, the fee shall be $60;

(ii) If the capital stock is more than $10,000 but does not exceed $25,000, the fee shall be $100;

(iii) If the capital stock is more than $25,000 but does not exceed $50,000, the fee shall be $150;

(iv) If the capital stock is more than $50,000 but does not exceed $75,000, the fee shall be $225;

(v) If the capital stock is more than $75,000 but does not exceed $100,000, the fee shall be $300; and

(vi) If the capital stock is more than $100,000, the fee shall be $300, plus $3 additional for each $1,000 in excess of $100,000.

For purposes of computing this fee, the capital stock of a corporation organized under the laws of any other state that domesticates in this state, and which stock does not have a par value, shall be deemed to have a par value of an amount per share equal to the amount paid in as capital for each of such shares as are then issued and outstanding, and in no event less than one dollar per share.

(b) Articles of incorporation or documents relating to domestication if filed by an insurer holding a certificate of authority issued by the Director of Insurance, the fee shall be $300.

(c) Application for reserved name...$25

(d) Notice of transfer of reserved name...$25

(e) Application for registered name...$25

(f) Application for renewal of registered name...$25

(g) Corporation's statement of change of registered agent or registered office or both...$25

(h) Agent's statement of change of registered office for each affected corporation...$25 not to exceed a total of...$1,000

(i) Agent's statement of resignation...No fee

(j) Amendment of articles of incorporation...$25

(k) Restatement of articles of incorporation...$25 with amendment of articles...$25

(l) Articles of merger or share exchange...$25

(m) Articles of dissolution...$45

(n) Articles of revocation of dissolution...$25

(o) Certificate of administrative dissolution...No fee

(p) Application for reinstatement...$25

(q) Certificate of reinstatement...No fee

(r) Certificate of judicial dissolution...No fee

(s) Application for certificate of authority...$130

(t) Application for amended certificate of authority...$25

(u) Application for certificate of withdrawal...$25

(v) Certificate of revocation of authority to transact business...No fee

(w) Articles of correction...$25

(x) Application for certificate of existence or authorization...$25

(y) Any other document required or permitted to be filed by the Business Corporation Act...$25.

(2) The Secretary of State shall collect a recording fee of five dollars per page in addition to the fees set forth in subsection (1) of this section.

(3) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

(a) One dollar per page for copying; and

(b) Ten dollars for the certificate.

(4) All fees set forth in this section shall be collected by the Secretary of State and remitted to the State Treasurer and credited two-thirds to the General Fund and one-third to the Corporation Cash Fund.

Source: Laws 1995, LB 109, § 5; Laws 1996, LB 1036, § 5; Laws 2007, LB117, § 1; Laws 2008, LB907, § 2.

21-2014 Terms, defined.

For purposes of the Business Corporation Act, unless the context otherwise requires:

(1) Articles of incorporation shall include amended and restated articles of incorporation and articles of merger;

(2) Authorized shares shall mean the shares of all classes a domestic or foreign corporation is authorized to issue;

(3) Conspicuous shall mean so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, shall be considered conspicuous;

(4) Corporation or domestic corporation shall mean a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of the act;

(5) Deliver or delivery shall mean any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission;

(6) Distribution shall mean a direct or indirect transfer of money or other property, except a corporation's own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend, a purchase, redemption, or other acquisition of shares, a distribution of indebtedness, or otherwise;

(7) Effective date of notice shall have the same meaning as in section 21-2015;

(8) Electronic transmission or electronically transmitted shall mean any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient;

(9) Employee shall include an officer but not a director. A director may accept duties that make him or her also an employee;

(10) Entity shall include corporation and foreign corporation, not-for-profit corporation, limited liability company, profit and not-for-profit unincorporated association, business trust, estate, partnership, trust, two or more persons having a joint or common economic interest, state, United States, and foreign government;

(11) Foreign corporation shall mean a corporation for profit incorporated under a law other than the law of this state;

(12) Governmental subdivision shall include authority, county, district, and municipality;

(13) Individual shall include the estate of an incompetent or deceased individual;

(14) Notice shall have the same meaning as in section 21-2015;

(15) Person shall include individual and entity;

(16) Principal office shall mean the office, in or out of this state, so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located;

(17) Proceeding shall include civil suit or action and criminal, administrative, and investigatory action;

(18) Record date shall mean the date established under sections 21-2035 to 21-2050 or 21-2051 to 21-2077 on which a corporation determines the identity of its shareholders and their shareholdings for purposes of the act. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed;

(19) Secretary shall mean the corporate officer to whom the board of directors has delegated responsibility under subsection (3) of section 21-2097 for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation;

(20) Share shall mean the unit into which the proprietary interests in a corporation are divided;

(21) Shareholder shall mean the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation;

(22) State, when referring to a part of the United States, shall include a state and commonwealth, and their agencies and governmental subdivisions, and a

territory and insular possession, and their agencies and governmental subdivisions, of the United States;

(23) Subscriber shall mean a person who subscribes for shares in a corporation, whether before or after incorporation;

(24) United States shall include district, authority, bureau, commission, department, and any other agency of the United States; and

(25) Voting group shall mean all shares of one or more classes or series that under the articles of incorporation or the act are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or the act to vote generally on the matter are for that purpose a single voting group.

Source: Laws 1995, LB 109, § 14; Laws 2009, LB528, § 2.

21-2015 Notice.

(1) Notice under the Business Corporation Act shall be in writing unless oral notice is reasonable under the circumstances. Notice by electronic transmission is written notice.

(2) Notice may be communicated in person, by mail or other method of delivery, or by telephone or other electronic means. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published or by radio, television, or other form of public broadcast communication.

(3) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, shall be effective (a) when mailed, if mailed postage prepaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders, or (b) when electronically transmitted to the shareholder in a manner authorized by the shareholder. Notice by a public corporation to its shareholder shall be effective if the notice is addressed to the shareholder or group of shareholders in a manner permitted by rules and regulations adopted and promulgated under the federal Securities Exchange Act of 1934 if the public corporation has first received affirmative written consent or implied consent required under such rules and regulations.

(4) Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office, shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(5) Except as provided in subsection (3) of this section, written notice, if in a comprehensible form, shall be effective at the earliest of the following:

(a) When received;

(b) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postage prepaid and correctly addressed; or

(c) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) Oral notice shall be effective when communicated if communicated in a comprehensible manner.

(7) If the act prescribes notice requirements for particular circumstances, those requirements shall govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of the act, those requirements shall govern.

Source: Laws 1995, LB 109, § 15; Laws 2009, LB528, § 3.

(b) INCORPORATION

21-2018 Articles of incorporation.

(1) The articles of incorporation shall set forth:

(a) The corporate name for the corporation that satisfies the requirements of section 21-2028;

(b) The number of shares the corporation is authorized to issue and, if such shares are to consist of one class only, the par value of each of such shares or, if such shares are to be divided into classes, the number of shares of each class and a statement of the par value of the shares of each such class;

(c) The street address of the corporation's initial registered office and the name of its initial registered agent at that office. A post office box number may be provided in addition to the street address;

(d) The name and street address of each incorporator; and

(e) Any provision limiting or eliminating the requirement to hold an annual meeting of the shareholders if the corporation is registered or intends to register as an investment company under the federal Investment Company Act of 1940. The provision shall not be effective if such corporation does not become or ceases to be so registered.

(2) The articles of incorporation may set forth:

(a) The names and street addresses of the individuals who are to serve as the initial directors;

(b) Provisions not inconsistent with law regarding:

(i) The purpose or purposes for which the corporation is organized;

(ii) Managing the business and regulating the affairs of the corporation;

(iii) Defining, limiting, and regulating the powers of the corporation, its board of directors, and its shareholders; and

(iv) The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;

(c) Any provision that under the Business Corporation Act is required or permitted to be set forth in the bylaws;

(d) A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for:

(i) The amount of a financial benefit received by a director to which he or she is not entitled;

(ii) An intentional infliction of harm on the corporation or the shareholders;

(iii) A violation of section 21-2096; or

(iv) An intentional violation of criminal law; and

(e) A provision permitting or making obligatory indemnification of a director for liability, as defined in section 21-20,102, to any person for any action taken, or any failure to take any action, as a director, except liability for (i) receipt of a financial benefit to which he or she is not entitled, (ii) an intentional infliction of harm on the corporation or its shareholders, (iii) a violation of section 21-2096, or (iv) an intentional violation of criminal law.

(3) The articles of incorporation shall not be required to set forth any of the corporate powers enumerated in the act.

Source: Laws 1995, LB 109, § 18; Laws 2008, LB379, § 15.

(e) OFFICE AND AGENT

21-2032 Change of registered office or registered agent.

(1) A corporation may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(a) The name of the corporation;

(b) The street address of its current registered office;

(c) If the current registered office is to be changed, the street address of the new registered office;

(d) The name and street address of its current registered agent. A post office box number may be provided in addition to the street address;

(e) If the current registered agent is to be changed, the name of the new registered agent and the new registered agent's written consent, either on the statement or attached to it, to the appointment; and

(f) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(2) If a registered agent changes the street address or post office box number of his or her business office, he or she may change the street address, or, if one exists, the post office box number, of the registered office of any corporation for which he or she is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change.

Source: Laws 1995, LB 109, § 32; Laws 2008, LB379, § 16.

(g) SHAREHOLDERS

21-2060 Proxies.

(1) A shareholder may vote his or her shares in person or by proxy.

(2) A shareholder or the shareholder's agent or attorney in fact may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by an electronic transmission. An electronic transmission shall contain or be accompanied by information from which one can determine that the shareholder or the shareholder's agent or attorney in fact authorized the transmission.

(3) An appointment of a proxy shall be effective when a signed appointment form or an electronic transmission of the appointment is received by the

inspector of election or the secretary or other officer or agent of the corporation authorized to tabulate votes. An appointment shall be valid for eleven months unless a longer period is expressly provided in the appointment form or electronic transmission.

(4) An appointment of a proxy shall be revocable by the shareholder unless the appointment form or electronic transmission conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest shall include the appointment of:

(a) A pledgee;

(b) A person who purchased or agreed to purchase the shares;

(c) A creditor of the corporation who extended it credit under terms requiring the appointment;

(d) An employee of the corporation whose employment contract requires the appointment; or

(e) A party to a voting agreement created under section 21-2068.

(5) The death or incapacity of the shareholder appointing a proxy shall not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his or her authority under the appointment.

(6) An appointment made irrevocable under subsection (4) of this section shall be revoked when the interest with which it is coupled is extinguished.

(7) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if he or she did not know of its existence when he or she acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(8) Subject to section 21-2062 and to any express limitation on the proxy's authority appearing on the face of the appointment form or electronic transmission, a corporation shall be entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

Source: Laws 1995, LB 109, § 60; Laws 2009, LB528, § 4.

(n) FOREIGN CORPORATIONS

21-20,170 Foreign corporation; certificate of authority; application.

(1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State for filing. The application shall set forth:

(a) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section 21-20,173;

(b) The name of the state or country under whose law the foreign corporation is incorporated;

(c) The date of incorporation and period of duration;

(d) The street address of its principal office;

(e) The street address of its registered office in this state and the name of its current registered agent at that office. A post office box number may be provided in addition to the street address; and

(f) The names and street addresses of its current directors and officers.

(2) The foreign corporation shall deliver with the completed application a certificate of existence, or a document of similar import, duly authenticated by the official having custody of corporate records in the state or country under whose law it is incorporated. Such certificate or document shall not bear a date of more than sixty days prior to the date the application is filed in this state.

Source: Laws 1995, LB 109, § 170; Laws 2008, LB379, § 17.

21-20,175 Foreign corporation; change of registered office or registered agent.

(1) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(a) Its name;

(b) The street address of its current registered office;

(c) If the current registered office is to be changed, the street address of its new registered office;

(d) The name and street address of its current registered agent. A post office box number may be provided in addition to the street address;

(e) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(f) After any change or changes are made, that the street addresses of its registered office and the business office of its registered agent will be identical.

(2) If a registered agent changes the street address or post office box number of his or her business office, he or she may change the street address or post office box number of the registered office of any foreign corporation for which he or she is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the Secretary of State for filing a statement of change that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change.

Source: Laws 1995, LB 109, § 175; Laws 2008, LB379, § 18.

21-20,177 Foreign corporation; service; consent to service of search warrant or subpoena.

(1) The registered agent of a foreign corporation authorized to transact business in this state shall be the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation. By being authorized to transact business in this state, the foreign corporation's agent for service of process shall also consent to service of process directed to the foreign corporation's agent in Nebraska for a search warrant issued pursuant to sections 28-807 to 28-829, or for any other validly issued and properly served subpoena, including those authorized under section 86-2,112, for records or documents that are in the possession of the foreign

corporation and are located inside or outside of this state. The consent to service of a subpoena or search warrant applies to a foreign corporation that is a party or nonparty to the matter for which the search warrant is sought.

(2) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation or the designated custodian of records at its principal office shown in its application for a certificate of authority or in its most recent annual report if the foreign corporation has:

(a) No registered agent or its registered agent cannot with reasonable diligence be served;

(b) Withdrawn from transacting business in this state under section 21-20,178; or

(c) Had its certificate of authority revoked under section 21-20,180.

(3) Service shall be perfected under subsection (2) of this section at the earliest of:

(a) The date the foreign corporation receives the mail;

(b) The date shown on the return receipt if signed on behalf of the foreign corporation; or

(c) Five days after its deposit in the United States mail as evidenced by the postmark if mailed postage prepaid and correctly addressed.

(4) This section shall not be construed to prescribe the only means or necessarily the required means of serving a foreign corporation.

Source: Laws 1995, LB 109, § 177; Laws 2009, LB97, § 1.

21-20,179 Foreign corporation; revocation of certificate of authority; grounds.

The Secretary of State may commence a proceeding under section 21-20,180 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) The foreign corporation is without a registered agent or registered office in this state for sixty days or more;

(2) The foreign corporation does not inform the Secretary of State under section 21-20,175 or 21-20,176 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation, or discontinuance;

(3) An incorporator, director, officer, or agent of the foreign corporation signed a document he or she knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing;

(4) The foreign corporation or its agent for service of process does not comply with section 21-20,177; or

(5) The Secretary of State receives a duly authenticated certificate from the official having custody of the corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or has disappeared as the result of a merger.

Source: Laws 1995, LB 109, § 179; Laws 2009, LB97, § 2.

21-20,181.01 Foreign corporation; domestication; procedure.

In lieu of compliance with section 21-20,168, relating to the authorization of foreign corporations to transact business in this state, any corporation organized under the laws of any other state or states which has heretofore filed, or which may hereafter file, with the Secretary of State of this state a copy, certified by the Secretary of State or other proper officer of the state or country under the laws of which such foreign corporation is formed, of its charter or articles of association or incorporation, together with all amendments to such date, the street address of its registered office in this state and the name and street address and, if one exists, a post office box number, of its current registered agent at that office, on filing with the Secretary of State a certified copy of a resolution adopted by its board of directors, including the date the resolution was adopted, accepting and agreeing to be bound by the provisions of the Business Corporation Act with respect to its property and business operations within this state shall become and be a body corporate of this state. If the stock is no par, a resolution of the corporation, signed by an officer of the corporation, shall state the book value of the no par stock, which in no event shall be less than one dollar per share.

Source: Laws 1996, LB 1036, § 8; Laws 2008, LB379, § 19.

(o) RECORDS AND REPORTS

21-20,186 Financial statements for shareholders.

(1) A corporation shall furnish its shareholders annual financial statements which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for that year unless such information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements shall also be prepared on that basis.

(2) If the annual financial statements are reported upon by a public accountant, the accountant's report shall accompany the financial statements. If not, the financial statements shall be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

(a) Stating his or her reasonable belief whether the financial statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(b) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(3) A corporation shall deliver the annual financial statements to each shareholder within one hundred twenty days after the close of each fiscal year. Thereafter, on written request from a shareholder who was not delivered the statements, the corporation shall deliver to him or her the latest financial statements.

Source: Laws 1995, LB 109, § 186; Laws 2009, LB528, § 5.

ARTICLE 22
PROFESSIONAL CORPORATIONS

Section
21-2212. Death or disqualification of shareholder; purchase or redemption of shares; death or disqualification of last remaining shareholder; powers of successor in interest.
21-2216. Regulating board; certificate of registration; contents; filing; fee; display; electronic access; Secretary of State; duty; corporate suspension or dissolution; when.

21-2212 Death or disqualification of shareholder; purchase or redemption of shares; death or disqualification of last remaining shareholder; powers of successor in interest.

(1) The articles of incorporation or the bylaws of the professional corporation shall provide for the purchase or redemption of the shares of any shareholder upon his or her death or disqualification to render the professional services of the professional corporation within this state.

(2) Unless otherwise provided in the articles of incorporation or the bylaws of the professional corporation, upon the death or disqualification of the last remaining shareholder of a professional corporation, a successor in interest to such deceased or disqualified shareholder may dissolve the corporation and wind up and liquidate its business and affairs, notwithstanding the fact that such successor in interest could not have become a shareholder of the professional corporation. The successor in interest may file articles of dissolution with the Secretary of State in accordance with section 21-20,153. Thereafter, the successor in interest may wind up and liquidate the corporation's business and affairs in accordance with section 21-20,155 and notify claimants in accordance with sections 21-20,156 and 21-20,157.

Source: Laws 1969, c. 121, § 12, p. 558; Laws 2010, LB759, § 1.
Effective date July 15, 2010.

21-2216 Regulating board; certificate of registration; contents; filing; fee; display; electronic access; Secretary of State; duty; corporate suspension or dissolution; when.

(1) No corporation shall open, operate, or maintain an establishment or do business for any purposes set forth in the Nebraska Professional Corporation Act without (a) filing with the Secretary of State a certificate of registration from the regulating board of the particular profession for which the professional corporation is organized to do business, which certificate shall set forth the name and residence addresses of all shareholders as of the last day of the month preceding such filing, and (b) certifying that all shareholders, directors, and officers, except the secretary and the assistant secretary, are duly licensed to render the same professional services as those for which the corporation was organized. Application for a certificate of registration shall be made by the professional corporation to the regulating board in writing and shall contain the names of all officers, directors, shareholders, and professional employees of the professional corporation, the street address at which the applicant proposes to perform professional services, and such other information as may be required by the regulating board.

(2) If it appears to the regulating board that each shareholder, officer, director, and professional employee of the applicant, except the secretary and the assistant secretary, is licensed to practice the profession of the applicant and that each shareholder, officer, director, or professional employee is not otherwise disqualified from performing the professional services of the applicant, such regulating board shall certify, in duplicate upon a form bearing its date of issuance and prescribed by such regulating board, that such proposed or existing professional corporation complies with the provisions of the act and of the applicable rules and regulations of such regulating board. Each applicant for such registration certificate shall pay such regulating board a fee of twenty-five dollars for the issuance of such duplicate certificate.

(3) One copy of such certificate shall be prominently exposed to public view upon the premises of the principal place of business of each professional corporation organized under the act, and one copy shall be filed by the professional corporation with the Secretary of State who shall charge a fee of twenty-five dollars for filing the same. The certificate from the regulating board shall be filed in the office of the Secretary of State together with the articles of incorporation. A registration certificate bearing an issuance date more than twelve months old shall not be eligible for filing with the Secretary of State.

(4) When licensing records of regulating boards are electronically accessible, the Secretary of State shall access the records. The access shall be made in lieu of the certificate of registration or registration certificate being prepared and issued by the regulating board. The professional corporation shall file with the Secretary of State an application setting forth the name and residence addresses of all officers, directors, shareholders, and professional employees as of the last day of the month preceding the date of the application and shall file with the Secretary of State an annual update thereafter. Each application shall be accompanied by a licensure verification fee of fifty dollars. The Secretary of State shall verify that all of the directors, officers, shareholders, and professional employees listed on the application, except for the secretary and assistant secretary, are duly licensed or otherwise legally authorized to render the same professional service or an ancillary service as those for which the professional corporation was organized. Verification shall be done by electronically accessing the regulating board's licensing records. If any director, officer, shareholder, or professional employee is not licensed or otherwise legally authorized to perform the professional service that the professional corporation was organized to render, the corporation will be suspended. The biennial report and tax cannot be filed and paid in the office of the Secretary of State until the corporation attests in writing that the director, officer, shareholder, or professional employee is licensed or otherwise legally authorized to practice, which shall be verified by the Secretary of State, or is no longer a director, officer, shareholder, or professional employee of the corporation. When the biennial report and the tax become delinquent, the corporation shall be dissolved for nonpayment of taxes in compliance with section 21-323.

Source: Laws 1969, c. 121, § 16, p. 560; Laws 1971, LB 489, § 1; Laws 1973, LB 157, § 4; Laws 1976, LB 749, § 1; Laws 1982, LB 928, § 16; Laws 1992, LB 1019, § 27; Laws 1995, LB 406, § 4; Laws 2003, LB 524, § 18; Laws 2008, LB379, § 20.

ARTICLE 23

NEBRASKA INDUSTRIAL DEVELOPMENT CORPORATION ACT

Section
21-2304. Articles of incorporation; contents.

21-2304 Articles of incorporation; contents.

The articles of incorporation shall set forth: (1) The names and residences of the applicants together with a recital that each of them is an elector of and taxpayer in the local political subdivision, (2) the name of the corporation, (3) a recital that permission to organize the corporation has been granted by resolution duly adopted by the governing body of the local political subdivision and the date of the adoption of the resolution, (4) the location of the registered office of the corporation, which shall be in the local political subdivision, and the name of its current registered agent at such office, (5) the purposes for which the corporation is organized, (6) the number of directors of the corporation, (7) the period, if any, of duration of the corporation, and (8) any other matter which the applicants choose to insert in the articles of incorporation which is not inconsistent with the Nebraska Industrial Development Corporation Act or with the laws of this state. The articles of incorporation shall be subscribed and acknowledged before a notary public by each of the applicants.

Source: Laws 1972, LB 1517, § 4; Laws 1995, LB 494, § 4; Laws 2008, LB379, § 21.

ARTICLE 26

LIMITED LIABILITY COMPANIES

Section
21-2601. Act, how cited; termination.
21-2601.01. Terms, defined.
21-2604. Name.
21-2606. Articles of organization.
21-2610. Change of registered office or registered agent.
21-2611. Failure to maintain registered agent or registered office or pay annual fee.
21-2612. Liability of members, managers, and employees.
21-2632.01. Limited liability company; professional service; limitation of services.
21-2638. Foreign limited liability company; certificate of authority; application.
21-2654. Charging order; authorized; procedure; effect; powers of court.

21-2601 Act, how cited; termination.

Sections 21-2601 to 21-2654 shall be known and may be cited as the Limited Liability Company Act. The act terminates on January 1, 2013.

Source: Laws 1993, LB 121, § 1; Laws 1994, LB 884, § 25; Laws 1997, LB 44, § 7; Laws 2006, LB 647, § 4; Laws 2009, LB35, § 2; Laws 2010, LB888, § 99.
Operative date January 1, 2011.
Termination date January 1, 2013.

21-2601.01 Terms, defined.

For purposes of the Limited Liability Company Act, unless the context otherwise requires:

(1) Certificate of registration or registration certificate from or by the regulating board means either a document prepared and issued by the regulating board or the electronic accessing of the regulating board's licensing records by the Secretary of State;

(2) Professional service means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and which includes, but is not limited to, personal services rendered by a certified public accountant, public accountant, dentist, osteopathic physician, physician and surgeon, veterinarian, real estate broker, associate real estate broker, real estate salesperson, or attorney at law. For purposes of the act, those professions pertaining to the diagnosis, care, and treatment of humans shall be considered to be of the same profession; and

(3) Regulating board means a board which is charged with the licensing and regulating of the practice or profession which the limited liability company is organized to render.

Source: Laws 2006, LB 647, § 5; Laws 2008, LB379, § 22.
Termination date January 1, 2013.

21-2604 Name.

(1) The words limited liability company, ltd. liability company, or ltd. liability co., or the abbreviation L.L.C. or LLC, shall be the last words of the name of every limited liability company, and the limited liability company name may not:

(a) Contain a word or phrase which indicates or implies that it is organized for a purpose other than one or more of the purposes contained in its articles of organization; or

(b) Except as provided in subsection (2) of this section, be the same as or deceptively similar to the name of a limited liability company or corporation existing under the laws of this state or a foreign limited liability company or corporation authorized to transact business in this state or a name the exclusive right to which is reserved in any manner provided under the laws of this state.

(2) A limited liability company may apply to the Secretary of State for authorization to use a name that is deceptively similar to, upon the records of the Secretary of State, one or more of the names described in subsection (1) of this section. The Secretary of State shall authorize use of the name applied for if:

(a) The other limited liability company or business entity consents to the use in writing; or

(b) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction that establishes the applicant's right to use the name applied for in this state.

(3) Omission of the words or an abbreviation required by subsection (1) of this section in the use of the name of the limited liability company shall render any person who participates in the omission or who knowingly acquiesces in such omission liable for indebtedness, damage, or liability caused by the omission.

(4) Identification as a limited liability company in the manner required by subsection (1) of this section shall appear at the end of the name of the limited

liability company on all correspondence, stationery, checks, invoices, and documents executed by the limited liability company.

Source: Laws 1993, LB 121, § 4; Laws 1997, LB 631, § 2; Laws 2008, LB907, § 3.
Termination date January 1, 2013.

21-2606 Articles of organization.

(1) The articles of organization of a limited liability company shall set forth:

(a) The name of the limited liability company;

(b) The purpose for which the limited liability company is organized but, if the limited liability company provides a professional service, the articles of organization shall contain a statement of the profession to be practiced by the limited liability company;

(c) The address of its principal place of business in this state and the name and address of its current registered agent in this state. A post office box number may be provided in addition to the street address;

(d) The total amount of cash contributed to stated capital and a description and agreed value of property other than cash contributed;

(e) The total additional contributions agreed to be made by all members and the times at which or events upon the happening of which the contributions will be made;

(f) The right, if given, of the members to admit additional members and the terms and conditions of the admission; and

(g) If the limited liability company is to be managed by one or more managers, the names and addresses of the persons who will serve as managers until the successor is elected, or if the management of a limited liability company is reserved to the one or more classes of members, the names and addresses of such members.

(2) The articles of organization of a limited liability company may set forth:

(a) The period of its duration, which may be perpetual. If the articles of organization do not state a period of duration, the limited liability company shall have perpetual existence; and

(b) Any other provision not inconsistent with law which the members elect to set out in the articles of organization for the regulation of the internal affairs of the limited liability company, including any provisions which are required or permitted to be set out in the operating agreement of the limited liability company.

(3) It shall not be necessary to set out in the articles of organization any of the powers enumerated in the Limited Liability Company Act.

Source: Laws 1993, LB 121, § 6; Laws 1994, LB 884, § 28; Laws 1997, LB 631, § 4; Laws 2006, LB 647, § 7; Laws 2008, LB379, § 23.
Termination date January 1, 2013.

21-2610 Change of registered office or registered agent.

(1) A limited liability company, whether foreign or domestic, may change its registered office or registered agent upon filing with the Secretary of State a statement setting forth:

(a) The name of the limited liability company;

(b) The street address of its current registered office;

(c) If the address of its registered office is to be changed, the new address;

(d) The name and street address of its current registered agent. A post office box number may be provided in addition to the street address;

(e) If its registered agent is to be changed, the name of the successor registered agent;

(f) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and

(g) That the change was authorized by an affirmative vote of a majority in interest of the members of the limited liability company or in any other manner authorized by the articles of organization.

(2) The statement shall be executed by an authorized representative of the limited liability company and delivered to the Secretary of State. If the Secretary of State finds that the statement conforms to the requirements of this section, he or she shall file the statement in his or her office, and upon filing, the change of address of the registered office or the appointment of a new registered agent shall be effective.

(3) A registered agent may resign as registered agent of a limited liability company upon filing a written notice, executed in duplicate, with the Secretary of State who shall mail a copy thereof to the limited liability company at its place of business if known to the Secretary of State, otherwise at its registered office. The appointment of the registered agent shall terminate upon the expiration of thirty days after receipt of notice by the Secretary of State.

(4) If a registered agent changes the street address or post office box number for his or her business office, he or she may change the street address, or, if one exists, the post office box number, of the registered office of any limited liability company for which he or she is the registered agent by notifying the limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (1) of this section and recites that the limited liability company has been notified of the change.

Source: Laws 1993, LB 121, § 10; Laws 1994, LB 884, § 29; Laws 1997, LB 631, § 6; Laws 2006, LB 647, § 9; Laws 2008, LB379, § 24. Termination date January 1, 2013.

21-2611 Failure to maintain registered agent or registered office or pay annual fee.

If a limited liability company has failed for ninety days to appoint and maintain a registered agent in this state, has failed for ninety days after change of its registered office or registered agent to file with the Secretary of State a statement of the change, or has failed to pay any fee required by section 21-2634, it shall be deemed to be transacting business within this state without authority and to have forfeited any franchises, rights, or privileges acquired under the laws of this state. The Secretary of State shall mail a notice of failure to comply to the limited liability company at its registered office by certified mail. Unless the limited liability company comes into compliance within thirty days after the delivery of notice, the limited liability company shall be deemed to be defunct and to have forfeited its certificate of organization. A defunct

limited liability company may at any time after the forfeiture of its certificate be revived and reinstated by filing any necessary documents, paying any fees, and paying an additional fee of one hundred dollars. A revived and reinstated limited liability company shall have the same force and effect as if its existence had not been defunct.

Source: Laws 1993, LB 121, § 11; Laws 1994, LB 884, § 30; Laws 2008, LB907, § 4.
Termination date January 1, 2013.

21-2612 Liability of members, managers, and employees.

(1) The members and managers of a limited liability company shall not be liable under a judgment, decree, or order of a court or in any other manner for a debt, obligation, or liability of the limited liability company. Except as otherwise specifically set forth in the Limited Liability Company Act, no member, manager, employee, or agent of a limited liability company shall be personally liable under any judgment, decree, or order of any court, agency, or other tribunal in this or any other state, or on any other basis, for any debt, obligation, or liability of the limited liability company.

(2) Any member, manager, or employee of a limited liability company with the duty to collect, account for, or pay over any taxes imposed upon a limited liability company or with the authority to decide whether the limited liability company will pay taxes imposed upon a limited liability company shall be personally liable for the payment of such taxes in the event of willful failure on his or her part to have a limited liability company perform such act. Such taxes shall be collected in the same manner as provided under section 77-1783.01.

Source: Laws 1993, LB 121, § 12; Laws 1994, LB 884, § 31; Laws 1997, LB 631, § 7; Laws 2005, LB 216, § 1; Laws 2008, LB914, § 1.
Termination date January 1, 2013.

21-2632.01 Limited liability company; professional service; limitation of services.

A limited liability company which provides a professional service shall render only one type of professional service and such services as may be ancillary thereto and shall not engage in any other profession. No limited liability company organized under the Limited Liability Company Act may render a professional service except through its members, managers, and professional employees who are duly licensed or otherwise legally authorized to render such professional service within this state. This section shall not be interpreted to include in the term professional employee, as used in the act, clerks, secretaries, bookkeepers, technicians, and other assistants who are not usually and ordinarily considered by custom and practice to be rendering a professional service to the public for which a license or other legal authorization is required.

Source: Laws 2006, LB 647, § 12; Laws 2008, LB379, § 25.
Termination date January 1, 2013.

21-2638 Foreign limited liability company; certificate of authority; application.

Before doing business in this state, a foreign limited liability company shall obtain a certificate of authority from the Secretary of State. In order to obtain a certificate of authority, a foreign limited liability company shall submit to the

Secretary of State, together with payment of the fee required by the Limited Liability Company Act, an original executed by a member or manager, together with a duplicate original, of an application for a certificate of authority as a foreign limited liability company, setting forth:

(1) The name of the foreign limited liability company;

(2) The state or other jurisdiction or country where organized, the date of its organization, and a statement issued by an appropriate authority in that jurisdiction that the foreign limited liability company exists in good standing under the laws of the jurisdiction of its organization;

(3) The nature of the business or purposes to be conducted or promoted in this state;

(4) The address of the registered office and the name and street address of the current resident agent for service of process required to be maintained by the act. A post office box number may be provided in addition to the street address; and

(5) Such additional information as may be necessary or appropriate in order to enable the Secretary of State to determine whether such foreign limited liability company is entitled to a certificate of authority to transact business in this state and to determine and assess the fees and taxes prescribed by the laws of this state.

Source: Laws 1993, LB 121, § 38; Laws 2008, LB379, § 26.
Termination date January 1, 2013.

21-2654 Charging order; authorized; procedure; effect; powers of court.

(1) On application to a court of competent jurisdiction by any judgment creditor of a member or transferee, the court may charge the transferable interest of the judgment debtor in the limited liability company with payment of the unsatisfied amount of the judgment with interest. To the extent of the amounts so charged, the judgment creditor has only the rights of the transferee to receive any distribution to which the judgment debtor would otherwise have been entitled with respect to the interest of the judgment debtor in the limited liability company.

(2) A charging order entered pursuant to this section constitutes a lien on the judgment debtor's transferable interest in the limited liability company.

(3) To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subsection (1) of this section, the court may (a) appoint a receiver of the distribution subject to the charging order, and the receiver shall have the power to make all inquiries the judgment debtor might have made, and (b) make all other orders necessary to give effect to the charging order.

(4) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. The purchaser at the foreclosure sale only obtains the transferable interest and does not become a member of the limited liability company.

(5) At any time before completion of the foreclosure sale under subsection (4) of this section, the member or transferee whose transferable interest is subject to a charging order under subsection (1) of this section may extinguish the

charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(6) At any time before completion of the foreclosure sale under subsection (4) of this section, a limited liability company or one or more members whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

(7) This section does not deprive any member or transferee of the benefit of any exemption laws applicable to the member's or transferee's interest in the limited liability company.

(8) This section provides the exclusive remedy by which a person seeking to enforce a judgment against a member or transferee may, in the capacity of judgment creditor, satisfy the judgment from the judgment debtor's transferable interest.

Source: Laws 2009, LB35, § 1; Laws 2010, LB888, § 100.
Operative date January 1, 2011.
Termination date January 1, 2013.

ARTICLE 29

NEBRASKA LIMITED COOPERATIVE ASSOCIATION ACT

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PART 1

GENERAL PROVISIONS

21-2901 Act, how cited.

Sections 21-2901 to 21-29,134 shall be known and may be cited as the Nebraska Limited Cooperative Association Act.

Source: Laws 2007, LB368, § 1; Laws 2008, LB848, § 1.

21-2903 Terms, defined.

For purposes of the Nebraska Limited Cooperative Association Act, unless the context otherwise requires:

(1) Articles of organization includes initial, amended, and restated articles of organization. In the case of a foreign limited cooperative association, the term includes all records that:

(a) Have a function similar to articles of organization; and

(b) Are required to be filed in the office of the Secretary of State or other official having custody of articles of organization in this state or the country under whose law it is organized;

(2) Bylaws includes initial, amended, and restated bylaws;

(3) Contribution means a benefit that a person provides to a limited cooperative association in order to become a member or in the person's capacity as a member;

(4) Debtor in bankruptcy means a person that is the subject of:

(a) An order for relief under 11 U.S.C. 101 et seq., as the sections existed on January 1, 2008; or

(b) An order comparable to an order described in subdivision (4)(a) of this section under federal, state, or foreign law governing insolvency;

(5) Designated office means the office designated under section 21-2913;

(6) Distribution means a transfer of money or other property from a limited cooperative association to a member because of the member's financial rights or to a transferee of a member's financial rights. The term does not include the amounts described in section 21-2983;

(7) Domestic entity means an entity organized under the laws of this state;

(8) Entity means an association, a business trust, a company, a corporation, a cooperative, a limited cooperative association, a general partnership, a limited liability company, a limited liability partnership, or a limited partnership, domestic or foreign;

(9) Financial rights means the right to participate in allocation and distribution under sections 21-2980 and 21-2981 but does not include rights or obligations under a marketing contract governed by sections 21-2949 to 21-2952;

(10) Foreign limited cooperative association means a foreign entity organized under a law similar to the Nebraska Limited Cooperative Association Act in another jurisdiction;

(11) Foreign entity means an entity that is not a domestic entity;

(12) Governance rights means the right to participate in governance of the limited cooperative association under section 21-2928;

(13) Investor member means a member that has made a contribution to a limited cooperative association and is not permitted or required by the articles of association or bylaws to conduct patronage business with the limited cooperative association in order to receive financial rights;

(14) Limited cooperative association means an association organized under the Nebraska Limited Cooperative Association Act;

(15) Member means a person that is a patron member or investor member or both in a limited cooperative association. The term does not include a person that has dissociated as a member;

(16) Members' interest means the interest of a patron member or investor member;

(17) Members' meeting means an annual or a special members' meeting;

(18) Patron means a person or entity that conducts economic activity with a limited cooperative association which entitles the person to receive financial rights based upon patronage;

(19) Patronage means business transactions between a limited cooperative association and a person which entitles the person to receive financial rights based on the value or quantity of business done between the person and the limited cooperative association;

(20) Patron member means a person admitted as a patron member pursuant to the articles of organization or bylaws and who is permitted or required by the articles of organization or bylaws to conduct patronage business with the limited cooperative association in order to receive financial rights;

(21) Person means an individual; an entity; a trust; a governmental subdivision, agency, or instrumentality; or any other legal or commercial entity;

(22) Principal office means the office, whether or not in this state, where the principal executive office of a limited cooperative association or a foreign limited cooperative association is located;

(23) Record, used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(24) Required information means the information a limited cooperative association is required to maintain under section 21-2910;

(25) Sign means, with the present intent to authenticate a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach or logically associate an electronic symbol, sound, or process to or with a record;

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

(27) Transfer includes assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law; and

(28) Voting member means a member that, under the articles of organization or bylaws, has a right to vote on matters subject to vote by members.

Source: Laws 2007, LB368, § 3; Laws 2008, LB848, § 2.

21-2910 Required information.

A limited cooperative association shall maintain in a record at its principal office the following information:

(1) A current list showing the full name and last-known street address, mailing address, and term of office of each director and officer;

(2) A copy of the initial articles of organization and all amendments to and restatement of the articles, together with signed copies of any powers of attorney under which any articles, amendments, or restatement has been signed;

(3) A copy of the initial bylaws and all amendments to or restatement of the bylaws;

(4) A copy of any filed articles of merger or consolidation;

(5) A copy of any audited financial statements;

(6) A copy of the minutes of meetings of members and records of all actions taken by members without a meeting for the three most recent years;

(7) A current list showing the full name and last-known street and mailing addresses, separately identifying the patron members, in alphabetical order, and the investor members, in alphabetical order;

(8) A copy of the minutes of directors' meetings and records of all actions taken by directors without a meeting for the three most recent years;

(9) A record stating:

(a) The amount of cash contributed and agreed to be contributed by each member;

(b) A description and statement of the agreed value of other benefits contributed and agreed to be contributed by each member;

(c) The times at which, or events on the happening of which, any additional contributions agreed to be made by each member are to be made; and

(d) For a person that is both a patron member and an investor member, a specification of the interest the person owns in each capacity; and

(10) A copy of all communications in a record to members as a group or to any class of members as a group for the three most recent years.

Source: Laws 2007, LB368, § 10; Laws 2008, LB848, § 3.

PART 2

FILING AND REPORTS

21-2922 Certificate of good standing or authorization.

(1) The Secretary of State, upon application and payment of the required fee, shall furnish a certificate of good standing for a limited cooperative association if the records filed in the office of the Secretary of State show that the Secretary of State has filed articles of organization, the limited cooperative association is in good standing, and there has not been filed articles of dissolution.

(2) The Secretary of State, upon application and payment of the required fee, shall furnish a certificate of authorization for a foreign limited cooperative association if the records filed in the office of the Secretary of State show that the Secretary of State has filed a certificate of authority, has not revoked the certificate of authority, and has not filed a notice of cancellation pursuant to section 21-29,108.

(3) Subject to any qualification stated in the certificate, a certificate of good standing or authorization issued by the Secretary of State may be relied upon as conclusive evidence that the limited cooperative association or foreign limited cooperative association is in good standing or is authorized to transact business in this state.

Source: Laws 2007, LB368, § 22; Laws 2008, LB848, § 4.

PART 4

MEMBERS

21-2929 Members.

In order to commence business, a limited cooperative association shall have two or more patron members, except that a limited cooperative association may have only one member if the member is an entity organized under the Nebraska Limited Cooperative Association Act, the Nonstock Cooperative Marketing Act, or sections 21-1301 to 21-1339.

Source: Laws 2007, LB368, § 29; Laws 2008, LB848, § 5.

Cross References

Cooperative corporations, see section 21-1301 et seq.
Cooperative farm land companies, see section 21-1333 et seq.
Nonstock Cooperative Marketing Act, see section 21-1401.

21-2930 Becoming a member.

A person becomes a member:

(1) As provided in the articles of organization and bylaws;

(2) As the result of merger or consolidation under section 21-29,122; or

(3) With the consent of all the members.

Source: Laws 2007, LB368, § 30; Laws 2008, LB848, § 6.

21-2935 Special members' meetings.

(1) Special members' meetings shall be called:

(a) As provided in the articles of organization or bylaws;

(b) By a majority vote of the board of directors;

(c) By demand in a record signed by members holding at least twenty percent of the votes of any class or group entitled to be cast on the matter that is the purpose of the meeting; or

(d) By demand in a record signed by members holding at least twenty percent of all votes entitled to be cast on the matter that is the purpose of the meeting.

(2) Any voting member may withdraw its demand under this section before the receipt by the limited cooperative association of demands sufficient to require a special members' meeting.

(3) A special members' meeting may be held in or out of this state at the place stated in the articles of organization or bylaws or by the board of directors in accordance with the articles of organization or bylaws.

(4) Only affairs within the purpose or purposes stated pursuant to subsection (2) of section 21-2965 may be conducted at a special members' meeting.

(5) Unless otherwise provided by the articles of organization or bylaws, the presiding officer of the meeting shall be designated by the board of directors.

Source: Laws 2007, LB368, § 35; Laws 2008, LB848, § 7.

21-2939 Voting by patron members; voting by investor members.

(1) Each patron member has one vote, but the articles of organization or bylaws may provide additional voting power to members on the basis of patronage under section 21-2941 and may provide for voting by district, group, or class under section 21-2956.

(2) If the articles of organization provide for investor members, each investor member has one vote, unless the articles of organization or bylaws otherwise provide. The articles of organization or bylaws may provide for the allocation of investor member voting power by class, classes, or any combination of classes.

(3) If a limited cooperative association has both patron and investor members:

(a) The aggregate voting power of all patron members shall not be less than fifty-one percent of the entire voting power entitled to vote, but the articles of organization or bylaws may reduce the collective voting power of patron members to not less than fifteen percent of the entire voting power entitled to vote; and

(b) The entire aggregate voting power of patron members shall be voted as determined by the majority vote of patron members voting at the members' meeting.

Source: Laws 2007, LB368, § 39; Laws 2008, LB848, § 8.

PART 5

MEMBER INTEREST

21-2945 Member interest.

A member's interest:

(1) Consists of: (a) Governance rights; (b) financial rights; and (c) the right or obligation, if any, to do business with the limited cooperative association;

(2) Is personal property; and

(3) May be in certificated or uncertificated form.

Source: Laws 2007, LB368, § 45; Laws 2008, LB848, § 9.

PART 6

MARKETING CONTRACTS

21-2949 Marketing contract, defined; authority.

In this section and sections 21-2950 to 21-2952, marketing contract means a contract between a limited cooperative association and another person that need not be a patron member:

(1) Requiring the other person to sell, or deliver for sale or marketing on the person's behalf, a specified part of the person's products, commodities, or goods exclusively to or through the limited cooperative association or any facilities furnished by the association; or

(2) Authorizing the limited cooperative association to act for the person in any manner with respect to the products, commodities, or goods.

Source: Laws 2007, LB368, § 49; Laws 2008, LB848, § 10.

21-2950 Marketing contract.

(1) If a marketing contract provides for the sale of products, commodities, or goods to a limited cooperative association, the sale transfers title absolutely, except for security interests properly perfected, to the association upon delivery or at any other specific time expressly provided by the contract.

(2) A marketing contract may:

(a) Authorize a limited cooperative association to create an enforceable security interest in the products, commodities, or goods delivered; and

(b) Allow the limited cooperative association to sell the products, commodities, or goods delivered and pay the sales price on a pooled or other basis after deducting selling costs, processing costs, overhead, expenses, and other charges.

Source: Laws 2007, LB368, § 50; Laws 2008, LB848, § 11.

21-2951 Duration of marketing contract; termination.

The initial duration of a marketing contract may not exceed ten years, but the contract may be made self-renewing for additional periods not exceeding five years each. Unless the contract provides for another manner or time for termination, either party may terminate the contract by giving notice in a record at least ninety days before the end of the current term.

Source: Laws 2007, LB368, § 51; Laws 2008, LB848, § 12.

21-2952 Remedies for breach or anticipating repudiation of contract.

(1) A marketing contract may liquidate damages to be paid to a limited cooperative association for a breach or anticipatory repudiation of the marketing contract but only at an amount or at a formula that is reasonable in light of the actual or then anticipated harm caused by the breach or to be caused by the anticipatory repudiation. The provision may be enforced as liquidated damages and is not to be considered a penalty.

(2) If there is a breach or anticipatory repudiation of a marketing contract, the limited cooperative association may seek an injunction to prevent the further breach or an anticipatory repudiation of the contract and the specific performance of the contract.

(3) In the case of a marketing contract between a limited cooperative association and a patron member, the articles of organization or bylaws may also provide additional remedies for the remedies under subsections (1) and (2) of this section.

(4) Nothing in this section shall restrict a limited cooperative association from seeking any other remedy at law or equity in the enforcement of a marketing contract.

Source: Laws 2007, LB368, § 52; Laws 2008, LB848, § 13.

PART 7

DIRECTORS AND OFFICERS

21-2953 Existence and powers of board of directors.

(1) A limited cooperative association shall have a board of directors consisting of three or more directors as set forth in the articles of organization or bylaws unless the number of members is less than three. If there are fewer than three members, the number of directors shall not be less than the number of members in the limited cooperative association.

(2) The affairs of the limited cooperative association shall be managed by, or under the direction of, the board of directors. The board of directors may adopt policies and procedures that are not in conflict with the articles of organization, the bylaws, and the Nebraska Limited Cooperative Association Act.

(3) A director does not have agency authority on behalf of the limited cooperative association solely by being a director.

Source: Laws 2007, LB368, § 53; Laws 2008, LB848, § 14.

21-2955 Qualifications of directors and composition of board.

(1) A director shall be an individual or individual representative of a member that is not an individual.

(2) The articles of organization or bylaws may provide for qualification of directors subject to this section.

(3) Except as otherwise provided in the articles of organization or bylaws and subject to subsections (4) and (5) of this section, each director shall be a member of the limited cooperative association or a designee of a member that is not an individual.

(4) Unless otherwise provided in the articles of organization or bylaws, a director may be an officer or employee of the limited cooperative association.

(5) If the limited cooperative association is permitted to have nonmember directors by its articles of organization or bylaws, the number of nonmember directors shall not exceed:

(a) One director, if there are two, three, or four directors; and

(b) One-fifth of the total number of directors, if there are five or more directors.

Source: Laws 2007, LB368, § 55; Laws 2008, LB848, § 15.

21-2956 Election of directors.

(1) At least fifty percent of the board of directors of a limited cooperative association shall be elected exclusively by patron members.

(2) Subject to the provisions of subsection (1) of this section, the articles of organization or bylaws may provide for the election of all or a specified number of directors by the holders of one or more groups of classes of members' interests.

(3) Subject to the provisions of subsection (1) of this section, the articles of organization or bylaws may provide for the nomination or election of directors by geographic district directly or by district delegates.

(4) Cumulative voting is prohibited unless otherwise provided in the articles of organization or bylaws.

(5) Except as otherwise provided by the articles of organization, bylaws, or section 21-2961, member directors shall be elected at an annual members' meeting.

(6) Nonmember directors shall be elected in the same manner as member directors unless the articles of organization or bylaws provide for a different method of selection.

Source: Laws 2007, LB368, § 56; Laws 2008, LB848, § 16.

21-2959 Removal of director.

Unless the articles of organization or bylaws otherwise provide, the following rules apply:

(1) Members may remove a director with or without cause;

(2) A member or members holding at least twenty-five percent of the total voting power entitled to be voted in the election of the director may demand removal of a director by a signed petition submitted to the officer of the limited cooperative association charged with keeping its records;

(3) Upon receipt of a petition for removal of a director, an officer or the board of directors shall:

(a) Call a special members' meeting to be held within ninety days after receipt of the petition by the association; and

(b) Mail or otherwise transmit or deliver in a record to the members entitled to vote on the removal notice of the meeting which complies with section 21-2936;

(4) A director against whom a petition has been submitted shall be informed in a record of the petition within a reasonable time before the members' meeting at which the members consider the petition; and

(5) A director is removed if the votes in favor of removal are equal to or greater than the votes required to elect the director.

Source: Laws 2007, LB368, § 59; Laws 2008, LB848, § 17.

21-2960 Suspension of director by board.

(1) The board of directors may suspend a director, if, considering the director's course of conduct and the inadequacy of other available remedies, immediate suspension is necessary for the best interests of the limited cooperative association and the director is engaged in:

(a) Fraudulent conduct with respect to the limited cooperative association or its members;

(b) Gross abuse of the position of the director;

(c) Intentional infliction of harm on the limited cooperative association; or

(d) Any other behavior, act, or omission as provided by the articles of organization or bylaws.

(2) A suspension under subsection (1) of this section is effective for thirty days unless the board of directors calls and gives notice of a special members' meeting for removal of the director before the end of the thirty-day period in which case the suspension is effective until adjournment of the special meeting or the director is removed.

(3) After suspension, a director may be removed pursuant to section 21-2959.

Source: Laws 2007, LB368, § 60; Laws 2008, LB848, § 18.

21-2970 Standards of conduct and liability.

(1) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner he or she reasonably believes to be in the best interests of the limited cooperative association.

(2) In discharging his or her duties, a director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the limited cooperative association whom the director reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(c) A committee of the board of directors of which he or she is not a member, if the director reasonably believes the committee merits confidence.

(3) A director shall not be considered to be acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) A director shall not be liable for any action taken as a director or any failure to take any action if he or she performed the duties of his or her office in compliance with this section.

Source: Laws 2007, LB368, § 70; Laws 2008, LB706, § 1.

PART 9

CONTRIBUTIONS, ALLOCATIONS, AND DISTRIBUTIONS

21-2978 Forms of contribution and valuation.

(1) Unless otherwise provided in the articles of organization or bylaws, the contributions of a member may consist of tangible or intangible property or other benefit to the limited cooperative association, including money, services performed or to be performed, promissory notes, other agreements to contribute cash or property, and contracts to be performed.

(2) The receipt and acceptance of contributions and the valuation of contributions shall be reflected in the limited cooperative association's required records pursuant to section 21-2910.

(3) Unless otherwise provided in the articles of organization or bylaws, the board of directors shall value the contributions received or to be received. The determination by the board of directors on valuation is conclusive for purposes of determining whether the member's contribution obligation has been fully met.

Source: Laws 2007, LB368, § 78; Laws 2008, LB848, § 19.

21-2980 Allocation of profits and losses.

(1) Subject to subsection (2) of this section, the articles of organization or bylaws shall provide for the allocation of net proceeds, savings, margins, profits, and losses between classes or groups of members.

(2)(a) Unless the articles of organization or bylaws otherwise provide, patron members shall be allocated at least fifty percent of the net proceeds, savings, margins, profits, and losses in any fiscal year. The articles of organization or bylaws shall not reduce the percentage allocated to patron members to less than fifteen percent of the net proceeds.

(b) For purposes of this subsection, the following rules apply:

(i) Amounts paid or due on contracts for the delivery to the association by patron members of products, goods, or services are not considered amounts allocated to patron members; and

(ii) Amounts paid, due, or allocated to investor members as a stated, fixed return on equity are not considered amounts allocated to investor members.

(3) Unless otherwise provided in the articles of organization or bylaws, in order to determine the amount of net proceeds, savings, margins, and profits, the board of directors may set aside a portion of the revenue, whether or not allocated to members, after accounting for other expenses, for purposes of:

(a) Creating or accumulating a capital reserve; and

(b) Creating or accumulating reserves for specific purposes, including expansion and replacement of capital assets and other necessary business purposes.

(4) Subject to subsection (5) of this section and the articles of organization or bylaws, the board of directors shall allocate the amount remaining after the allocations under subsections (1) through (3) of this section:

(a) To patron members annually in accordance with the ratio of each member's patronage during the period to total patronage of all patron members during the period; and

(b) To investor members, if any, in accordance with the ratio of each investor member's limited contribution to the total initial contribution of all investor members.

(5) For purposes of allocation of net proceeds, savings, margins, profits, and losses to patron members, the articles of organization or bylaws may establish allocation units based on function, division, district, department, allocation units, pooling arrangements, members' contributions, or other methods.

Source: Laws 2007, LB368, § 80; Laws 2008, LB848, § 20.

21-2981.01 Distributions to members; redemption or repurchase authorized; how treated.

Property distributed under subsection (2) of section 21-2981, other than cash, may be redeemed or repurchased as provided in the articles of organization or bylaws but no redemption or repurchase may be made without full and final authorization by the board of directors, which may be withheld for any reason in the board's sole discretion. The redemption or repurchase will be treated as a distribution under section 21-2981.

Source: Laws 2008, LB848, § 21.

21-2981.02 Limit on distributions.

(1) A limited cooperative association shall not make a distribution if, after the distribution:

(a) The limited cooperative association would not be able to pay its debts as they become due in the ordinary course of the association's activities; or

(b) The limited cooperative association's assets would be less than the sum of its total liabilities.

(2) A limited cooperative association may base a determination that a distribution is not prohibited under subsection (1) of this section on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other methods that are reasonable in the circumstances.

(3) Except as otherwise provided in subsection (4) of this section, the effect of a distribution allowed under subsection (2) of this section is measured:

(a) In the case of distribution by purchase, redemption, or other acquisition of financial rights in the limited cooperative association, as of the date money or other property is transferred or debt is incurred by the association; and

(b) In all other cases, as of the date:

(i) The distribution is authorized, if the payment occurs within one-hundred-twenty days after that date; or

(ii) The payment is made, if payment occurs more than one-hundred-twenty days after the distribution is authorized.

(4) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

(5) For purposes of this section, distribution does not include reasonable amounts paid to a member in the ordinary course of business as payment or compensation for commodities, goods, past or present services, or reasonable payments made in the ordinary course of business under a bona fide retirement or other benefits program.

Source: Laws 2008, LB848, § 22.

21-2981.03 Prohibited distribution; director liability; member or holder of financial rights liability; actions authorized; statute of limitation.

(1) A director who consents to a distribution made in violation of section 21-2981 is personally liable to the limited cooperative association for the amount of the distribution which exceeds the amount that could have been distributed without the violation if it is established that in consenting to the distribution the director failed to comply with section 21-2970 or 21-2971.

(2) A member or holder of financial rights which received a distribution knowing that the distribution to the member or holder was made in violation of section 21-2981.02 is personally liable to the limited cooperative association but only to the extent that the distribution received by the member or holder exceeded the amount that could have been properly paid under section 21-2981.02.

(3) A director against whom an action is commenced under subsection (1) of this section may:

(a) Implead in the action any other director that is liable under subsection (1) of this section and compel contribution from the person; and

(b) Implead in the action any person that is liable under subsection (2) of this section and compel contribution from the person in the amount the person received as described in such subsection.

(4) An action under this section is barred if it is not commenced within two years after the distribution.

Source: Laws 2008, LB848, § 23.

PART 10

DISSOCIATION

21-2982 Member's dissociation; power of estate of member.

(1) A member does not have a right to withdraw as a member of a limited cooperative association but has the power to withdraw.

(2) Unless otherwise provided by the articles of organization or bylaws, a member is dissociated from a limited cooperative association upon the occurrence of any of the following events:

(a) The limited cooperative association's having notice in a record of the person's express will to withdraw as a member or to withdraw on a later date specified by the person;

(b) An event provided in the articles of organization or bylaws as causing the person's dissociation as a member;

(c) The person's expulsion as a member pursuant to the articles of organization or bylaws;

(d) The person's expulsion as a member by the board of directors if:

(i) It is unlawful to carry on the limited cooperative association's activities with the person as a member;

(ii) Subject to section 21-2947, there has been a transfer of all of the person's financial rights in the limited cooperative association;

(iii) The person is a corporation or association whether or not organized under the Nebraska Limited Cooperative Association Act; and:

(A) The limited cooperative association notifies the person that it will be expelled as a member because it has filed a statement of intent to dissolve or articles of dissolution, it has been administratively or judicially dissolved, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its organization; and

(B) Within ninety days after the person receives the notification described in subdivision (2)(d)(iii)(A) of this section, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(iv) The person is a limited liability company, association, whether or not organized under the act, or partnership that has been dissolved and whose business is being wound up;

(e) In the case of a person who is an individual, the person's death;

(f) In the case of a person that is a trust, distribution of the trust's entire financial rights in the limited cooperative association, but not merely by the substitution of a successor trustee;

(g) In the case of a person that is an estate, distribution of the estate's entire financial interest in the limited cooperative association, but not merely by the substitution of a successor personal representative;

(h) Termination of a member that is not an individual, partnership, limited liability company, limited cooperative association, whether or not organized under the act, corporation, trust, or estate; or

(i) The limited cooperative association's participation in a merger or consolidation, if, under the plan of merger or consolidation as approved under section 21-29,122, the person ceases to be a member.

Source: Laws 2007, LB368, § 82; Laws 2008, LB848, § 24.

PART 11

DISSOLUTION

21-2992 Other claims against dissolved limited cooperative association.

(1) A dissolved limited cooperative association shall publish notice of its dissolution and may request persons having claims against the limited cooperative association to present them in accordance with the notice.

(2) The notice shall:

(a) Be published at least once in a newspaper of general circulation in the county in which the dissolved limited cooperative association's principal office is located or, if it has none in this state, in the county in which the limited cooperative association's designated office is or was last located;

(b) Describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent; and

(c) State that a claim against the limited cooperative association is barred unless an action to enforce the claim is commenced within three years after publication of the notice.

(3) If a dissolved limited cooperative association publishes a notice in accordance with subsection (2) of this section, the claim of each of the following claimants is barred, unless the claimant commences an action to enforce the claim against the dissolved limited cooperative association within three years after the publication date of the notice:

(a) A claimant that did not receive notice in a record under section 21-2991;

(b) A claimant whose claim was timely sent to the dissolved limited cooperative association but not acted on; and

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim not barred under this section may be enforced:

(a) Against the dissolved limited cooperative association, to the extent of its undistributed assets; or

(b) If the assets have been distributed in liquidation, against a member or transferee of financial rights to the extent of that person's proportionate share of the claim or the limited cooperative association's assets distributed to the member or transferee in liquidation, whichever is less, but a person's total liability for all claims under this subsection does not exceed the total amount of assets distributed to the person as part of the winding up of the dissolved limited cooperative association.

Source: Laws 2007, LB368, § 92; Laws 2008, LB848, § 25.

PART 14

AMENDMENT OF ARTICLES OF ORGANIZATION OR BYLAWS

21-29,110 Authority to amend articles of organization or bylaws; rights of member.

(1) A limited cooperative association may amend its articles of organization or bylaws.

(2) Unless the articles of organization or bylaws provide otherwise, a member of a limited cooperative association does not have vested property rights resulting from any provision in the articles of organization or bylaws, including provisions relating to management, control, capital structure, distribution, entitlement, purpose, or duration of the limited cooperative association.

Source: Laws 2007, LB368, § 110; Laws 2008, LB848, § 26.

PART 15

CONVERSION, MERGER, AND CONSOLIDATION

21-29,117 Merger and consolidation; terms, defined.

For purposes of sections 21-29,117 to 21-29,127:

(1) Constituent limited cooperative association means a limited cooperative association that is a party to a merger or consolidation;

(2) Constituent organization means an organization, other than a limited cooperative association, that is a party to a merger or consolidation;

(3) Governing statute of an organization means the statute that governs the organization's internal affairs;

(4) Organization means a limited cooperative association, limited cooperative association governed by a law other than the Nebraska Limited Cooperative Association Act, a general partnership, a limited liability partnership, a limited partnership, a limited liability company, a business trust, a corporation, a cooperative, or any other person having a governing statute. The term includes domestic and foreign organizations whether or not organized for profit;

(5) Personal liability means personal liability for a debt, liability, or other obligation of an organization which is imposed on a person that co-owns, has an interest in, or is a member of the organization:

(a) By the organization's governing statute solely by reason of co-owning, having an interest in, or being a member of the organization; or

(b) By the organization's organizational documents under a provision of the organization's governing statute authorizing those documents to make one or more specified persons liable for all or for specified debts, liabilities, and other obligations of the organization solely by reason of co-owning, having an interest in, or being a member of the organization; and

(6) Surviving organization means an organization into which one or more other organizations are merged or consolidated. A surviving organization may exist before the merger or consolidation or be created by the merger or consolidation.

Source: Laws 2007, LB368, § 117; Laws 2008, LB848, § 27.

21-29,118 Repealed. Laws 2008, LB 848, § 35.

21-29,119 Repealed. Laws 2008, LB 848, § 35.

21-29,120 Repealed. Laws 2008, LB 848, § 35.

21-29,121 Repealed. Laws 2008, LB 848, § 35.

21-29,122 Merger or consolidation.

(1) Any one or more limited cooperative associations may merge or consolidate with or into any one or more limited cooperative associations, limited liability companies, general partnerships, limited partnerships, cooperatives, or corporations, and any one or more limited liability companies, general partnerships, limited partnerships, cooperatives, or corporations may merge or consolidate with or into any one or more limited cooperative associations.

(2) A plan of merger or consolidation shall be in a record and shall include:

(a) The name and form of each constituent organization;

(b) The name and form of the surviving organization and, if the surviving organization is to be created by the merger or consolidation, a statement to that effect;

(c) The terms and conditions of the merger or consolidation, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration;

(d) If the surviving organization is to be created by the merger or consolidation, the surviving organization's organizational documents;

(e) If the surviving organization is not to be created by the merger or consolidation, any amendments to be made by the merger or consolidation to the surviving organization's organizational documents; and

(f) If a member of a constituent limited cooperative association will have personal liability with respect to a surviving organization, the identity by descriptive class or other reasonable manner of the member.

Source: Laws 2007, LB368, § 122; Laws 2008, LB848, § 28.

21-29,123 Notice and action on plan of merger or consolidation by constituent limited cooperative association.

(1) Unless otherwise provided in the articles of organization or bylaws, the plan of merger or consolidation shall be approved by a majority vote of the board of directors.

(2) The board of directors shall mail or otherwise transmit or deliver in a record to each member:

(a) The plan of merger or consolidation;

(b) A recommendation that the members approve the plan of merger or consolidation unless the board makes a determination because of conflicts of interest or other special circumstances that it should not make such a recommendation;

(c) If the board makes no recommendation, the basis for that decision;

(d) Any condition of its submission of the plan of merger or consolidation to the members; and

(e) Notice of the meeting in the same manner as a special members' meeting.

Source: Laws 2007, LB368, § 123; Laws 2008, LB848, § 29.

21-29,124 Approval or abandonment of merger or consolidation by members of constituent limited cooperative association.

(1) Unless the articles of organization or bylaws provide for a greater quorum and subject to section 21-2939, a plan of merger or consolidation shall be approved by at least a two-thirds vote of patron members voting under section 21-2939 and by at least a two-thirds vote of investor members, if any, voting under section 21-2942.

(2) Subject to any contractual rights, after a merger or consolidation is approved, and at any time before a filing is made under section 21-29,126, a constituent limited cooperative association may amend the plan of merger or consolidation or abandon the planned merger or consolidation:

(a) As provided in the plan; and

(b) Except as prohibited by the plan, with the same consent as was required to approve the plan.

Source: Laws 2007, LB368, § 124; Laws 2008, LB848, § 30.

21-29,125 Merger or consolidation with subsidiary.

(1) Unless the articles of organization or bylaws of the limited cooperative association or articles of organization or bylaws of the other organization otherwise provide, a limited cooperative association that owns at least ninety percent of each class of the voting power of a subsidiary organization may merge or consolidate the subsidiary into itself or into another subsidiary.

(2) The limited cooperative association owning at least ninety percent of the subsidiary organization before the merger or consolidation shall notify each other owner of the subsidiary, if any, of the merger within ten days after the effective date of the merger or consolidation.

Source: Laws 2007, LB368, § 125; Laws 2008, LB848, § 31.

21-29,126 Filings required for merger or consolidation; effective date.

(1) After each constituent organization has approved a merger or consolidation, articles of merger or consolidation shall be signed on behalf of each other preexisting constituent organization by an authorized representative.

(2) The articles of merger or consolidation shall include:

(a) The name and form of each constituent organization and the jurisdiction of its governing statute;

(b) The name and form of the surviving organization, the jurisdiction of its governing statute, and, if the surviving organization is created by the merger or consolidation, a statement to that effect;

(c) The date the merger or consolidation is effective under the governing statute of the surviving organization;

(d) If the surviving organization is to be created by the merger or consolidation:

(i) If it will be a limited cooperative association, the limited cooperative association's articles of organization; or

(ii) If it will be an organization other than a limited cooperative association, the organizational document that creates the organization;

(e) If the surviving organization preexists the merger or consolidation, any amendments provided for in the plan of merger or consolidation for the organizational document that created the organization;

(f) A statement as to each constituent organization that the merger or consolidation was approved as required by the organization's governing statute;

(g) If the surviving organization is a foreign organization not authorized to transact business in this state, the street and mailing addresses of an office which the Secretary of State may use for the purposes of service of process; and

(h) Any additional information required by the governing statute of any constituent organization.

(3) Each constituent limited cooperative association shall deliver the articles of merger or consolidation for filing in the office of the Secretary of State.

(4) A merger or consolidation becomes effective under this section:

(a) If the surviving organization is a limited cooperative association, upon the later of:

(i) Compliance with subsection (3) of this section; or

(ii) Subject to section 21-2919, as specified in the articles of merger or consolidation; or

(b) If the surviving organization is not a limited cooperative association, as provided by the governing statute of the surviving organization.

Source: Laws 2007, LB368, § 126; Laws 2008, LB848, § 32.

21-29,127 Effect of merger or consolidation.

When a merger or consolidation becomes effective:

(1) The surviving organization continues or comes into existence;

(2) Each constituent organization that merges or consolidates into the surviving organization ceases to exist as a separate entity;

(3) All property owned by each constituent organization that ceases to exist vests in the surviving organization;

(4) All debts, liabilities, and other obligations of each constituent organization that ceases to exist continue as obligations of the surviving organization;

(5) An action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger or consolidation had not occurred;

(6) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;

(7) Except as otherwise provided in the plan of merger or consolidation, the terms and conditions of the plan take effect;

(8) Except as otherwise agreed, if a constituent limited cooperative association ceases to exist, the merger or consolidation does not dissolve the limited cooperative association for purposes of section 21-2987;

(9) If the surviving organization is created by the merger or consolidation:

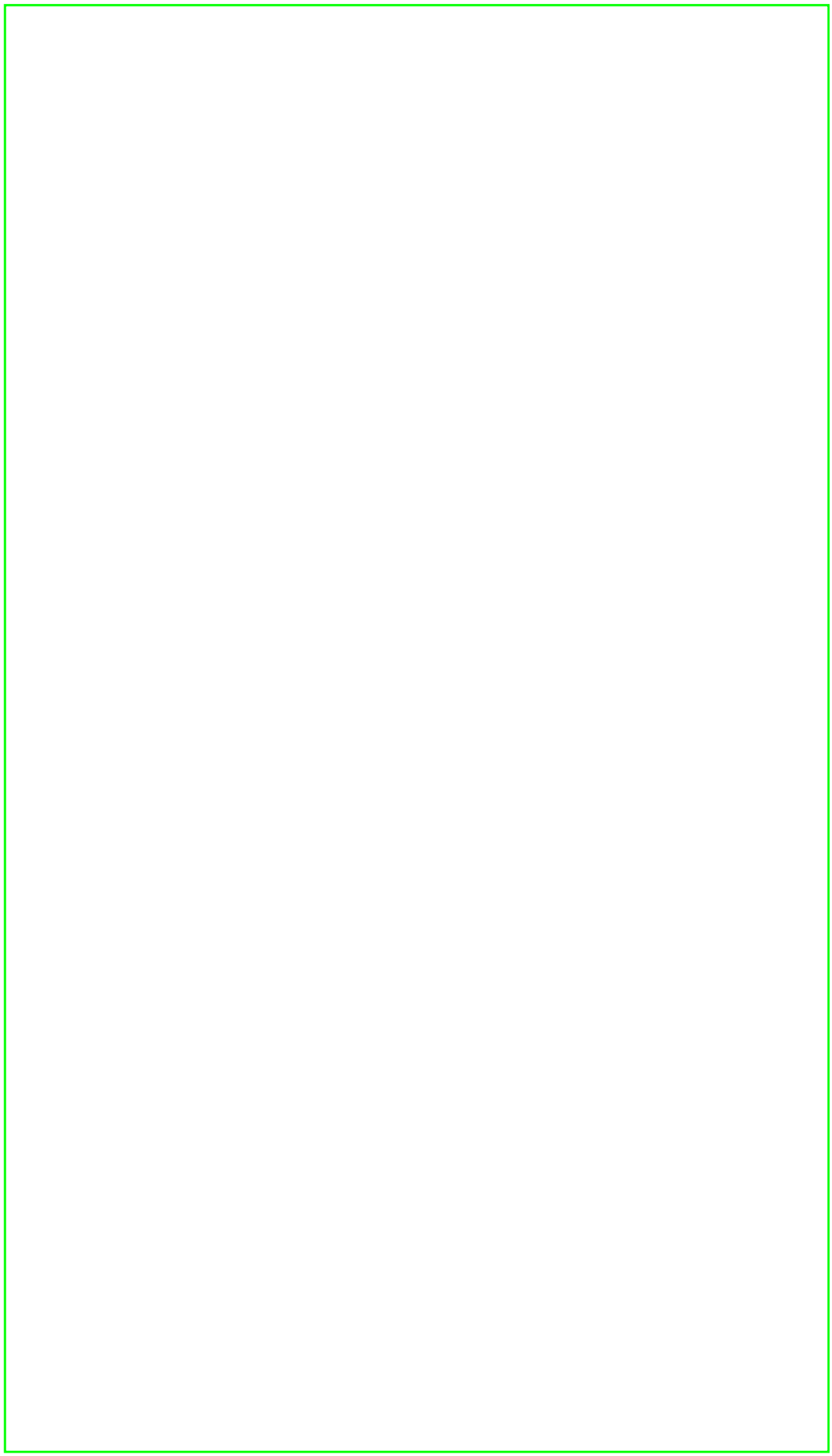
(a) If it is a limited cooperative association, the articles of organization become effective; or

(b) If it is an organization other than a limited cooperative association, the organizational document that creates the organization becomes effective; and

(10) If the surviving organization exists before the merger or consolidation, any amendments provided for in the articles of merger or consolidation for the organizational document that created the organization become effective.

Source: Laws 2007, LB368, § 127; Laws 2008, LB848, § 33.

21-29,128 Repealed. Laws 2008, LB 848, § 35.



CHAPTER 22
COUNTIES

Article.
1. Names and Boundaries of Counties. 22-161 to 22-172.01.

ARTICLE 1
NAMES AND BOUNDARIES OF COUNTIES

Section
22-161. Repealed. Laws 2009, LB 131, § 3.
22-161.01. Merrick.
22-172. Repealed. Laws 2009, LB 131, § 3.
22-172.01. Polk.

22-161 Repealed. Laws 2009, LB 131, § 3.

22-161.01 Merrick.

The county of Merrick is bounded as follows: Beginning at the northeast corner of township 16 north, range 3 west; thence west on the dividing line of townships 16 and 17 north, to the boundaries of the Pawnee Indian reservation; thence by the boundaries of said reservation passing by its south side around to the north line of township 16 north; thence west, to the northwest corner of township 16 north, range 8 west; thence south on the dividing line of ranges 8 and 9 west to the middle of the south channel of the Platte River; thence northeast by the middle of said south channel to a point on the west line of section 19, township 14 north, range 4 west of the sixth principal meridian, said point being 2132.77 feet north of the southwest corner of the northwest quarter of said section 19; thence continuing on the middle of the south channel of the Platte River, and assuming the west line of said section 19 to have a bearing of south 1 degree, 46 minutes, 44 seconds east; the next 35 courses on said thread of stream; thence south 84 degrees, 28 minutes, 19 seconds east, 60.66 feet; thence north 29 degrees, 30 minutes, 32 seconds east, 130.51 feet; thence south 70 degrees, 11 minutes, 42 seconds east, 131.06 feet; thence north 40 degrees, 23 minutes, 29 seconds east, 27.01 feet; thence north 31 degrees, 48 minutes, 41 seconds west, 130.23 feet; thence north 38 degrees, 43 minutes, 26 seconds east, 153.67 feet; thence south 71 degrees, 56 minutes, 45 seconds east, 194.99 feet; thence north 64 degrees, 11 minutes, 17 seconds east, 153.41 feet; thence north 56 degrees, 6 minutes, 19 seconds east, 108.65 feet; thence north 9 degrees, 37 minutes, 55 seconds east, 60.66 feet; thence north 55 degrees, 53 minutes, 26 seconds east, 184.62 feet; thence south 89 degrees, 4 minutes, 41 seconds east, 267.50 feet; thence north 22 degrees, 39 minutes, 9 seconds east, 124.70 feet; thence north 53 degrees, 36 minutes, 57 seconds east, 149.13 feet; thence north 37 degrees, 5 minutes, 51 seconds west, 124.10 feet; thence north 47 degrees, 57 minutes, 2 seconds east, 65.57 feet; thence south 36 degrees, 3 minutes, 53 seconds east, 301.87 feet; thence north 46 degrees, 48 minutes, 49 seconds east, 115.81 feet; thence north 4 degrees, 29 minutes, 24 seconds west, 72.26 feet; thence north 59 degrees, 37 minutes, 54 seconds east, 102.28 feet; thence north 6 degrees, 30 minutes, 41 seconds west,

317.85 feet; thence north 37 degrees, 40 minutes, 28 seconds east, 182.50 feet; thence north 31 degrees, 10 minutes, 30 seconds west, 119.52 feet; thence north 52 degrees, 46 minutes, 4 seconds east, 95.33 feet; thence north 73 degrees, 10 minutes, 0 seconds east, 64.89 feet; thence south 16 degrees, 50 minutes, 0 seconds east, 109.48 feet; thence south 80 degrees, 32 minutes, 59 seconds east, 109.60 feet; thence north 23 degrees, 1 minute, 57 seconds east, 150.01 feet; thence north 56 degrees, 56 minutes, 49 seconds east, 162.33 feet; thence north 2 degrees, 13 minutes, 20 seconds east, 105.50 feet; thence north 55 degrees, 41 minutes, 50 seconds east, 367.42 feet; thence north 11 degrees, 8 minutes, 4 seconds east, 126.97 feet; thence north 60 degrees, 16 minutes, 1 second east, 247.07 feet; thence north 25 degrees, 36 minutes, 31 seconds east, 486.91 feet; thence south 86 degrees, 4 minutes, 13 seconds east, 477.93 feet and ending at a point that is perpendicular to the northeast corner of said section 19; thence continuing on the county line between Polk and Merrick counties adjacent to section 17 and section 8, township 14 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of said section 17, and assuming the north line of section 19, township 14 north, range 4 west to have a bearing of north 87 degrees, 50 minutes, 16 seconds east; thence north 43 degrees, 19 minutes, 4 seconds west, 2576.37 feet to the point of beginning; thence north 46 degrees, 40 minutes, 56 seconds east, 922.93 feet; thence north 57 degrees, 57 minutes, 4 seconds east, 777.42 feet; thence north 22 degrees, 53 minutes, 36 seconds east, 341.40 feet; thence north 52 degrees, 26 minutes, 41 seconds east, 268.04 feet; thence north 27 degrees, 48 minutes, 39 seconds east, 466.41 feet; thence north 42 degrees, 10 minutes, 35 seconds east, 496.04 feet; thence north 52 degrees, 16 minutes, 36 seconds east, 297.07 feet; thence north 31 degrees, 18 minutes, 19 seconds east, 243.80 feet; thence north 49 degrees, 41 minutes, 58 seconds east, 265.23 feet; thence north 60 degrees, 19 minutes, 0 seconds east, 350.21 feet; thence north 44 degrees, 11 minutes, 59 seconds west, 543.34 feet; thence north 51 degrees, 2 minutes, 28 seconds east, 2051.44 feet; thence north 32 degrees, 40 minutes, 47 seconds west, 482.44 feet; thence north 42 degrees, 17 minutes, 15 seconds east, 177.59 feet; thence north 8 degrees, 12 minutes, 7 seconds east, 284.77 feet; thence north 59 degrees, 57 minutes, 4 seconds east, 806.17 feet; thence north 79 degrees, 30 minutes, 49 seconds east, 393.73 feet; thence south 66 degrees, 48 minutes, 41 seconds east, 90.99 feet; thence north 75 degrees, 13 minutes, 56 seconds east, 224.90 feet; thence north 51 degrees, 45 minutes, 30 seconds east, 177.92 feet; thence north 28 degrees, 41 minutes, 5 seconds east, 174.26 feet to a point that is perpendicular to the northeast corner of government lot 4 of said section 8; thence north 36 degrees, 51 minutes, 23 seconds west, and perpendicular to the geographical centerline of the Platte River, 1242.20 feet and ending at the geographical centerline of said Platte River; thence continuing on the county line between Polk and Merrick counties adjacent to section 9, township 14 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of government lot 4 in said section 9, and assuming the south line of the southwest quarter of said section 9 to have a bearing of south 89 degrees, 53 minutes, 34 seconds west; thence north 0 degrees, 16 minutes, 54 seconds east, and on the west line of government lots 4 and 3, 1487.75 feet to the original meander line of the Platte River; thence north 35 degrees, 17 minutes, 2 seconds west, and perpendicular to the geographical centerline of said Platte River, 2859.02 feet to the point of beginning, said point being on said geographical centerline; thence north 54 degrees, 42 minutes, 58 seconds

east, and on said geographical centerline, 888.27 feet; thence north 58 degrees, 11 minutes, 51 seconds east, and on said geographical centerline, 1487.03 feet; thence north 40 degrees, 30 minutes, 0 seconds east, and on said geographical centerline, 1281.69 feet and ending at a point that is perpendicular to the northwest corner of government lot 1 in said section 9; thence continuing on the county line between Polk and Merrick counties adjacent to section 4, township 14 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southeast corner of government lot 5 in said section 4, and assuming the east line of government lots 3 and 5 in said section 4 to have a bearing of south 0 degrees, 5 minutes, 41 seconds east; thence south 89 degrees, 24 minutes, 52 seconds west, and on the south line of government lots 5 and 4, 3102.76 feet to a point on the original south meander line of the Platte River; thence north 49 degrees, 30 minutes, 0 seconds west, and perpendicular to the geographical centerline of said Platte River, 1321.25 feet to the point of beginning, said point being on the geographical centerline of said Platte River, the next 7 courses on said centerline; thence north 40 degrees, 30 minutes, 0 seconds east, 348.74 feet to a three-fourths seconds rebar with cap; thence north 39 degrees, 16 minutes, 11 seconds east, 1420.98 feet to a three-fourths seconds rebar with cap; thence north 38 degrees, 14 minutes, 59 seconds east, 1222.76 feet to a three-fourths seconds rebar with cap; thence north 36 degrees, 4 minutes, 35 seconds east, 426.21 feet to a three-fourths seconds rebar with cap; thence north 42 degrees, 8 minutes, 26 seconds east, 779.07 feet to a three-fourths seconds rebar with cap; thence north 44 degrees, 45 minutes, 1 second east, 505.14 feet to a three-fourths seconds rebar with cap; thence north 42 degrees, 56 minutes, 58 seconds east, 685.04 feet and ending at a point that is perpendicular to the northeast corner of government lot 2 in said section 4; thence continuing on the county line between Polk and Merrick counties adjacent to section 3, township 14 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the northeast corner of government lot 2 in said section 4, and assuming the east line of said government lot 2 to have a bearing of south 0 degrees, 5 minutes, 41 seconds east; thence north 47 degrees, 3 minutes, 2 seconds west, and perpendicular to the geographical centerline of the Platte River, 848.52 feet to the point of beginning, said point being on said geographical centerline; thence north 42 degrees, 56 minutes, 58 seconds east, and on said geographical centerline, 750.96 feet; thence north 33 degrees, 22 minutes, 23 seconds east, and on said geographical centerline, 434.94 feet and ending at a point that is perpendicular to the northwesterly corner of government lot 4 in said section 3; thence continuing on the county line between Polk and Merrick counties adjacent to section 34, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of the southeast quarter of section 34, and assuming the south line of said southeast quarter to have a bearing of north 89 degrees, 10 minutes, 38 seconds east; thence south 88 degrees, 55 minutes, 33 seconds west, 1780.73 feet to the calculated meander corner; thence north 56 degrees, 37 minutes, 37 seconds west, and perpendicular to the geographical centerline of the Platte River, 912.40 feet to the point of beginning; the next 13 courses on the geographical centerline of said Platte River; thence north 33 degrees, 22 minutes, 23 seconds east, 148.31 feet; thence north 42 degrees, 32 minutes, 16 seconds east, 450.87 feet; thence north 35 degrees, 36 minutes, 3 seconds east, 461.73 feet; thence north 21 degrees, 44 minutes, 33 seconds east, 652.02 feet; thence north 22 degrees, 47 minutes, 50 seconds east, 723.43 feet; thence north

17 degrees, 25 minutes, 48 seconds east, 480.50 feet; thence north 18 degrees, 58 minutes, 22 seconds east, 315.96 feet; thence north 28 degrees, 41 minutes, 27 seconds east, 513.70 feet; thence north 10 degrees, 53 minutes, 32 seconds east, 365.66 feet; thence north 31 degrees, 12 minutes, 36 seconds east, 686.04 feet; thence north 29 degrees, 6 minutes, 28 seconds east, 479.52 feet; thence north 11 degrees, 9 minutes, 24 seconds east, 688.60 feet; thence north 35 degrees, 54 minutes, 48 seconds east, 1209.26 feet and ending at a point that is perpendicular to the meander corner, the northeast corner of the northeast quarter of section 34, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to sections 26 and 23, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of the southwest quarter of section 26, and assuming the south line of said southwest quarter to have a bearing of south 89 degrees, 32 minutes, 23 seconds west; thence north 53 degrees, 20 minutes, 6 seconds west, 2455.61 feet to the point of beginning, said point being on the geographical centerline of the Platte River; the next 14 courses on said geographical centerline; thence north 29 degrees, 1 minute, 35 seconds east, 191.87 feet; thence north 41 degrees, 18 minutes, 40 seconds east, 943.72 feet; thence north 42 degrees, 12 minutes, 23 seconds east, 1208.49 feet; thence north 43 degrees, 8 minutes, 28 seconds east, 905.77 feet; thence north 54 degrees, 19 minutes, 20 seconds east, 731.56 feet; thence north 57 degrees, 13 minutes, 41 seconds east, 684.45 feet; thence north 56 degrees, 14 minutes, 20 seconds east, 120.34 feet; thence north 53 degrees, 9 minutes, 36 seconds east, 598.24 feet; thence north 62 degrees, 7 minutes, 10 seconds east, 707.55 feet; thence north 59 degrees, 58 minutes, 43 seconds east, 563.34 feet; thence north 49 degrees, 11 minutes, 46 seconds east, 482.37 feet; thence north 57 degrees, 18 minutes, 21 seconds east, 762.06 feet; thence north 71 degrees, 32 minutes, 53 seconds east, 481.69 feet; thence north 61 degrees, 27 minutes, 48 seconds east, 250.65 feet and ending at a point that is perpendicular to the northeast corner of government lot 5 of section 23, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to section 24, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the northeast corner of government lot 5 of section 23, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, and assuming the east line of said government lot 5 to have a bearing of south 0 degrees, 1 minute, 56 seconds east; thence north 28 degrees, 32 minutes, 12 seconds west, and perpendicular to the geographical centerline of the Platte River, 1225.57 feet to the point of beginning, said point being on said geographical centerline; the next 5 courses on said geographical centerline; thence north 61 degrees, 27 minutes, 48 seconds east, 759.65 feet; thence north 54 degrees, 45 minutes, 25 seconds east, 1538.51 feet; thence north 58 degrees, 5 minutes, 44 seconds east, 1675.34 feet; thence north 53 degrees, 15 minutes, 23 seconds east, 1844.73 feet; thence north 46 degrees, 46 minutes, 34 seconds east, 622.22 feet and ending at a point that is perpendicular to the northeast corner of government lot 1 of said section 24, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to sections 17, 18, and 19, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the northeast corner of government lot 1 of section 24,

township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, and assuming the north line of government lot 1 of section 17, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, to have a bearing of north 56 degrees, 3 minutes, 25 seconds east; thence north 43 degrees, 13 minutes, 26 seconds west, and perpendicular to the geographical centerline of the Platte River, 901.44 feet to the point of beginning, said point being on the geographical centerline; the next 12 courses on said geographical centerline; thence north 46 degrees, 46 minutes, 34 seconds east, 347.92 feet; thence north 52 degrees, 38 minutes, 26 seconds east, 626.31 feet; thence north 41 degrees, 44 minutes, 8 seconds east, 334.55 feet; thence north 51 degrees, 2 minutes, 44 seconds east, 972.55 feet; thence north 40 degrees, 15 minutes, 33 seconds east, 731.79 feet; thence north 36 degrees, 26 minutes, 23 seconds east, 970.59 feet; thence north 36 degrees, 32 minutes, 36 seconds east, 908.72 feet; thence north 58 degrees, 27 minutes, 57 seconds east, 258.30 feet; thence north 42 degrees, 48 minutes, 50 seconds east, 367.48 feet; thence north 43 degrees, 54 minutes, 57 seconds east, 2682.73 feet; thence north 41 degrees, 38 minutes, 34 seconds east, 398.76 feet; thence north 40 degrees, 45 minutes, 24 seconds east, 416.25 feet and ending at a point that is perpendicular to the northeast corner of government lot 1 of said section 17, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to sections 8 and 9, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of lot 5 of said section 8, and assuming the south line of said lot 5 to have a bearing of south 89 degrees, 33 minutes, 8 seconds east; thence north 49 degrees, 14 minutes, 36 seconds west, and perpendicular to the geographical centerline of the Platte River, 1386.78 feet to the point of beginning, said point being on the geographical centerline of said Platte River; the next 26 courses on said geographical centerline; thence north 59 degrees, 9 minutes, 30 seconds east, 435.97 feet; thence north 41 degrees, 24 minutes, 58 seconds east, 144.83 feet; thence north 45 degrees, 47 minutes, 4 seconds east, 298.37 feet; thence north 44 degrees, 1 minute, 35 seconds east, 399.35 feet; thence north 31 degrees, 41 minutes, 6 seconds east, 220.66 feet; thence north 29 degrees, 20 minutes, 52 seconds east, 420.71 feet; thence north 46 degrees, 4 minutes, 0 seconds east, 343.05 feet; thence north 39 degrees, 58 minutes, 42 seconds east, 489.14 feet; thence north 30 degrees, 8 minutes, 23 seconds east, 370.70 feet; thence north 47 degrees, 40 minutes, 21 seconds east, 243.26 feet; thence north 49 degrees, 27 minutes, 19 seconds east, 381.66 feet; thence north 42 degrees, 43 minutes, 37 seconds east, 193.07 feet; thence north 47 degrees, 54 minutes, 34 seconds east, 171.32 feet; thence north 47 degrees, 54 minutes, 34 seconds east, 299.06 feet; thence north 54 degrees, 43 minutes, 13 seconds east, 293.59 feet; thence north 47 degrees, 48 minutes, 38 seconds east, 273.99 feet; thence north 60 degrees, 50 minutes, 29 seconds east, 259.30 feet; thence north 43 degrees, 34 minutes, 13 seconds east, 647.78 feet; thence north 43 degrees, 34 minutes, 13 seconds east, 308.91 feet; thence north 33 degrees, 44 minutes, 23 seconds east, 205.67 feet; thence north 42 degrees, 59 minutes, 37 seconds east, 103.53 feet; thence north 49 degrees, 59 minutes, 5 seconds east, 573.10 feet; thence north 48 degrees, 3 minutes, 27 seconds east, 250.06 feet; thence north 55 degrees, 30 minutes, 20 seconds east, 251.45 feet; thence north 36 degrees, 29 minutes, 4 seconds east, 256.44 feet; thence north 50 degrees, 34 minutes, 37 seconds east, 170.89 feet and ending at a point that is perpendicular to the southwest corner of government lot 4 of section 4,

township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to section 4, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of lot 4 of said section 4, and assuming the south line of said lot 4 to have a bearing of south 89 degrees, 38 minutes, 18 seconds east; thence north 39 degrees, 25 minutes, 23 seconds west, and perpendicular to the geographical centerline of the Platte River, 1662.07 feet to the point of beginning, said point being on said geographical centerline; the next 7 courses on said geographical centerline; thence north 53 degrees, 46 minutes, 58 seconds east, 330.14 feet; thence north 58 degrees, 57 minutes, 3 seconds east, 253.55 feet; thence north 44 degrees, 28 minutes, 51 seconds east, 250.91 feet; thence north 50 degrees, 4 minutes, 7 seconds east, 250.02 feet; thence north 56 degrees, 38 minutes, 46 seconds east, 252.04 feet; thence north 45 degrees, 40 minutes, 51 seconds east, 250.51 feet; thence north 43 degrees, 26 minutes, 50 seconds east, 286.41 feet to a point on the west line of north thunderbird lake subdivision extended north; thence south 33 degrees, 33 minutes, 56 seconds east, and on the west line of said subdivision, 1762.06 feet to the southwest corner of said subdivision; thence north 52 degrees, 27 minutes, 34 seconds east, and on the south line of said subdivision, 258.17 feet; thence north 50 degrees, 24 minutes, 39 seconds east, and on the south line of said subdivision, 784.82 feet; thence north 4 degrees, 21 minutes, 44 seconds east, and on the south line of said subdivision, 229.01 feet; thence north 50 degrees, 51 minutes, 33 seconds east, 509.80 feet; thence north 6 degrees, 13 minutes, 43 seconds west, and on the south line of said subdivision, 284.97 feet; thence north 67 degrees, 25 minutes, 50 seconds east, 902.92 feet to a point on the west right-of-way line of said highway number 39; thence north 23 degrees, 0 minutes, 50 seconds west, and on the west right-of-way line of said highway number 39, 226.15 feet; thence north 23 degrees, 41 minutes, 10 seconds west, and on the west right-of-way line of said highway number 39, 305.60 feet; thence north 33 degrees, 36 minutes, 5 seconds west, and on the west right-of-way line of said highway number 39, 305.56 feet; thence north 23 degrees, 14 minutes, 0 seconds west, and on the west right-of-way line of said highway number 39, 299.38 feet; thence north 22 degrees, 6 minutes, 20 seconds west, and on the west right-of-way line of said highway number 39, 116.44 feet; thence north 67 degrees, 53 minutes, 40 seconds east, 260.58 feet and ending at a point on the west line of tri-lakes subdivision, said point being 56.75 feet southeast of the northwest corner of said subdivision; thence continuing on the county line between Polk and Merrick counties in section 3, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Beginning at a point on the west line of tri-lakes subdivision, said point being 56.75 feet southeast of the northwest corner of said subdivision, and assuming the west line of said subdivision to have a bearing of south 22 degrees, 58 minutes, 33 seconds east; thence north 67 degrees, 53 minutes, 40 seconds east, 2957.56 feet to a point on an agreed upon boundary line; thence south 26 degrees, 56 minutes, 23 seconds east, and on said agreed upon boundary line, 1196.15 feet; thence north 87 degrees, 51 minutes, 49 seconds east, 1981.62 feet to a point on the thread of stream of the south channel of the Platte River; thence south 89 degrees, 37 minutes, 0 seconds east, and on said thread of stream, 624.91 feet and ending at the east line of said section 3; thence continuing on the county line between Polk and Merrick counties in section 2, township 15 north, range 3 west of the sixth principal meridian, Polk

County, Nebraska, and in sections 30 and 31, township 16 north, range 2 west of the sixth principal meridian, Polk County, Nebraska, and in sections 35 and 36, township 16 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at a point on the west line of tri-lakes subdivision, said point being 56.75 feet southeast of the northwest corner of said subdivision, and assuming the west line of said subdivision to have a bearing of south 22 degrees, 58 minutes, 33 seconds east; thence north 67 degrees, 53 minutes, 40 seconds east, 2957.56 feet to a point on an agreed upon boundary line; thence south 26 degrees, 56 minutes, 23 seconds east, and on said agreed upon boundary line, 1196.15 feet; thence north 87 degrees, 51 minutes, 49 seconds east, 1981.62 feet to a point on the thread of stream of the south channel of the Platte River; thence south 89 degrees, 37 minutes, 0 seconds east, and on said thread of stream, 624.91 feet to the point of beginning, said point being on the west line of said section 2; the next 13 courses on the thread of stream of the south channel of the Platte River; thence north 76 degrees, 31 minutes, 56 seconds east, 1282.77 feet; thence north 64 degrees, 49 minutes, 59 seconds east, 1003.62 feet; thence north 66 degrees, 16 minutes, 54 seconds east, 771.67 feet; thence north 64 degrees, 24 minutes, 8 seconds east, 987.84 feet; thence north 62 degrees, 32 minutes, 13 seconds east, 765.60 feet; thence north 82 degrees, 40 minutes, 10 seconds east, 881.63 feet; thence north 66 degrees, 25 minutes, 46 seconds east, 407.59 feet; thence north 51 degrees, 51 minutes, 31 seconds east, 644.83 feet; thence north 62 degrees, 11 minutes, 14 seconds east, 438.62 feet; thence north 79 degrees, 50 minutes, 8 seconds east, 1220.74 feet; thence north 68 degrees, 59 minutes, 38 seconds east, 1125.78 feet; thence north 58 degrees, 55 minutes, 8 seconds east, 1012.63 feet; thence north 73 degrees, 48 minutes, 20 seconds east, 926.49 feet to the east line of section 36, township 16 north, range 3 west of the sixth principal meridian, Polk County, Nebraska; thence north on the dividing line between ranges two and three west to the point of beginning.

Source: Laws 2009, LB131, § 1.

22-172 Repealed. Laws 2009, LB 131, § 3.

22-172.01 Polk.

The county of Polk is bounded as follows: Beginning at the southwest corner of township 13 north, range 4 west; thence north, and on the west line of range 4 west, to the southwest corner of the northwest quarter of section 19, township 14 north, range 4 west of the sixth principal meridian; thence north 1 degree, 46 minutes, 44 seconds west (assumed bearing), and on the west line of the northwest quarter of said section 19, 2132.77 feet to the thread of stream of the south channel of the Platte River; the next 35 courses on said thread of stream; thence south 84 degrees, 28 minutes, 19 seconds east, 60.66 feet; thence north 29 degrees, 30 minutes, 32 seconds east, 130.51 feet; thence south 70 degrees, 11 minutes, 42 seconds east, 131.06 feet; thence north 40 degrees, 23 minutes, 29 seconds east, 27.01 feet; thence north 31 degrees, 48 minutes, 41 seconds west, 130.23 feet; thence north 38 degrees, 43 minutes, 26 seconds east, 153.67 feet; thence south 71 degrees, 56 minutes, 45 seconds east, 194.99 feet; thence north 64 degrees, 11 minutes, 17 seconds east, 153.41 feet; thence north 56 degrees, 6 minutes, 19 seconds east, 108.65 feet; thence north 9 degrees, 37 minutes, 55 seconds east, 60.66 feet; thence north 55 degrees, 53 minutes, 26 seconds east, 184.62 feet; thence south 89 degrees, 4 minutes, 41 seconds east,

267.50 feet; thence north 22 degrees, 39 minutes, 9 seconds east, 124.70 feet; thence north 53 degrees, 36 minutes, 57 seconds east, 149.13 feet; thence north 37 degrees, 5 minutes, 51 seconds west, 124.10 feet; thence north 47 degrees, 57 minutes, 2 seconds east, 65.57 feet; thence south 36 degrees, 3 minutes, 53 seconds east, 301.87 feet; thence north 46 degrees, 48 minutes, 49 seconds east, 115.81 feet; thence north 4 degrees, 29 minutes, 24 seconds west, 72.26 feet; thence north 59 degrees, 37 minutes, 54 seconds east, 102.28 feet; thence north 6 degrees, 30 minutes, 41 seconds west, 317.85 feet; thence north 37 degrees, 40 minutes, 28 seconds east, 182.50 feet; thence north 31 degrees, 10 minutes, 30 seconds west, 119.52 feet; thence north 52 degrees, 46 minutes, 4 seconds east, 95.33 feet; thence north 73 degrees, 10 minutes, 0 seconds east, 64.89 feet; thence south 16 degrees, 50 minutes, 0 seconds east, 109.48 feet; thence south 80 degrees, 32 minutes, 59 seconds east, 109.60 feet; thence north 23 degrees, 1 minute, 57 seconds east, 150.01 feet; thence north 56 degrees, 56 minutes, 49 seconds east, 162.33 feet; thence north 2 degrees, 13 minutes, 20 seconds east, 105.50 feet; thence north 55 degrees, 41 minutes, 50 seconds east, 367.42 feet; thence north 11 degrees, 8 minutes, 4 seconds east, 126.97 feet; thence north 60 degrees, 16 minutes, 1 second east, 247.07 feet; thence north 25 degrees, 36 minutes, 31 seconds east, 486.91 feet; thence south 86 degrees, 4 minutes, 13 seconds east, 477.93 feet and ending at a point that is perpendicular to the northeast corner of said section 19; thence continuing on the county line between Polk and Merrick counties adjacent to section 17 and section 8, township 14 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of said section 17, and assuming the north line of section 19, township 14 north, range 4 west to have a bearing of north 87 degrees, 50 minutes, 16 seconds east; thence north 43 degrees, 19 minutes, 4 seconds west, 2576.37 feet to the point of beginning; thence north 46 degrees, 40 minutes, 56 seconds east, 922.93 feet; thence north 57 degrees, 57 minutes, 4 seconds east, 777.42 feet; thence north 22 degrees, 53 minutes, 36 seconds east, 341.40 feet; thence north 52 degrees, 26 minutes, 41 seconds east, 268.04 feet; thence north 27 degrees, 48 minutes, 39 seconds east, 466.41 feet; thence north 42 degrees, 10 minutes, 35 seconds east, 496.04 feet; thence north 52 degrees, 16 minutes, 36 seconds east, 297.07 feet; thence north 31 degrees, 18 minutes, 19 seconds east, 243.80 feet; thence north 49 degrees, 41 minutes, 58 seconds east, 265.23 feet; thence north 60 degrees, 19 minutes, 0 seconds east, 350.21 feet; thence north 44 degrees, 11 minutes, 59 seconds west, 543.34 feet; thence north 51 degrees, 2 minutes, 28 seconds east, 2051.44 feet; thence north 32 degrees, 40 minutes, 47 seconds west, 482.44 feet; thence north 42 degrees, 17 minutes, 15 seconds east, 177.59 feet; thence north 8 degrees, 12 minutes, 7 seconds east, 284.77 feet; thence north 59 degrees, 57 minutes, 4 seconds east, 806.17 feet; thence north 79 degrees, 30 minutes, 49 seconds east, 393.73 feet; thence south 66 degrees, 48 minutes, 41 seconds east, 90.99 feet; thence north 75 degrees, 13 minutes, 56 seconds east, 224.90 feet; thence north 51 degrees, 45 minutes, 30 seconds east, 177.92 feet; thence north 28 degrees, 41 minutes, 5 seconds east, 174.26 feet to a point that is perpendicular to the northeast corner of government lot 4 of said section 8; thence north 36 degrees, 51 minutes, 23 seconds west, and perpendicular to the geographical centerline of the Platte River, 1242.20 feet and ending at the geographical centerline of said Platte River; thence continuing on the county line between Polk and Merrick counties adjacent to section 9, township 14 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of government lot 4

in said section 9, and assuming the south line of the southwest quarter of said section 9 to have a bearing of south 89 degrees, 53 minutes, 34 seconds west; thence north 0 degrees, 16 minutes, 54 seconds east, and on the west line of government lots 4 and 3, 1487.75 feet to the original meander line of the Platte River; thence north 35 degrees, 17 minutes, 2 seconds west, and perpendicular to the geographical centerline of said Platte River, 2859.02 feet to the point of beginning, said point being on said geographical centerline; thence north 54 degrees, 42 minutes, 58 seconds east, and on said geographical centerline, 888.27 feet; thence north 58 degrees, 11 minutes, 51 seconds east, and on said geographical centerline, 1487.03 feet; thence north 40 degrees, 30 minutes, 0 seconds east, and on said geographical centerline, 1281.69 feet and ending at a point that is perpendicular to the northwest corner of government lot 1 in said section 9; thence continuing on the county line between Polk and Merrick counties adjacent to section 4, township 14 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southeast corner of government lot 5 in said section 4, and assuming the east line of government lots 3 and 5 in said section 4 to have a bearing of south 0 degrees, 5 minutes, 41 seconds east; thence south 89 degrees, 24 minutes, 52 seconds west, and on the south line of government lots 5 and 4, 3102.76 feet to a point on the original south meander line of the Platte River; thence north 49 degrees, 30 minutes, 0 seconds west, and perpendicular to the geographical centerline of said Platte River, 1321.25 feet to the point of beginning, said point being on the geographical centerline of said Platte River, the next 7 courses on said centerline; thence north 40 degrees, 30 minutes, 0 seconds east, 348.74 feet to a three-fourths seconds rebar with cap; thence north 39 degrees, 16 minutes, 11 seconds east, 1420.98 feet to a three-fourths seconds rebar with cap; thence north 38 degrees, 14 minutes, 59 seconds east, 1222.76 feet to a three-fourths seconds rebar with cap; thence north 36 degrees, 4 minutes, 35 seconds east, 426.21 feet to a three-fourths seconds rebar with cap; thence north 42 degrees, 8 minutes, 26 seconds east, 779.07 feet to a three-fourths seconds rebar with cap; thence north 44 degrees, 45 minutes, 1 second east, 505.14 feet to a three-fourths seconds rebar with cap; thence north 42 degrees, 56 minutes, 58 seconds east, 685.04 feet and ending at a point that is perpendicular to the northeast corner of government lot 2 in said section 4; thence continuing on the county line between Polk and Merrick counties adjacent to section 3, township 14 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the northeast corner of government lot 2 in said section 4, and assuming the east line of said government lot 2 to have a bearing of south 0 degrees, 5 minutes, 41 seconds east; thence north 47 degrees, 3 minutes, 2 seconds west, and perpendicular to the geographical centerline of the Platte River, 848.52 feet to the point of beginning, said point being on said geographical centerline; thence north 42 degrees, 56 minutes, 58 seconds east, and on said geographical centerline, 750.96 feet; thence north 33 degrees, 22 minutes, 23 seconds east, and on said geographical centerline, 434.94 feet and ending at a point that is perpendicular to the northwesterly corner of government lot 4 in said section 3; thence continuing on the county line between Polk and Merrick counties adjacent to section 34, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of the southeast quarter of section 34, and assuming the south line of said southeast quarter to have a bearing of north 89 degrees, 10 minutes, 38 seconds east; thence south 88 degrees, 55 minutes, 33 seconds west, 1780.73

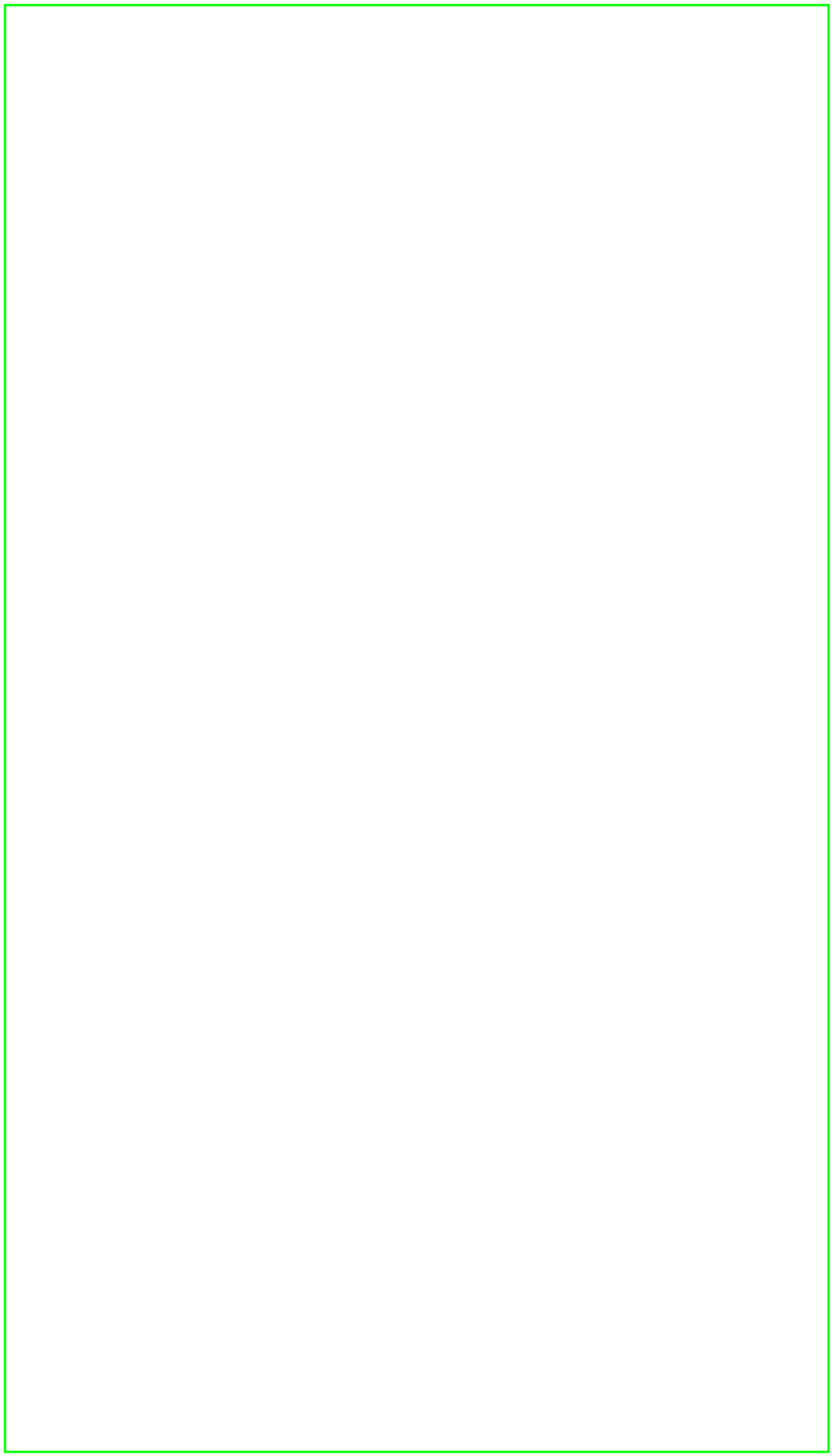
feet to the calculated meander corner; thence north 56 degrees, 37 minutes, 37 seconds west, and perpendicular to the geographical centerline of the Platte River, 912.40 feet to the point of beginning; the next 13 courses on the geographical centerline of said Platte River; thence north 33 degrees, 22 minutes, 23 seconds east, 148.31 feet; thence north 42 degrees, 32 minutes, 16 seconds east, 450.87 feet; thence north 35 degrees, 36 minutes, 3 seconds east, 461.73 feet; thence north 21 degrees, 44 minutes, 33 seconds east, 652.02 feet; thence north 22 degrees, 47 minutes, 50 seconds east, 723.43 feet; thence north 17 degrees, 25 minutes, 48 seconds east, 480.50 feet; thence north 18 degrees, 58 minutes, 22 seconds east, 315.96 feet; thence north 28 degrees, 41 minutes, 27 seconds east, 513.70 feet; thence north 10 degrees, 53 minutes, 32 seconds east, 365.66 feet; thence north 31 degrees, 12 minutes, 36 seconds east, 686.04 feet; thence north 29 degrees, 6 minutes, 28 seconds east, 479.52 feet; thence north 11 degrees, 9 minutes, 24 seconds east, 688.60 feet; thence north 35 degrees, 54 minutes, 48 seconds east, 1209.26 feet and ending at a point that is perpendicular to the meander corner, the northeast corner of the northeast quarter of section 34, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to sections 26 and 23, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of the southwest quarter of section 26, and assuming the south line of said southwest quarter to have a bearing of south 89 degrees, 32 minutes, 23 seconds west; thence north 53 degrees, 20 minutes, 6 seconds west, 2455.61 feet to the point of beginning, said point being on the geographical centerline of the Platte River; the next 14 courses on said geographical centerline; thence north 29 degrees, 1 minute, 35 seconds east, 191.87 feet; thence north 41 degrees, 18 minutes, 40 seconds east, 943.72 feet; thence north 42 degrees, 12 minutes, 23 seconds east, 1208.49 feet; thence north 43 degrees, 8 minutes, 28 seconds east, 905.77 feet; thence north 54 degrees, 19 minutes, 20 seconds east, 731.56 feet; thence north 57 degrees, 13 minutes, 41 seconds east, 684.45 feet; thence north 56 degrees, 14 minutes, 20 seconds east, 120.34 feet; thence north 53 degrees, 9 minutes, 36 seconds east, 598.24 feet; thence north 62 degrees, 7 minutes, 10 seconds east, 707.55 feet; thence north 59 degrees, 58 minutes, 43 seconds east, 563.34 feet; thence north 49 degrees, 11 minutes, 46 seconds east, 482.37 feet; thence north 57 degrees, 18 minutes, 21 seconds east, 762.06 feet; thence north 71 degrees, 32 minutes, 53 seconds east, 481.69 feet; thence north 61 degrees, 27 minutes, 48 seconds east, 250.65 feet and ending at a point that is perpendicular to the northeast corner of government lot 5 of section 23, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to section 24, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the northeast corner of government lot 5 of section 23, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, and assuming the east line of said government lot 5 to have a bearing of south 0 degrees, 1 minute, 56 seconds east; thence north 28 degrees, 32 minutes, 12 seconds west, and perpendicular to the geographical centerline of the Platte River, 1225.57 feet to the point of beginning, said point being on said geographical centerline; the next 5 courses on said geographical centerline; thence north 61 degrees, 27 minutes, 48 seconds east, 759.65 feet; thence north 54 degrees, 45 minutes, 25 seconds east, 1538.51 feet; thence north 58 degrees, 5 minutes, 44 seconds east, 1675.34 feet; thence

north 53 degrees, 15 minutes, 23 seconds east, 1844.73 feet; thence north 46 degrees, 46 minutes, 34 seconds east, 622.22 feet and ending at a point that is perpendicular to the northeast corner of government lot 1 of said section 24, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to sections 17, 18, and 19, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the northeast corner of government lot 1 of section 24, township 15 north, range 4 west of the sixth principal meridian, Polk County, Nebraska, and assuming the north line of government lot 1 of section 17, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, to have a bearing of north 56 degrees, 3 minutes, 25 seconds east; thence north 43 degrees, 13 minutes, 26 seconds west, and perpendicular to the geographical centerline of the Platte River, 901.44 feet to the point of beginning, said point being on the geographical centerline; the next 12 courses on said geographical centerline; thence north 46 degrees, 46 minutes, 34 seconds east, 347.92 feet; thence north 52 degrees, 38 minutes, 26 seconds east, 626.31 feet; thence north 41 degrees, 44 minutes, 8 seconds east, 334.55 feet; thence north 51 degrees, 2 minutes, 44 seconds east, 972.55 feet; thence north 40 degrees, 15 minutes, 33 seconds east, 731.79 feet; thence north 36 degrees, 26 minutes, 23 seconds east, 970.59 feet; thence north 36 degrees, 32 minutes, 36 seconds east, 908.72 feet; thence north 58 degrees, 27 minutes, 57 seconds east, 258.30 feet; thence north 42 degrees, 48 minutes, 50 seconds east, 367.48 feet; thence north 43 degrees, 54 minutes, 57 seconds east, 2682.73 feet; thence north 41 degrees, 38 minutes, 34 seconds east, 398.76 feet; thence north 40 degrees, 45 minutes, 24 seconds east, 416.25 feet and ending at a point that is perpendicular to the northeast corner of government lot 1 of said section 17, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to sections 8 and 9, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of lot 5 of said section 8, and assuming the south line of said lot 5 to have a bearing of south 89 degrees, 33 minutes, 8 seconds east; thence north 49 degrees, 14 minutes, 36 seconds west, and perpendicular to the geographical centerline of the Platte River, 1386.78 feet to the point of beginning, said point being on the geographical centerline of said Platte River; the next 26 courses on said geographical centerline; thence north 59 degrees, 9 minutes, 30 seconds east, 435.97 feet; thence north 41 degrees, 24 minutes, 58 seconds east, 144.83 feet; thence north 45 degrees, 47 minutes, 4 seconds east, 298.37 feet; thence north 44 degrees, 1 minute, 35 seconds east, 399.35 feet; thence north 31 degrees, 41 minutes, 6 seconds east, 220.66 feet; thence north 29 degrees, 20 minutes, 52 seconds east, 420.71 feet; thence north 46 degrees, 4 minutes, 0 seconds east, 343.05 feet; thence north 39 degrees, 58 minutes, 42 seconds east, 489.14 feet; thence north 30 degrees, 8 minutes, 23 seconds east, 370.70 feet; thence north 47 degrees, 40 minutes, 21 seconds east, 243.26 feet; thence north 49 degrees, 27 minutes, 19 seconds east, 381.66 feet; thence north 42 degrees, 43 minutes, 37 seconds east, 193.07 feet; thence north 47 degrees, 54 minutes, 34 seconds east, 171.32 feet; thence north 47 degrees, 54 minutes, 34 seconds east, 299.06 feet; thence north 54 degrees, 43 minutes, 13 seconds east, 293.59 feet; thence north 47 degrees, 48 minutes, 38 seconds east, 273.99 feet; thence north 60 degrees, 50 minutes, 29 seconds east, 259.30 feet; thence north 43 degrees, 34 minutes, 13 seconds east, 647.78 feet; thence

north 43 degrees, 34 minutes, 13 seconds east, 308.91 feet; thence north 33 degrees, 44 minutes, 23 seconds east, 205.67 feet; thence north 42 degrees, 59 minutes, 37 seconds east, 103.53 feet; thence north 49 degrees, 59 minutes, 5 seconds east, 573.10 feet; thence north 48 degrees, 3 minutes, 27 seconds east, 250.06 feet; thence north 55 degrees, 30 minutes, 20 seconds east, 251.45 feet; thence north 36 degrees, 29 minutes, 4 seconds east, 256.44 feet; thence north 50 degrees, 34 minutes, 37 seconds east, 170.89 feet and ending at a point that is perpendicular to the southwest corner of government lot 4 of section 4, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska; thence continuing on the county line between Polk and Merrick counties adjacent to section 4, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at the southwest corner of lot 4 of said section 4, and assuming the south line of said lot 4 to have a bearing of south 89 degrees, 38 minutes, 18 seconds east; thence north 39 degrees, 25 minutes, 23 seconds west, and perpendicular to the geographical centerline of the Platte River, 1662.07 feet to the point of beginning, said point being on said geographical centerline; the next 7 courses on said geographical centerline; thence north 53 degrees, 46 minutes, 58 seconds east, 330.14 feet; thence north 58 degrees, 57 minutes, 3 seconds east, 253.55 feet; thence north 44 degrees, 28 minutes, 51 seconds east, 250.91 feet; thence north 50 degrees, 4 minutes, 7 seconds east, 250.02 feet; thence north 56 degrees, 38 minutes, 46 seconds east, 252.04 feet; thence north 45 degrees, 40 minutes, 51 seconds east, 250.51 feet; thence north 43 degrees, 26 minutes, 50 seconds east, 286.41 feet to a point on the west line of north thunderbird lake subdivision extended north; thence south 33 degrees, 33 minutes, 56 seconds east, and on the west line of said subdivision, 1762.06 feet to the southwest corner of said subdivision; thence north 52 degrees, 27 minutes, 34 seconds east, and on the south line of said subdivision, 258.17 feet; thence north 50 degrees, 24 minutes, 39 seconds east, and on the south line of said subdivision, 784.82 feet; thence north 4 degrees, 21 minutes, 44 seconds east, and on the south line of said subdivision, 229.01 feet; thence north 50 degrees, 51 minutes, 33 seconds east, 509.80 feet; thence north 6 degrees, 13 minutes, 43 seconds west, and on the south line of said subdivision, 284.97 feet; thence north 67 degrees, 25 minutes, 50 seconds east, 902.92 feet to a point on the west right-of-way line of said highway number 39; thence north 23 degrees, 0 minutes, 50 seconds west, and on the west right-of-way line of said highway number 39, 226.15 feet; thence north 23 degrees, 41 minutes, 10 seconds west, and on the west right-of-way line of said highway number 39, 305.60 feet; thence north 33 degrees, 36 minutes, 5 seconds west, and on the west right-of-way line of said highway number 39, 305.56 feet; thence north 23 degrees, 14 minutes, 0 seconds west, and on the west right-of-way line of said highway number 39, 299.38 feet; thence north 22 degrees, 6 minutes, 20 seconds west, and on the west right-of-way line of said highway number 39, 116.44 feet; thence north 67 degrees, 53 minutes, 40 seconds east, 260.58 feet and ending at a point on the west line of tri-lakes subdivision, said point being 56.75 feet southeast of the northwest corner of said subdivision; thence continuing on the county line between Polk and Merrick counties in section 3, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Beginning at a point on the west line of tri-lakes subdivision, said point being 56.75 feet southeast of the northwest corner of said subdivision, and assuming the west line of said subdivision to have a bearing of south 22 degrees, 58 minutes, 33 seconds east; thence north 67 degrees, 53 minutes, 40

seconds east, 2957.56 feet to a point on an agreed upon boundary line; thence south 26 degrees, 56 minutes, 23 seconds east, and on said agreed upon boundary line, 1196.15 feet; thence north 87 degrees, 51 minutes, 49 seconds east, 1981.62 feet to a point on the thread of stream of the south channel of the Platte River; thence south 89 degrees, 37 minutes, 0 seconds east, and on said thread of stream, 624.91 feet and ending at the east line of said section 3; thence continuing on the county line between Polk and Merrick counties in section 2, township 15 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, and in sections 30 and 31, township 16 north, range 2 west of the sixth principal meridian, Polk County, Nebraska, and in sections 35 and 36, township 16 north, range 3 west of the sixth principal meridian, Polk County, Nebraska, described as follows: Commencing at a point on the west line of tri-lakes subdivision, said point being 56.75 feet southeast of the northwest corner of said subdivision, and assuming the west line of said subdivision to have a bearing of south 22 degrees, 58 minutes, 33 seconds east; thence north 67 degrees, 53 minutes, 40 seconds east, 2957.56 feet to a point on an agreed upon boundary line; thence south 26 degrees, 56 minutes, 23 seconds east, and on said agreed upon boundary line, 1196.15 feet; thence north 87 degrees, 51 minutes, 49 seconds east, 1981.62 feet to a point on the thread of stream of the south channel of the Platte River; thence south 89 degrees, 37 minutes, 0 seconds east, and on said thread of stream, 624.91 feet to the point of beginning, said point being on the west line of said section 2; the next 13 courses on the thread of stream of the south channel of the Platte River; thence north 76 degrees, 31 minutes, 56 seconds east, 1282.77 feet; thence north 64 degrees, 49 minutes, 59 seconds east, 1003.62 feet; thence north 66 degrees, 16 minutes, 54 seconds east, 771.67 feet; thence north 64 degrees, 24 minutes, 8 seconds east, 987.84 feet; thence north 62 degrees, 32 minutes, 13 seconds east, 765.60 feet; thence north 82 degrees, 40 minutes, 10 seconds east, 881.63 feet; thence north 66 degrees, 25 minutes, 46 seconds east, 407.59 feet; thence north 51 degrees, 51 minutes, 31 seconds east, 644.83 feet; thence north 62 degrees, 11 minutes, 14 seconds east, 438.62 feet; thence north 79 degrees, 50 minutes, 8 seconds east, 1220.74 feet; thence north 68 degrees, 59 minutes, 38 seconds east, 1125.78 feet; thence north 58 degrees, 55 minutes, 8 seconds east, 1012.63 feet; thence north 73 degrees, 48 minutes, 20 seconds east, 926.49 feet to the east line of section 36, township 16 north, range 3 west of the sixth principal meridian, Polk County, Nebraska; thence north on the dividing line between ranges two and three west to the south bank of the north channel of the Platte River; thence northeasterly along the south bank of said Platte River to the east line of range 1 west; thence south, and on the east line of range 1 west to the southeast corner of township thirteen north, range one west; thence west on the south line of township 13 north, to the point of beginning.

Source: Laws 2009, LB131, § 2.



CHAPTER 23
COUNTY GOVERNMENT AND OFFICERS

Article.
1. General Provisions.
   (b) Powers and Duties of County Board. 23-114.01 to 23-120.
   (c) Commissioner System. 23-148 to 23-151.
   (i) Motor Vehicle and Motorboat Services. 23-186.
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2. Counties under Township Organization.
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ARTICLE 1
GENERAL PROVISIONS

(b) POWERS AND DUTIES OF COUNTY BOARD

Section
23-114.01. County planning commission; appointment; qualifications; terms; vacancies; compensation; expenses; powers; duties; appeal.
23-114.02. Comprehensive development plan; purpose.
23-114.06. County planning commission; notice to military installation.
23-120. Provide buildings; tax; levy authorized.

(c) COMMISSIONER SYSTEM

23-148. Commissioners; number; election; when authorized.
23-149. Commissioners; number; petition to change; election; ballot; form.
23-151. Commissioner system; districts; number; redistricting; duties of county board; commissioners; election.

(i) MOTOR VEHICLE AND MOTORBOAT SERVICES

23-186. Consolidation of services; county board; designation of official; county treasurer; duties.

(j) ORDINANCES

23-187. Subjects regulated; power to enforce.
23-188. County board; notice; contents; public hearing.
23-189. Proof of ordinance; proof of adoption and publication.
23-190. County ordinance; reading by title; suspension of requirement; adoption; vote required; revision or amendment.
23-191. Style of ordinance; publication.
23-192. Ordinance; territorial application; copy provided to clerk of city and village within county; effective date; change of jurisdiction; effect.
23-193. County attorney; powers; filing of ordinances.

(b) POWERS AND DUTIES OF COUNTY BOARD

23-114.01 County planning commission; appointment; qualifications; terms; vacancies; compensation; expenses; powers; duties; appeal.

(1) In order to avail itself of the powers conferred by section 23-114, the county board shall appoint a planning commission to be known as the county planning commission. The members of the commission shall be residents of the county to be planned and shall be appointed with due consideration to geographical and population factors. Since the primary focus of concern and control in county planning and land-use regulatory programs is the unincorporated area, a majority of the members of the commission shall be residents of unincorporated areas, except that this requirement shall not apply to joint planning commissions. Members of the commission shall hold no county or municipal office, except that a member may also be a member of a city, village, or other type of planning commission. The term of each member shall be three years, except that approximately one-third of the members of the first commission shall serve for terms of one year, one-third for terms of two years, and one-third for terms of three years. All members shall hold office until their successors are appointed. Members of the commission may be removed by a majority vote of the county board for inefficiency, neglect of duty, or malfeasance in office or other good and sufficient cause upon written charges being filed with the county board and after a public hearing has been held regarding such charges. Vacancies occurring otherwise than through the expiration of terms shall be filled for the unexpired terms by individuals appointed by the county board. Members of the commission shall be compensated for their actual and necessary expenses incurred in connection with their duties in an amount to be fixed by the county board. Reimbursement for mileage shall be made at the rate provided in section 81-1176. Each county board may provide a per diem payment for members of the commission of not to exceed fifteen dollars for each day that each such member attends meetings of the commission or is engaged in matters concerning the commission, but no member shall receive more than one thousand dollars in any one year. Such per diem payments shall be in addition to and separate from compensation for expenses.

(2) The commission: (a) Shall prepare and adopt as its policy statement a comprehensive development plan and such implemental means as a capital improvement program, subdivision regulations, building codes, and a zoning resolution; (b) shall consult with and advise public officials and agencies, public utilities, civic organizations, educational institutions, and citizens relating to the promulgation of implemental programs; (c) may delegate authority to any of the groups named in subdivision (b) of this subsection to conduct studies and make surveys for the commission; and (d) shall make preliminary reports on its findings and hold public hearings before submitting its final reports. The county board shall not hold its public meetings or take action on matters relating to the comprehensive development plan, capital improvements, building codes, subdivision development, or zoning until it has received the recommendations of the commission.

(3) The commission may, with the consent of the governing body, in its own name: Make and enter into contracts with public or private bodies; receive contributions, bequests, gifts, or grants of funds from public or private sources; expend the funds appropriated to it by the county board; employ agents and employees; and acquire, hold, and dispose of property. The commission may,

on its own authority: Make arrangements consistent with its program; conduct or sponsor special studies or planning work for any public body or appropriate agency; receive grants, remuneration, or reimbursement for such studies or work; and at its public hearings, summon witnesses, administer oaths, and compel the giving of testimony.

(4) In all counties in the state, the county planning commission may grant conditional uses or special exceptions to property owners for the use of their property if the county board of commissioners or supervisors has officially and generally authorized the commission to exercise such powers and has approved the standards and procedures the commission adopted for equitably and judiciously granting such conditional uses or special exceptions. The granting of a conditional use permit or special exception shall only allow property owners to put their property to a special use if it is among those uses specifically identified in the county zoning regulations as classifications of uses which may require special conditions or requirements to be met by the owners before a use permit or building permit is authorized. The applicant for a conditional use permit or special exception for a livestock operation specifically identified in the county zoning regulations as a classification of use which may require special conditions or requirements to be met within an area of a county zoned for agricultural use may request a determination of the special conditions or requirements to be imposed by the county planning commission or by the county board of commissioners or supervisors if the board has not authorized the commission to exercise such authority. Upon request the commission or board shall issue such determination of the special conditions or requirements to be imposed in a timely manner. Such special conditions or requirements to be imposed may include, but are not limited to, the submission of information that may be separately provided to state or federal agencies in applying to obtain the applicable state and federal permits. The commission or the board may request and review, prior to making a determination of the special conditions or requirements to be imposed, reasonable information relevant to the conditional use or special exception. If a determination of the special conditions or requirements to be imposed has been made, final permit approval may be withheld subject only to a final review by the commission or county board to determine whether there is a substantial change in the applicant's proposed use of the property upon which the determination was based and that the applicant has met, or will meet, the special conditions or requirements imposed in the determination. For purposes of this section, substantial change shall include any significant alteration in the original application including a significant change in the design or location of buildings or facilities, in waste disposal methods or facilities, or in capacity.

(5) The power to grant conditional uses or special exceptions as set forth in subsection (4) of this section shall be the exclusive authority of the commission, except that the county board of commissioners or supervisors may choose to retain for itself the power to grant conditional uses or special exceptions for those classifications of uses specified in the county zoning regulations. The county board of commissioners or supervisors may exercise such power if it has formally adopted standards and procedures for granting such conditional uses or special exceptions in a manner that is equitable and which will promote the public interest. In any county other than a county in which is located a city of the primary class, an appeal of a decision by the county planning commission or county board of commissioners or supervisors regarding a conditional use or

special exception shall be made to the district court. In any county in which is located a city of the primary class, an appeal of a decision by the county planning commission regarding a conditional use or special exception shall be made to the county board of commissioners or supervisors, and an appeal of a decision by the county board of commissioners or supervisors regarding a conditional use or special exception shall be made to the district court.

(6) Whenever a county planning commission or county board is authorized to grant conditional uses or special exceptions pursuant to subsection (4) or (5) of this section, the planning commission or county board shall, with its decision to grant or deny a conditional use permit or special exception, issue a statement of factual findings arising from the record of proceedings that support the granting or denial of the conditional use permit or special exception. If a county planning commission's role is advisory to the county board, the county planning commission shall submit such statement with its recommendation to the county board as to whether to approve or deny a conditional use permit or special exception.

Source: Laws 1967, c. 117, § 2, p. 366; Laws 1975, LB 410, § 22; Laws 1978, LB 186, § 8; Laws 1981, LB 204, § 21; Laws 1982, LB 601, § 1; Laws 1991, LB 259, § 1; Laws 1996, LB 1011, § 6; Laws 2003, LB 754, § 3; Laws 2004, LB 973, § 3; Laws 2010, LB970, § 1.
Effective date July 15, 2010.

23-114.02 Comprehensive development plan; purpose.

The general plan for the improvement and development of the county shall be known as the comprehensive development plan and shall, among other elements, include:

(1) A land-use element which designates the proposed general distribution, general location, and extent of the uses of land for agriculture, housing, commerce, industry, recreation, education, public buildings and lands, and other categories of public and private use of land;

(2) The general location, character, and extent of existing and proposed major streets, roads, and highways, and air and other transportation routes and facilities;

(3) When a new comprehensive plan or a full update to an existing comprehensive plan is developed on or after July 15, 2010, but not later than January 1, 2015, an energy element which: Assesses energy infrastructure and energy use by sector, including residential, commercial, and industrial sectors; evaluates utilization of renewable energy sources; and promotes energy conservation measures that benefit the community; and

(4) The general location, type, capacity, and area served of present and projected or needed community facilities including recreation facilities, schools, libraries, other public buildings, and public utilities and services.

The comprehensive development plan shall consist of both graphic and textual material and shall be designed to accommodate anticipated long-range future growth which shall be based upon documented population and economic projections.

Source: Laws 1967, c. 117, § 3, p. 368; Laws 2010, LB997, § 4.
Effective date July 15, 2010.

23-114.06 County planning commission; notice to military installation.

When a county planning commission appointed pursuant to section 23-114.01 is considering the adoption or amendment of a zoning ordinance or the approval of the platting or replatting of any development of real estate, the commission shall notify any military installation which is located within the county if the county has received a written request for such notification from the military installation. The county planning commission shall deliver the notification to the military installation at least ten days prior to the meeting of the county planning commission at which the proposal is to be considered.

Source: Laws 2010, LB279, § 4.
Effective date July 15, 2010.

23-120 Provide buildings; tax; levy authorized.

(1) The county board shall acquire, purchase, construct, renovate, remodel, furnish, equip, add to, improve, or provide a suitable courthouse, jail, and other county buildings and a site or sites therefor and for such purposes borrow money and issue the bonds of the county to pay for the same. Agreements entered into under section 25-412.03 shall be deemed to be in compliance with this section. The board shall keep such buildings in repair and provide suitable rooms and offices for the accommodation of the several courts of record, Nebraska Workers' Compensation Court or any judge thereof, Commissioner of Labor for the conduct and operation of the state free employment service, county board, county clerk, county treasurer, county sheriff, clerk of the district court, county surveyor, county agricultural agent, and county attorney if the county attorney holds his or her office at the county seat and shall provide suitable furniture and equipment therefor. All such courts which desire such accommodation shall be suitably housed in the courthouse.

(2) No levy exceeding (a) two million dollars in counties having in excess of two hundred fifty thousand inhabitants, (b) one million dollars in counties having in excess of one hundred thousand inhabitants and not in excess of two hundred fifty thousand inhabitants, (c) three hundred thousand dollars in counties having in excess of thirty thousand inhabitants and not in excess of one hundred thousand inhabitants, or (d) one hundred fifty thousand dollars in all other counties shall be made within a one-year period for any of the purposes specified in subsection (1) of this section without first submitting the proposition to a vote of the people of the county at a general election or a special election ordered by the board for that purpose and obtaining the approval of a majority of the legal voters thereon.

(3)(a) The county board of any county in this state may, when requested so to do by petition signed by at least a majority of the legal voters in the county based on the average vote of the two preceding general elections, make an annual levy of not to exceed seventeen and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in the county for any of the purposes specified in subsection (1) of this section.

(b) If a county on the day it first initiates a project for any of the purposes specified in subsection (1) of this section had no bonded indebtedness payable from its general fund levy, the county board may make an annual levy of not to exceed five and two-tenths cents on each one hundred dollars upon the taxable value of all the taxable property of the county for a project or projects for any of the purposes specified in subsection (1) of this section without the filing of a

petition described in subdivision (3)(a) of this section. The county board shall designate the particular project for which such levy shall be expended, the period of years, which shall not exceed twenty, for which the tax will be levied for such project, and the number of cents of the levy for each year thereof. The county board may designate more than one project and levy a tax pursuant to this section for each such project, concurrently or consecutively, as the case may be, if the aggregate levy in each year and the duration of each levy will not exceed the limitations specified in this subsection. Each levy for a project which is authorized by this subdivision may be imposed for such duration specified by the county board notwithstanding the contemporaneous existence or subsequent imposition of any other levy or levies for another project or projects imposed pursuant to this subdivision and notwithstanding the subsequent issuance by the county of bonded indebtedness payable from its general fund levy.

Source: Laws 1879, § 25, p. 361; Laws 1887, c. 27, § 1, p. 352; Laws 1889, c. 10, § 1, p. 83; Laws 1909, c. 20, § 1, p. 210; R.S.1913, § 954; Laws 1915, c. 18, § 1, p. 75; Laws 1919, c. 66, § 1, p. 175; Laws 1919, c. 67, § 1, p. 178; Laws 1921, c. 144, § 1, p. 615; C.S.1922, § 854; C.S.1929, § 26-108; Laws 1935, c. 107, § 7, p. 345; Laws 1939, c. 28, § 8, p. 148; C.S.Supp.,1941, § 26-108; R.S.1943, § 23-120; Laws 1951, c. 46, § 1, p. 162; Laws 1953, c. 287, § 38, p. 952; Laws 1967, c. 119, § 1, p. 380; Laws 1969, c. 147, § 1, p. 704; Laws 1971, LB 999, § 1; Laws 1975, LB 97, § 5; Laws 1979, LB 187, § 94; Laws 1984, LB 683, § 1; Laws 1986, LB 811, § 9; Laws 1988, LB 853, § 1; Laws 1992, LB 719A, § 94; Laws 1995, LB 286, § 1; Laws 1996, LB 1114, § 37; Laws 1999, LB 272, § 4; Laws 2009, LB294, § 1.

(c) COMMISSIONER SYSTEM

23-148 Commissioners; number; election; when authorized.

The county board of commissioners in all counties having not more than three hundred thousand inhabitants shall consist of three persons except as follows:

(1) The registered voters in any county containing not more than three hundred thousand inhabitants may vote at any general election as to whether their county board shall consist of three or five commissioners. Upon the completion of the canvass by the county canvassing board, the proposition shall be decided and, if the number of commissioners is increased from three to five commissioners, vacancies shall be deemed to exist and the procedures set forth in section 32-567 shall be instituted; and

(2) The registered voters of any county under township organization voting to discontinue township organization may also vote as to the number of county commissioners as provided in sections 23-292 to 23-299.

Source: Laws 1879, § 53, p. 369; Laws 1887, c. 29, § 1, p. 359; Laws 1891, c. 21, § 1, p. 225; Laws 1903, c. 30, § 1, p. 277; R.S.1913, § 978; Laws 1917, c. 16, § 1, p. 77; Laws 1919, c. 69, § 1, p. 182; C.S.1922, § 878; C.S.1929, § 26-132; R.S.1943, § 23-148; Laws 1945, c. 42, § 1, p. 202; Laws 1947, c. 62, § 2, p. 197; Laws 1951,

c. 48, § 1, p. 165; Laws 1957, c. 60, § 1, p. 278; Laws 1979, LB 331, § 2; Laws 1985, LB 53, § 1; Laws 1991, LB 789, § 4; Laws 1994, LB 76, § 534; Laws 2008, LB269, § 1.

Cross References

For discontinuance of township organization, see sections 23-292 to 23-299.

23-149 Commissioners; number; petition to change; election; ballot; form.

(1) In counties not under township organization, a registered voter may file a petition or petitions for the submission of the question regarding the number of commissioners on the county board. The petition or petitions shall be signed by registered voters equal in number to five percent of the voters registered in the county at the preceding statewide general election.

(2) When the petition or petitions are filed in the office of the county clerk or election commissioner not less than seventy days before the date of any general election, the county clerk or election commissioner shall cause the question to be submitted to the voters of the county at such election and give notice thereof in the general notice of such election. The forms of ballots shall be respectively: For three commissioners and For five commissioners; and the same shall be printed upon the regular ballots cast for officers voted for at such election and shall be counted and canvassed in the same manner.

(3) If a majority of votes cast at the election favor the proposition For five commissioners, thereafter the county shall have five commissioners, and if a majority of the ballots cast at the election favor the proposition For three commissioners, thereafter the county shall have three commissioners.

Source: Laws 1891, c. 21, § 1, p. 226; Laws 1903, c. 30, § 1, p. 277; R.S.1913, § 978; Laws 1917, c. 18, § 1, p. 78; Laws 1919, c. 69, § 1, p. 183; C.S.1922, § 878; C.S.1929, § 26-132; R.S.1943, § 23-149; Laws 1969, c. 259, § 1, p. 958; Laws 1973, LB 75, § 1; Laws 1991, LB 789, § 5; Laws 2008, LB269, § 2.

23-151 Commissioner system; districts; number; redistricting; duties of county board; commissioners; election.

(1) Each county under commissioner organization having not more than three hundred thousand inhabitants shall be divided into (a) three districts numbered respectively, one, two, and three, (b) five districts as provided for in sections 23-148 and 23-149 numbered respectively, one, two, three, four, and five, or (c) seven districts as provided for in sections 23-292 to 23-299 numbered respectively, one, two, three, four, five, six, and seven. Each county having more than three hundred thousand inhabitants shall be divided into seven districts numbered respectively, one, two, three, four, five, six, and seven.

(2) Such districts shall consist of two or more voting precincts comprising compact and contiguous territory and embracing a substantially equal division of the population of the county. District boundary lines shall not be subject to alteration more than once every ten years unless the county has a change in population requiring it to be redistricted pursuant to subdivision (3)(a) of this section or unless there is a vote to change from three to five districts as provided for in sections 23-148 and 23-149.

(3)(a) The establishment of district boundary lines pursuant to subsection (1) of this section shall be completed within one year after a county attains a

population of more than three hundred thousand inhabitants. Beginning in 2001 and every ten years thereafter, the district boundary lines of any county having more than three hundred thousand inhabitants shall be redrawn, if necessary to maintain substantially equal district populations, by the date specified in section 32-553.

(b) The establishment of district boundary lines and any alteration thereof under this subsection shall be done by the county board. If the county board fails to do so by the applicable deadline, district boundaries shall be drawn by the election commissioner within six months after the deadline established for the drawing or redrawing of district boundaries by the county board. If the election commissioner fails to meet such deadline, the remedies established in subsection (3) of section 32-555 shall apply.

(4) The district boundary lines shall not be changed at any session of the county board unless all of the commissioners are present at such session.

(5) Commissioners shall be elected as provided in section 32-528. Elections shall be conducted as provided in the Election Act.

Source: Laws 1879, § 54, p. 369; Laws 1887, c. 29, § 2, p. 359; Laws 1891, c. 21, § 1, p. 227; Laws 1903, c. 30, § 1, p. 278; Laws 1913, c. 150, § 1, p. 386; R.S.1913, § 979; Laws 1915, c. 19, § 1, p. 78; Laws 1917, c. 16, § 2, p. 78; Laws 1919, c. 69, § 2, p. 183; C.S.1922, § 879; C.S.1929, § 26-133; Laws 1931, c. 39, § 1, p. 132; C.S.Supp.,1941, § 26-133; R.S.1943, § 23-151; Laws 1947, c. 62, § 3, p. 198; Laws 1963, c. 111, § 1, p. 439; Laws 1969, c. 148, § 1, p. 706; Laws 1973, LB 552, § 2; Laws 1978, LB 632, § 3; Laws 1979, LB 331, § 3; Laws 1990, LB 81, § 1; Laws 1991, LB 789, § 7; Laws 1994, LB 76, § 536; Laws 2008, LB268, § 1; Laws 2008, LB269, § 3.

Cross References

Election Act, see section 32-101.

(i) MOTOR VEHICLE AND MOTORBOAT SERVICES

23-186 Consolidation of services; county board; designation of official; county treasurer; duties.

(1) Until the implementation date designated by the Director of Motor Vehicles under subsection (2) of this section, a county board may consolidate, under the office of a designated county official, the services provided to the public by the county assessor, the county clerk, and the county treasurer relating to the issuance of certificates of title, registration certificates, certificates of number, license plates, and renewal decals, the notation and cancellation of liens, and the collection of taxes and fees for motor vehicles, all-terrain vehicles, utility-type vehicles, minibikes, snowmobiles, trailers, and motorboats as provided in the Motor Vehicle Certificate of Title Act, the Motor Vehicle Registration Act, the State Boat Act, and sections 18-1738, 18-1738.01, and 60-1803. In a county in which a city of the metropolitan class is located, the county board may designate the county treasurer to provide the services. In any other county, the county board may designate the county assessor, the county clerk, or the county treasurer to provide the services.

(2) Beginning on an implementation date designated by the Director of Motor Vehicles, but no later than January 1, 2011, the county treasurer of each county

shall be the county official who provides services to the public relating to the issuance of certificates of title, registration certificates, certificates of number, license plates, and renewal decals, the notation and cancellation of liens, and the collection of taxes and fees for motor vehicles, all-terrain vehicles, utility-type vehicles, minibikes, snowmobiles, trailers, and motorboats as provided in the Motor Vehicle Certificate of Title Act, the Motor Vehicle Registration Act, the State Boat Act, and sections 18-1738, 18-1738.01, and 60-1803.

Source: Laws 1993, LB 112, § 1; Laws 1995, LB 37, § 1; Laws 1996, LB 464, § 1; Laws 1997, LB 271, § 13; Laws 2003, LB 333, § 32; Laws 2005, LB 274, § 227; Laws 2005, LB 276, § 99; Laws 2009, LB49, § 2; Laws 2010, LB650, § 1.
Operative date January 1, 2011.

Cross References

Motor Vehicle Certificate of Title Act, see section 60-101.
Motor Vehicle Registration Act, see section 60-301.
State Boat Act, see section 37-1201.

(j) ORDINANCES

23-187 Subjects regulated; power to enforce.

(1) In addition to the powers granted by section 23-104, a county may, in the manner specified by sections 23-187 to 23-193, regulate the following subjects by ordinance:

(a) Parking of motor vehicles on public roads, highways, and rights-of-way as it pertains to snow removal for and access by emergency vehicles to areas within the county;

(b) Motor vehicles as defined in section 60-339 that are abandoned on public or private property;

(c) Graffiti on public or private property;

(d) False alarms from electronic security systems that result in requests for emergency response from law enforcement or other emergency responders; and

(e) Violation of the public peace and good order of the county by disorderly conduct, lewd or lascivious behavior, or public nudity.

(2) For the enforcement of any ordinance authorized by this section, a county may impose fines, forfeitures, or penalties and provide for the recovery, collection, and enforcement of such fines, forfeitures, or penalties. A county may also authorize such other measures for the enforcement of ordinances as may be necessary and proper. A fine enacted pursuant to this section shall not exceed five hundred dollars for each offense.

Source: Laws 2009, LB532, § 1.

23-188 County board; notice; contents; public hearing.

A county board shall provide notice of the time when any county ordinance is set for consideration before the board. Such notice shall appear at least once a week for two weeks in a newspaper published or of general circulation in the county. The notice shall contain the entire wording of the ordinance and the time and place of the public hearing. The last publication of the notice shall be not less than five days nor more than two weeks prior to the time set for the public hearing on the adoption of the ordinance. A county board shall not take

final action on the proposed ordinance until after at least one public hearing has been held thereon by the county board at which public comment regarding the proposed ordinance was permitted.

Source: Laws 2009, LB532, § 2.

23-189 Proof of ordinance; proof of adoption and publication.

A county ordinance may be proved by the certificate of the county clerk under the seal of the county. The adoption and publication of the ordinance shall be sufficiently proved by a certificate under the seal of the county, from the county clerk, showing (1) that such ordinance was adopted and (2) when and in what paper the ordinance was published or when, by whom, and where the ordinance was posted.

Source: Laws 2009, LB532, § 3.

23-190 County ordinance; reading by title; suspension of requirement; adoption; vote required; revision or amendment.

(1) A county ordinance shall be read by title on three different days unless three-fourths of the county board members, following the public hearing on the ordinance, vote to suspend this requirement. If such requirement is suspended, the ordinance shall be read by title or number and then moved for final adoption. Three-fourths of the county board members may require a reading of any such ordinance in full before adoption under either procedure set out in this section. The votes of each member shall be called aloud and recorded. To adopt any ordinance, the concurrence of a majority of the whole number of the members of the county board shall be required.

(2) A county ordinance shall contain no subject which is not clearly expressed in the title, and no ordinance or section thereof shall be revised or amended unless the new ordinance contains the entire ordinance or section as revised or amended and the ordinance or section that is amended is repealed.

Source: Laws 2009, LB532, § 4.

23-191 Style of ordinance; publication.

The style of county ordinances shall be: ''Be it ordained by the county board of the county of .....,'' and all county ordinances shall, within fifteen days after they are adopted, be published in some newspaper published or of general circulation within the county.

Source: Laws 2009, LB532, § 5.

23-192 Ordinance; territorial application; copy provided to clerk of city and village within county; effective date; change of jurisdiction; effect.

(1) No ordinance adopted pursuant to sections 23-187 to 23-193 shall be effective within the corporate boundaries of any incorporated city or village located in whole or in part within the county. No ordinance adopted pursuant to sections 23-187 to 23-193 shall be effective within the area outside of the corporate boundaries of any city or village in which such city or village has been granted and is exercising powers by ordinance on a similar subject matter. Every county ordinance adopted pursuant to sections 23-187 to 23-193 shall include one section defining the area of the county within which the county ordinance is effective. The ordinance shall be amended to reflect any

changes in the area of the county's jurisdiction resulting from (a) annexation by a city or village, (b) action by a city or village to adopt an ordinance regarding similar subject matter to that of the county ordinance if the city or village ordinance is to be effective in areas beyond its corporate boundary, or (c) any changes in the area of jurisdiction of the city or village regarding such city or village ordinance.

(2) Before a county adopts an ordinance under sections 23-187 to 23-193, the county clerk shall provide a copy of the text of the ordinance to the clerk of each city and village within the county no later than seven days after the first reading of the ordinance or the public hearing on the ordinance, whichever occurs first. Within seven days after receiving a copy of the ordinance, the city or village shall respond to the county and provide a copy of any ordinance specifying where the city or village is enforcing an ordinance on similar subject matter outside its corporate boundaries. Any ordinance adopted by the county shall not be effective in the area in which the city or village is exercising jurisdiction. Prior to the adoption of the county ordinance, the section of the ordinance that defines the area of county jurisdiction shall be amended to show the removal of the area of the jurisdiction of such city or village as indicated in the city or village ordinance provided to the county from the description of the area within which the county ordinance will be effective. An ordinance adopted under sections 23-187 to 23-193 shall not be effective until fifteen days after its adoption.

(3) Any city or village located in whole or in part within a county that has adopted an ordinance pursuant to sections 23-187 to 23-193 which (a) annexes any territory, (b) adopts an ordinance on similar subject matter to that of the county ordinance and extends the jurisdiction of the city or village under such ordinance to areas beyond its corporate boundaries, or (c) changes the area beyond the corporate boundaries of the city or village within which the city or village exercises jurisdiction by ordinance on similar subject matter to that of the county ordinance shall provide to the county clerk a copy of the ordinance establishing and delineating its jurisdiction or any change to that jurisdiction within seven days after the adoption of the relevant city or village ordinance. Upon the effective date of the city or village ordinance, the county ordinance shall cease to be effective within the area in which the city or village has assumed jurisdiction. The county board shall promptly amend its ordinance to reflect the change in the area within which the county ordinance is effective.

Source: Laws 2009, LB532, § 6.

23-193 County attorney; powers; filing of ordinances.

A county attorney may sign and prosecute a complaint in the county court for a violation of an ordinance of the county in which he or she serves as county attorney. No county may prosecute a complaint for a violation of an ordinance unless such county has on file with the court a current copy of the ordinances of such county. Subject to guidelines provided by the State Court Administrator, the court shall prescribe the form in which such ordinances shall be filed.

Source: Laws 2009, LB532, § 7.

ARTICLE 2
COUNTIES UNDER TOWNSHIP ORGANIZATION

(a) ADOPTION OF TOWNSHIP ORGANIZATION; GENERAL PROVISIONS

Section
23-202. Township organization; petition; election.

(c) TOWNSHIP SUPERVISOR SYSTEM

23-283. Repealed. Laws 2008, LB 269, § 14.
23-287. Repealed. Laws 2008, LB 269, § 14.
23-290. Repealed. Laws 2008, LB 269, § 14.
23-291. Repealed. Laws 2008, LB 269, § 14.

(d) DISCONTINUANCE OF TOWNSHIP ORGANIZATION

23-292. Township organization; how discontinued.
23-293. Township organization; discontinuance; procedure.
23-294. Township organization; discontinuance; election; ballot; form.
23-295. Township organization; discontinuance; when effective.
23-296. Township organization; cessation; establishment of commissioner system.
23-297. Commissioner system creation; districts; elected members; how treated.
23-299. Township organization; cessation; town records; indebtedness and unexpended balances; how discharged.

(e) TERMINATION OF TOWNSHIP BOARD

23-2,100. Termination of township board; public hearing; notice; resolution; termination date; conduct of business; disposal of property; discontinuance of township organization of county.

(a) ADOPTION OF TOWNSHIP ORGANIZATION; GENERAL PROVISIONS

23-202 Township organization; petition; election.

(1) In counties not under township organization, a registered voter may file a petition or petitions for the submission of the question of township organization. The petition or petitions shall be signed by registered voters equal in number to five percent of the voters registered in the county at the preceding statewide general election.

(2) When the petition or petitions are filed in the office of the county clerk or election commissioner, the question shall be submitted to the registered voters at the next general election held not less than seventy days after the filing of the petitions. The questions on the ballot shall be respectively: For changing to township organization with a seven-member county board of supervisors; or Against changing to township organization.

(3) Elections shall be conducted as provided in the Election Act.

Source: Laws 1895, c. 28, § 2, p. 131; R.S.1913, § 988; C.S.1922, § 888; C.S.1929, § 26-202; R.S.1943, § 23-202; Laws 2008, LB269, § 4; Laws 2009, LB434, § 1.

Cross References

Election Act, see section 32-101.

(c) TOWNSHIP SUPERVISOR SYSTEM

23-283 Repealed. Laws 2008, LB 269, § 14.

23-287 Repealed. Laws 2008, LB 269, § 14.

23-290 Repealed. Laws 2008, LB 269, § 14.

23-291 Repealed. Laws 2008, LB 269, § 14.

(d) DISCONTINUANCE OF TOWNSHIP ORGANIZATION

23-292 Township organization; how discontinued.

Any county which has township organization shall discontinue the same whenever the majority of the registered voters of the county voting on the question of such discontinuance so decide in the manner provided in sections 23-293 to 23-295.

Source: Laws 1885, c. 43, § 1, p. 235; R.S.1913, § 1056; C.S.1922, § 958; C.S.1929, § 26-272; R.S.1943, § 23-292; Laws 2008, LB269, § 5.

23-293 Township organization; discontinuance; procedure.

(1) In counties under township organization, a registered voter may file a petition or petitions for submission of the question of the discontinuance of township organization to the registered voters of the county. The petition or petitions shall be signed by registered voters equal in number to five percent of the voters registered in the county at the preceding statewide general election. When the petition or petitions are filed in the office of the county clerk or election commissioner, the question shall be submitted to the registered voters at the next general election held not less than seventy days after the filing of the petitions.

(2) In counties under township organization, if a resolution supported by a majority of the county board is filed in the office of the county clerk or election commissioner for submission of the question of discontinuance of township organization to the registered voters of the county, the question shall be submitted to the registered voters at the next general election held not less than seventy days after the filing of the resolution.

(3) A petition or county board resolution for discontinuance of township organization shall specify whether the county board of commissioners to be formed pursuant to section 23-151 will have five or seven members and that reorganization as a county board of commissioners will be effective at the expiration of the supervisors' terms of office in January of the third calendar year following the election to discontinue township organization.

Source: Laws 1885, c. 43, § 2, p. 236; Laws 1895, c. 29, § 1, p. 154; R.S.1913, § 1057; C.S.1922, § 959; C.S.1929, § 26-273; R.S. 1943, § 23-293; Laws 1973, LB 75, § 18; Laws 1985, LB 422, § 1; Laws 2008, LB269, § 6.

23-294 Township organization; discontinuance; election; ballot; form.

(1) If the petition or county board resolution to discontinue township organization specifies a five-member county board of commissioners pursuant to section 23-293, the questions on the ballot shall be respectively: For discontinuance of township organization and creation of a five-member county board of commissioners; or Against changing to a commissioner form of county government.

(2) If the petition or county board resolution to discontinue township organization specifies a seven-member county board of commissioners pursuant to section 23-293, the questions on the ballot shall be respectively: For discontinu-

ance of township organization and creation of a seven-member county board of commissioners; or Against changing to a commissioner form of county government.

(3) Elections shall be conducted regarding discontinuance of township organization as provided in the Election Act.

Source: Laws 1885, c. 43, § 3, p. 236; R.S.1913, § 1058; C.S.1922, § 960; C.S.1929, § 26-274; R.S.1943, § 23-294; Laws 2008, LB269, § 7; Laws 2009, LB434, § 2.

Cross References

Election Act, see section 32-101.

23-295 Township organization; discontinuance; when effective.

If a majority of the votes cast on the question are for the discontinuance of township organization, then such organization shall cease to exist effective at the expiration of the supervisors' terms of office in January of the third calendar year following such election.

Source: Laws 1885, c. 43, § 4, p. 236; R.S.1913, § 1059; C.S.1922, § 961; C.S.1929, § 26-275; R.S.1943, § 23-295; Laws 2008, LB269, § 8; Laws 2009, LB434, § 3.

23-296 Township organization; cessation; establishment of commissioner system.

When township organization ceases in any county as provided by sections 23-292 to 23-295, a commissioner system shall be established. The county board of commissioners shall have five or seven members as specified in the petition or county board resolution pursuant to section 23-293.

Source: Laws 1885, c. 43, § 5, p. 236; R.S.1913, § 1060; C.S.1922, § 962; C.S.1929, § 26-276; R.S.1943, § 23-296; Laws 1945, c. 42, § 2, p. 203; Laws 2008, LB269, § 9.

23-297 Commissioner system creation; districts; elected members; how treated.

(1) If the voters vote for creation of a seven-member county board of commissioners, the commissioner districts shall be the same districts as the former supervisor districts unless changed at a later date as provided by section 23-149 and the supervisors whose terms have not expired on the effective date of the reorganization prescribed in section 23-293 shall continue in office as commissioners for the remainder of their unexpired terms.

(2)(a) If the voters vote for creation of a five-member county board of commissioners, the county clerk, county treasurer, and county attorney shall meet on the first Saturday after the first Tuesday of January following such election and redistrict the county into five commissioner districts with substantially equal population. Such redistricting shall be completed within thirty days after such initial meeting and shall specify where necessary the newly established districts which the members will serve for the balance of the unexpired terms as designated in subdivision (b) of this subsection. The newly established districts will not be effective until the effective date of the reorganization prescribed in section 23-293 except for purposes of being nominated and elected for office from such districts.

(b)(i) If three members of the county board of supervisors were elected for four-year terms at the election to create a five-member county board of commissioners, each such supervisor shall serve two of such years as a supervisor and two of such years as a commissioner representing the newly established districts as designated under subdivision (a) of this subsection and two commissioners shall be elected for four-year terms from the newly established districts at the next general election.

(ii) If four members of the county board of supervisors were elected for four-year terms at the election to create a five-member county board of commissioners, the three of such supervisors receiving the most votes at such election shall serve two of such years as a supervisor and two of such years as a commissioner representing the newly established districts as designated under subdivision (a) of this subsection, the fourth of such supervisors shall serve a term of two years as a supervisor, and two commissioners shall be elected for four-year terms from the newly established districts at the next general election.

Source: Laws 1885, c. 43, § 6, p. 237; R.S.1913, § 1061; C.S.1922, § 963; C.S.1929, § 26-277; R.S.1943, § 23-297; Laws 1945, c. 42, § 3, p. 203; Laws 1979, LB 331, § 7; Laws 2008, LB269, § 10.

23-299 Township organization; cessation; town records; indebtedness and unexpended balances; how discharged.

When township organization is discontinued in any county, the town clerk in each town in such county, as soon as the county board of commissioners is qualified pursuant to section 23-297, shall deposit with the county clerk of the county all town records, papers, and documents pertaining to the affairs of such town and certify to the county clerk the amount of indebtedness of such town outstanding at the time of such discontinuance. The county board shall have full and complete power to settle all the unfinished business of the town as fully as might have been done by the town itself and to dispose of any and all property belonging to such town, the proceeds of which, after paying all indebtedness, shall be disposed of by the county board for the benefit of the taxable inhabitants thereof by such board crediting all unexpended balances of the town to the district road fund and in no other manner. The county board, at such time as provided by law, shall levy a tax upon the taxable property of such town to pay any unliquidated indebtedness it may have outstanding.

Source: Laws 1885, c. 43, § 8, p. 237; R.S.1913, § 1063; C.S.1922, § 965; C.S.1929, § 26-279; R.S.1943, § 23-299; Laws 1945, c. 42, § 5, p. 204; Laws 2008, LB269, § 11.

(e) TERMINATION OF TOWNSHIP BOARD

23-2,100 Termination of township board; public hearing; notice; resolution; termination date; conduct of business; disposal of property; discontinuance of township organization of county.

(1) If a township board has become inactive, the county board of supervisors shall hold a public hearing on the issue of termination of the township board. Notice of the hearing shall be published for two consecutive weeks in a newspaper of general circulation in the county. For purposes of this section, a township board has become inactive when two or more board positions are vacant and the county board has been unable to fill such positions in accordance with section 32-567 for six or more months.

(2) If no appointment to the township board has been made within thirty days after the public hearing because no resident of the township has provided written notice to the county board that he or she will serve on the township board, the county board may adopt a resolution to terminate the township board on the following June 30. If the resolution is adopted on or after June 1 but before June 30, the township board shall terminate on the following July 31.

(3) Between the date of the public hearing and the date of termination of the township board, the business of the township shall be handled according to this subsection. No tax distributions shall be made to the township. Such funds shall be held by the county board in a separate township fund and disbursed only to pay outstanding obligations of the township board. All claims against the township board shall be filed with the county clerk and heard by the county board. Upon allowance of a claim, the county board shall direct the county clerk to draw a warrant upon the township fund. The warrant shall be signed by the chairperson of the county board and countersigned by the county clerk.

(4) Upon termination of a township board, the county board shall settle all unfinished business of the township board and shall dispose of all property under ownership of the township. Any proceeds of such sale shall first be disbursed to pay any outstanding obligations of the township, and remaining funds shall be credited to the road fund of the county board. Any remaining township board members serving as of the date of termination shall deposit with the county clerk all township records, papers, and documents pertaining to the affairs of the township and shall certify to the county clerk the amount of outstanding indebtedness in existence on the date of termination. The county board shall levy a tax upon the taxable property located within the boundaries of the township to pay any outstanding indebtedness not paid for under this subsection or subsection (3) of this section.

(5) If more than fifty percent of the township boards in a county have been terminated, the county board shall file with the election commissioner or county clerk a resolution supporting the discontinuance of the township organization of the county pursuant to subsection (2) of section 23-293.

Source: Laws 2010, LB768, § 1.
Effective date July 15, 2010.

ARTICLE 12
COUNTY ATTORNEY

Section
23-1201.02. County attorney; qualifications; exception.
23-1205. Acting county attorney; appointment; when authorized; compensation.
23-1212. Terms, defined.
23-1213. Nebraska County Attorney Standards Advisory Council; created; members; qualifications; appointment; terms; vacancy.
23-1213.01. Guidelines to promote uniform and quality death investigations for county coroners; contents.
23-1213.02. Network of regional officials for death investigation support services.
23-1213.03. Coroner or deputy coroner; training; continuing education.
23-1218. Nebraska Commission on Law Enforcement and Criminal Justice; continuing legal education; duties; enumerated.

23-1201.02 County attorney; qualifications; exception.

(1) No person shall seek nomination or appointment for the office of county attorney in counties of Class 4, 5, 6, or 7, nor serve in that capacity, unless he

or she has been admitted to the practice of law in this state for at least two years next preceding the date such person would take office and has practiced law actively in this state during such two-year period, except that if no person who meets the requirements of this subsection has filed for or sought such office by the filing deadline for nomination or by the deadline for applications for appointment, the provisions of this subsection shall not apply to any person seeking such office.

(2) No person shall seek nomination or appointment for the office of county attorney, nor serve in that capacity, unless he or she has been admitted to the practice of law in this state.

(3) The classification of counties in section 23-1114.01 applies for purposes of this section.

Source: Laws 1969, c. 142, § 1, p. 664; Laws 1993, LB 468, § 2; Laws 2009, LB55, § 1.

Cross References

Classification of counties, see section 23-1114.01.

23-1205 Acting county attorney; appointment; when authorized; compensation.

Due to the absence, sickness, disability, or conflict of interest of the county attorney and his or her deputies, or upon request of the county attorney for good cause, the Supreme Court, the Court of Appeals, or any district court, separate juvenile court, or county court before which the cause may be heard may appoint an attorney to act as county attorney in any investigation, appearance, or trial by an order entered upon the minutes of the court. Such attorney shall be allowed compensation for such services as the court determines, to be paid by order of the county treasurer upon presenting to the county board the certificate of the judge before whom the cause was tried certifying to services rendered by such attorney and the amount of compensation.

Source: Laws 1885, c. 40, § 7, p. 218; R.S.1913, § 5600; C.S.1922, § 4917; C.S.1929, § 26-905; R.S.1943, § 23-1205; Laws 1969, c. 165, § 2, p. 742; Laws 2007, LB214, § 1; Laws 2009, LB35, § 3.

23-1212 Terms, defined.

For purposes of sections 23-1212 to 23-1222, unless the context otherwise requires:

(1) County attorney shall mean the county attorney of a county in this state whether such position is elective or appointive and regardless of whether such position is full time or part time;

(2) Deputy county attorney shall mean an attorney employed by a county in this state for the purpose of assisting the county attorney in carrying out his or her responsibilities regardless of whether such position is full time or part time;

(3) Council shall mean the Nebraska County Attorney Standards Advisory Council;

(4) Attorney General shall mean the Nebraska Attorney General;

(5) Commission shall mean the Nebraska Commission on Law Enforcement and Criminal Justice; and

(6) Continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, shall mean that type of legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, which has application to and seeks to maintain and improve the skills of the county attorney and deputy county attorney in carrying out the responsibilities of his or her office or position.

Source: Laws 1980, LB 790, § 1; Laws 1990, LB 1246, § 1; Laws 2009, LB671, § 1.

23-1213 Nebraska County Attorney Standards Advisory Council; created; members; qualifications; appointment; terms; vacancy.

(1)(a) There is hereby created the Nebraska County Attorney Standards Advisory Council which, except as provided in subdivision (b) of this subsection, shall consist of seven members, four of whom shall be either a county attorney or deputy county attorney, one member being a professor of law or professor of forensic science, and two members being county commissioners or supervisors. The members of such council shall be appointed by the Governor. Of the county attorneys or deputy county attorneys appointed to such council, one shall be from Douglas County, one shall be from Lancaster County, and the remaining two shall be appointed from the remainder of the state. Members of the council shall serve a term of four years, except that of the members first appointed one member shall serve a term of one year, two members shall serve a term of two years, two members shall serve a term of three years, and two members shall each serve a term of four years.

(b) On and after August 30, 2009, the council shall consist of eleven members with the addition of the following four new members: (i) Two members who shall be either county attorneys or deputy county attorneys from counties other than Douglas County or Lancaster County; (ii) one member who is a county sheriff or a chief of police; and (iii) one member who is a certified forensic pathologist. The new members shall serve terms of four years, except that of the new members first appointed two members shall serve terms of two years and two members shall serve terms of three years.

(2) A member may be reappointed at the expiration of his or her term. Any vacancy occurring other than by expiration of a term shall be filled for the remainder of the unexpired term in the same manner as the original appointment. The council shall select one of its members as chairperson. The Governor shall make the appointments under this section within ninety days of July 19, 1980.

(3) Members of the council shall have such membership terminated if they cease to hold the office of county attorney, deputy county attorney, county commissioner or supervisor, or county sheriff or chief of police. A member of the council may be removed from the council for good cause upon written notice and upon an opportunity to be heard before the Governor. After the hearing, the Governor shall file in the office of the Secretary of State a complete statement of the charges and the findings and disposition together with a complete record of the proceedings.

Source: Laws 1980, LB 790, § 2; Laws 2009, LB671, § 2.

23-1213.01 Guidelines to promote uniform and quality death investigations for county coroners; contents.

The council shall, with respect to ensuring quality and uniform death investigation processes throughout the state, develop guidelines to promote uniform and quality death investigations for county coroners. Such guidelines may include guidance to the county coroner in:

(1) Determining the need for autopsies involving:

(a) Deaths of individuals nineteen years of age or older;

(b) Deaths of individuals under nineteen years of age;

(c) Sudden, unexplained infant deaths;

(d) Deaths while in custody;

(e) Deaths caused by motor vehicle collisions;

(f) Deaths by burning; and

(g) Suspicious deaths;

(2) The utilization of investigative tools and equipment;

(3) Entering the death scene;

(4) Documenting and evaluating the death scene;

(5) Documenting and evaluating the body;

(6) Establishing and recording decedent profile information; and

(7) Completing the death scene investigation.

Persons investigating infant deaths and young child deaths may also refer to the recommendations adopted by the Attorney General with respect to such investigations.

Source: Laws 2009, LB671, § 3.

23-1213.02 Network of regional officials for death investigation support services.

The council shall also:

(1) Help establish a voluntary network of regional officials including, but not limited to, law enforcement, county coroners, and medical personnel to provide death investigation support services for any location in Nebraska;

(2) Help determine the membership of such networks; and

(3) Develop, design, and provide standardized forms in both hard copy and electronic copy for use in death investigations.

Source: Laws 2009, LB671, § 4.

23-1213.03 Coroner or deputy coroner; training; continuing education.

Every person who is elected or appointed as a coroner or deputy coroner in or for the State of Nebraska shall satisfactorily complete initial death investigation training within one year after the date of election or appointment and thereafter annually complete continuing education as determined by the council.

Source: Laws 2009, LB671, § 5.

23-1218 Nebraska Commission on Law Enforcement and Criminal Justice; continuing legal education; duties; enumerated.

The Nebraska Commission on Law Enforcement and Criminal Justice, after consultation with the council, shall:

(1) Establish curricula for the implementation of a mandatory continuing legal education program, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, for county attorneys and deputy county attorneys;

(2) Administer all programs of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, for county attorneys and deputy county attorneys required under sections 23-1212 to 23-1222;

(3) Evaluate the effectiveness of programs of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, required under sections 23-1212 to 23-1222;

(4) Certify the number of hours of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, completed by a county attorney and deputy county attorney as required under sections 23-1212 to 23-1222 and maintain all records relating thereto;

(5) Report to the Attorney General the names of all county attorneys and deputy county attorneys who have failed to complete the number of hours of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, as required under section 23-1217;

(6) Establish tuition and fees for all programs of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, as required under sections 23-1212 to 23-1222;

(7) Adopt and promulgate necessary rules and regulations for the effective delivery of all programs of continuing legal education, including instruction providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, for county attorneys and deputy county attorneys as required under sections 23-1212 to 23-1222;

(8) Do all things necessary to carry out the purpose of training county attorneys and deputy county attorneys as required by sections 23-1212 to 23-1222; and

(9) Receive and distribute appropriated funds to the Nebraska County Attorneys Association to develop, administer, and conduct continuing legal education seminars, prepare and publish trial manuals and other publications, and

take any other measure that will enhance the investigation and prosecution of crime in this state.

Source: Laws 1980, LB 790, § 7; Laws 1990, LB 1246, § 4; Laws 2009, LB671, § 6.

ARTICLE 14

COUNTY COMPTROLLER IN CERTAIN COUNTIES

Section
23-1401. County comptroller; qualifications; duties.

23-1401 County comptroller; qualifications; duties.

In any county in which a city of the metropolitan class is located, there is hereby created the office of county comptroller for such county, and the county clerk of such county shall be the ex officio county comptroller for the county. The county comptroller shall act as the general accountant and fiscal agent of the county and shall exercise a general supervision over all officers of the county charged in any manner with the receipt, collection, or disbursement of the county revenue. The county comptroller shall be a competent bookkeeper and accountant, and it shall be his or her duty to keep a complete set of books in which, among other things, the amount of the appropriation that has been made on the fund that has been expended on account of such appropriation fund shall be stated. It shall be the duty of the county comptroller to audit all claims filed against the county and prepare a report thereon to the county board of such county. The county comptroller shall also keep accurate and separate accounts between the county and officers of the county, and between the county and all contractors or other persons doing work or furnishing material for the county. The county comptroller shall also examine and check the reports of all officers of the county. The county comptroller shall prepare and file the required annual inventory statement of county personal property in his or her custody or possession, as provided in sections 23-346 to 23-350.

Source: Laws 1915, c. 181, § 1, p. 369; C.S.1922, § 4937; C.S.1929, § 26-1101; Laws 1939, c. 28, § 12, p. 152; C.S.Supp.,1941, § 26-1101; R.S.1943, § 23-1401; Laws 1947, c. 62, § 7, p. 201; Laws 1991, LB 798, § 6; Laws 2010, LB475, § 1.
Operative date January 1, 2011.

ARTICLE 17

SHERIFF

(b) MERIT SYSTEM

Section
23-1734. Deputy sheriff; removal, suspension, reduced in rank or grade; procedure; grievance; procedure.

(b) MERIT SYSTEM

23-1734 Deputy sheriff; removal, suspension, reduced in rank or grade; procedure; grievance; procedure.

(1)(a) Any deputy sheriff may be removed, suspended with or without pay, or reduced in either rank or grade or both rank and grade by the sheriff, after appointment or promotion is complete, by an order in writing, stating specifi-

cally the reasons therefor. Such order shall be filed with the sheriff's office merit commission, and a copy thereof shall be furnished to the person so removed, suspended, or reduced. Any person so removed, suspended with or without pay, or reduced in either rank or grade or both rank and grade may, within ten days after presentation to him or her of the order of removal, suspension with or without pay, or reduction, appeal to the commission from such order. The commission shall, within two weeks after the filing of such appeal, hold a hearing thereon, and thereupon fully hear and determine the matter, and either affirm, modify, or revoke such order. The appellant shall be entitled to appear personally, produce evidence, and have counsel or other representation and a public hearing. The finding and decision of the commission shall be certified to the sheriff and shall forthwith be enforced and followed, but under no condition shall the employee who has appealed to the commission be permanently removed, suspended with or without pay, or reduced in rank until such finding and decision of the commission is so certified to the sheriff.

(b) This subsection does not apply to a deputy sheriff during his or her probationary period.

(2) Any deputy sheriff may grieve a violation of an employment contract, a personnel rule, a state or local law, or a written departmental policy or procedure to the commission. The commission shall hear the grievance at the next regularly scheduled meeting, or the commission may, at its discretion, set a special meeting to hear the grievance. If the deputy sheriff is subject to a labor agreement, all applicable procedures in the agreement shall be followed prior to the matter being heard by the commission. In all other cases, the matter shall be grieved, in writing, to the commission within fifteen calendar days after the date the deputy sheriff became aware of the occurrence giving rise to the grievance. After hearing or reviewing the grievance, the commission shall issue a written order either affirming or denying the grievance. Such order shall be delivered to the parties to the grievance or their counsel or other representative within seven calendar days after the date of the hearing or the submission of the written grievance.

Source: Laws 1969, c. 140, § 14, p. 646; Laws 2003, LB 222, § 11; Laws 2009, LB158, § 3.

ARTICLE 18
CORONER

Section
23-1825. Organ and tissue donations; legislative findings.
23-1826. Organ and tissue donations; terms, defined.
23-1827. Organ and tissue donations; preliminary investigation; access to information; release of organs or tissues; exception; presence for removal procedure.
23-1828. Organ and tissue donations; failure to complete preliminary investigation; effect.
23-1829. Organ and tissue donations; denial of recovery; written report required.
23-1830. Organ and tissue donations; coroner's access to medical information, medical records, pathology reports, and the donor's body.
23-1831. Organ and tissue donations; report provided to coroner; contents.
23-1832. Organ and tissue donations; immunity from criminal liability.

23-1825 Organ and tissue donations; legislative findings.

The Legislature finds and declares that it is in the public interest to facilitate organ and tissue donations pursuant to the Revised Uniform Anatomical Gift

Act and thereby to increase the availability of organs and tissues for medical transplantation. To accomplish these purposes, the following constitutes the procedure to facilitate the recovery of organs and tissues from donors under the jurisdiction of a coroner within a time period compatible with the preservation of such organ or tissue for the purpose of transplantation.

Source: Laws 2008, LB246, § 1; Laws 2010, LB1036, § 23.
Operative date January 1, 2011.

Cross References

Revised Uniform Anatomical Gift Act, see section 71-4824.

23-1826 Organ and tissue donations; terms, defined.

For purposes of sections 23-1825 to 23-1832:

(1) Coroner means a coroner or his or her designated representative;

(2) Decedent means an individual with respect to whom a determination of death has been made pursuant to section 71-7202;

(3) Donor has the definition found in section 71-4825; and

(4) Preliminary investigation means an inquiry into whether any organs or tissues are necessary to determine the proximate cause or means of death.

Source: Laws 2008, LB246, § 2; Laws 2010, LB1036, § 24.
Operative date January 1, 2011.

23-1827 Organ and tissue donations; preliminary investigation; access to information; release of organs or tissues; exception; presence for removal procedure.

(1) A coroner shall conduct a preliminary investigation of a decedent within the coroner's jurisdiction as soon as possible after notification by the hospital in which such decedent is located or the hospital to which such decedent is being transported. The coroner may designate the coroner's physician or another physician to conduct the preliminary investigation.

(2) The preliminary investigation shall be completed within a time period that is compatible with the preservation and recovery of organs or tissues for the purpose of transplantation.

(3) The coroner may request and shall have access to all necessary information including copies of medical records, laboratory test results, X-rays, and other diagnostic results. The information shall be provided as expeditiously as possible, through reasonable means, to permit the preliminary investigation to be completed within a time period compatible with the preservation and recovery of organs or tissues for the purpose of transplantation.

(4) Upon completion of the preliminary investigation, the coroner shall release all organs or tissues which have been donated or may yet be donated pursuant to the Revised Uniform Anatomical Gift Act except those that the coroner reasonably believes contain evidence of the proximate cause or means of death. If the coroner reasonably believes that a specific organ or tissue contains evidence of the proximate cause or means of death and the organ or tissue is otherwise subject to recovery as a donated organ or tissue pursuant to the Revised Uniform Anatomical Gift Act, the coroner or his or her designee shall be present for the removal procedure (a) to make a final determination that allows the recovery of the organs and tissues to proceed, (b) to request a

biopsy, or (c) to deny removal of such organ or tissue if the coroner determines such organ or tissue contains evidence of the proximate cause or means of death. After a preliminary investigation is completed under this section, all organs or tissues compatible for transplantation, except any organs or tissues for which the coroner has denied recovery, may be recovered pursuant to the Revised Uniform Anatomical Gift Act.

Source: Laws 2008, LB246, § 3; Laws 2010, LB1036, § 25.
Operative date January 1, 2011.

Cross References

Revised Uniform Anatomical Gift Act, see section 71-4824.

23-1828 Organ and tissue donations; failure to complete preliminary investigation; effect.

If the coroner, coroner's physician, or other physician designated by the coroner fails to complete the preliminary investigation required under section 23-1827, or if the coroner fails to designate the coroner's physician or another physician to conduct and complete the preliminary investigation, within a time period compatible with the preservation of the organs and tissues for the purpose of transplantation, or if the coroner declines to conduct the preliminary investigation, any organ or tissue that is compatible for transplantation may be recovered pursuant to the Revised Uniform Anatomical Gift Act as though the donor was not within the coroner's jurisdiction.

Source: Laws 2008, LB246, § 4; Laws 2010, LB1036, § 26.
Operative date January 1, 2011.

Cross References

Revised Uniform Anatomical Gift Act, see section 71-4824.

23-1829 Organ and tissue donations; denial of recovery; written report required.

If the coroner denies recovery of an organ or tissue, the coroner shall include in a written report the reasons such recovery was denied and provide the report within ten days to the federally designated organ procurement organization for Nebraska.

Source: Laws 2008, LB246, § 5; Laws 2010, LB1036, § 27.
Operative date January 1, 2011.

23-1830 Organ and tissue donations; coroner's access to medical information, medical records, pathology reports, and the donor's body.

(1) If the coroner releases any organ or tissue for recovery, the coroner may request that a blood sample, a sample of catheterized urine, a sample of bile if the liver is recovered for the purpose of transplantation, a biopsy specimen in fixative of the organ or tissue procured, and copies of any photographs, pictures, or other diagrams of the organ or tissue made at the time of recovery be delivered to the coroner.

(2) A coroner shall have access to medical records, pathology reports, and the body of the donor following the recovery of any organ or tissue allowed under section 23-1827 or 23-1828.

Source: Laws 2008, LB246, § 6; Laws 2010, LB1036, § 28.
Operative date January 1, 2011.

23-1831 Organ and tissue donations; report provided to coroner; contents.

Any physician or designated recovery personnel authorized by the federally designated organ procurement organization for Nebraska to recover any organ or tissue pursuant to section 23-1827 or 23-1828 shall provide to the coroner a report detailing the recovery of such organ or tissue and any known relationship to the proximate cause or means of death. If appropriate, such report shall include a biopsy or medically approved sample from the recovered organ or tissue and the results of any diagnostic testing performed upon the recovered organ or tissue. Such report shall become part of the coroner's report or coroner's physician's report.

Source: Laws 2008, LB246, § 7; Laws 2010, LB1036, § 29.
Operative date January 1, 2011.

23-1832 Organ and tissue donations; immunity from criminal liability.

A coroner, a coroner's designee, a coroner's physician or his or her designee, a facility at which an organ or tissue recovery took place pursuant to sections 23-1825 to 23-1832, any authorized recovery personnel, or any other person who acts in good faith in compliance with sections 23-1825 to 23-1832 shall be immune from criminal liability for recovery of any organ or tissue.

Source: Laws 2008, LB246, § 8; Laws 2010, LB1036, § 30.
Operative date January 1, 2011.

ARTICLE 23

COUNTY EMPLOYEES RETIREMENT

Section

23-2306. Retirement system; members; employees; elected officials; new employee; participation in another governmental plan; how treated; separate employment; effect.
23-2308.01. Cash balance benefit; election; effect; administrative services agreements; authorized.
23-2309.01. Defined contribution benefit; employee account; investment options; procedures; administration.
23-2310.04. County Employees Defined Contribution Retirement Expense Fund; County Employees Cash Balance Retirement Expense Fund; created; use; investment.
23-2310.05. Defined contribution benefit; employer account; investment options; procedures; administration.
23-2315. Retirement system; retirement; when; conditions; application for benefits; deferment of payment; board; duties.
23-2315.01. Retirement for disability; application; when; medical examination.
23-2317. Retirement system; future service retirement benefit; when payable; how computed; selection of annuity; board; provide tax information.
23-2319. Termination of employment; termination benefit; vesting.
23-2319.02. County Employer Retirement Expense Fund; use.
23-2320. Employee; reemployment; status; how treated.
23-2321. Retirement system; employee; death before retirement; death benefit.

23-2306 Retirement system; members; employees; elected officials; new employee; participation in another governmental plan; how treated; separate employment; effect.

(1) The membership of the retirement system shall be composed of all persons who are or were employed by member counties and who maintain an account balance with the retirement system.

(2) The following employees of member counties are authorized to participate in the retirement system: (a) All permanent full-time employees shall begin participation in the retirement system upon employment and full-time elected officials shall begin participation in the retirement system upon taking office, (b) all permanent part-time employees who have attained the age of twenty years may exercise the option to begin participation in the retirement system, and (c) all part-time elected officials may exercise the option to begin participation in the retirement system. An employee who exercises the option to begin participation in the retirement system shall remain in the system until termination or retirement, regardless of any change of status as a permanent or temporary employee.

(3) On and after July 1, 2010, no employee of a member county shall be authorized to participate in the retirement system provided for in the County Employees Retirement Act unless the employee (a) is a United States citizen or (b) is a qualified alien under the federal Immigration and Nationality Act, 8 U.S.C. 1101 et seq., as such act existed on January 1, 2009, and is lawfully present in the United States.

(4) Within the first one hundred eighty days of employment, a full-time employee may apply to the board for vesting credit for years of participation in another Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code. During the years of participation in the other Nebraska governmental plan, the employee must have been a full-time employee, as defined in the Nebraska governmental plan in which the credit was earned. The board may adopt and promulgate rules and regulations governing the assessment and granting of vesting credit.

(5) Any employee who qualifies for membership in the retirement system pursuant to this section may not be disqualified from membership in the retirement system solely because such employee also maintains separate employment which qualifies the employee for membership in another public retirement system, nor may membership in this retirement system disqualify such an employee from membership in another public retirement system solely by reason of separate employment which qualifies such employee for membership in this retirement system.

(6) A full-time or part-time employee of a city, village, or township who becomes a county employee pursuant to a merger of services shall receive vesting credit for his or her years of participation in a Nebraska governmental plan, as defined by section 414(d) of the Internal Revenue Code, of the city, village, or township.

(7) A full-time or part-time employee of a city, village, fire protection district, or township who becomes a municipal county employee shall receive credit for his or her years of employment with the city, village, fire protection district, or township for purposes of the vesting provisions of this section.

(8) Counties shall ensure that employees authorized to participate in the retirement system pursuant to this section shall enroll and make required contributions to the retirement system immediately upon becoming an employee. Information necessary to determine membership in the retirement system shall be provided by the employer.

Source: Laws 1965, c. 94, § 6, p. 405; Laws 1975, LB 32, § 1; Laws 1984, LB 216, § 3; Laws 1985, LB 349, § 1; Laws 1991, LB 549, § 3; Laws 1995, LB 501, § 1; Laws 1996, LB 1076, § 2; Laws 1997,

LB 250, § 5; Laws 1997, LB 624, § 2; Laws 1998, LB 1191, § 24; Laws 2000, LB 1192, § 2; Laws 2001, LB 142, § 33; Laws 2002, LB 407, § 2; Laws 2002, LB 687, § 5; Laws 2004, LB 1097, § 3; Laws 2006, LB 366, § 3; Laws 2008, LB1147, § 1; Laws 2009, LB188, § 1; Laws 2010, LB950, § 1.
Operative date July 1, 2010.

23-2308.01 Cash balance benefit; election; effect; administrative services agreements; authorized.

(1) It is the intent of the Legislature that, in order to improve the competitiveness of the retirement plan for county employees, a cash balance benefit shall be added to the County Employees Retirement Act on and after January 1, 2003. Each member who is employed and participating in the retirement system prior to January 1, 2003, may either elect to continue participation in the defined contribution benefit as provided in the act prior to January 1, 2003, or elect to participate in the cash balance benefit as set forth in this section. The member shall make the election prior to January 1, 2003, or on or after November 1, 2007, but before January 1, 2008. If no election is made prior to January 1, 2003, or on or after November 1, 2007, but before January 1, 2008, the member shall be treated as though he or she elected to continue participating in the defined contribution benefit as provided in the act prior to January 1, 2003. Members who elect to participate in the cash balance benefit on or after November 1, 2007, but before January 1, 2008, shall commence participation in the cash balance benefit on January 1, 2008. Any member who made the election prior to January 1, 2003, does not have to reelect the cash balance benefit on or after November 1, 2007, but before January 1, 2008. A member employed and participating in the retirement system prior to January 1, 2003, who terminates employment on or after January 1, 2003, and returns to employment prior to having a five-year break in service shall participate in the cash balance benefit as set forth in this section.

(2) For a member employed and participating in the retirement system beginning on and after January 1, 2003, or a member employed and participating in the retirement system on January 1, 2003, who, prior to January 1, 2003, or on or after November 1, 2007, but before January 1, 2008, elects to convert his or her employee and employer accounts to the cash balance benefit:

(a) The employee cash balance account shall, at any time, be equal to the following:

(i) The initial employee account balance, if any, transferred from the defined contribution plan account described in section 23-2309; plus

(ii) Employee contribution credits deposited in accordance with section 23-2307; plus

(iii) Interest credits credited in accordance with subdivision (19) of section 23-2301; plus

(iv) Dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317; and

(b) The employer cash balance account shall, at any time, be equal to the following:

(i) The initial employer account balance, if any, transferred from the defined contribution plan account described in section 23-2310; plus

(ii) Employer contribution credits deposited in accordance with section 23-2308; plus

(iii) Interest credits credited in accordance with subdivision (19) of section 23-2301; plus

(iv) Dividend amounts credited in accordance with subdivision (4)(c) of section 23-2317.

(3) In order to carry out the provisions of this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the counties and their participating employees. The board may develop a schedule for the allocation of the administrative services agreements costs for accounting or record-keeping services and may assess the costs so that each member pays a reasonable fee as determined by the board.

Source: Laws 2002, LB 687, § 6; Laws 2003, LB 451, § 4; Laws 2005, LB 364, § 2; Laws 2006, LB 366, § 5; Laws 2006, LB 1019, § 3; Laws 2007, LB328, § 1; Laws 2009, LB188, § 2; Laws 2010, LB950, § 2.
Operative date July 1, 2010.

23-2309.01 Defined contribution benefit; employee account; investment options; procedures; administration.

(1) Each member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, shall be allowed to allocate all contributions to his or her employee account to various investment options. The investment options shall include, but not be limited to, the following:

(a) An investor select account which shall be invested under the direction of the state investment officer with an asset allocation and investment strategy substantially similar to the investment allocations made by the state investment officer for the defined benefit plans under the retirement systems described in subdivision (1)(a) of section 84-1503. Investments shall most likely include domestic and international equities, fixed income investments, and real estate, as well as potentially additional asset classes;

(b) A stable return account which shall be invested by or under the direction of the state investment officer in one or more guaranteed investment contracts;

(c) An equities account which shall be invested by or under the direction of the state investment officer in equities;

(d) A balanced account which shall be invested by or under the direction of the state investment officer in equities and fixed income instruments;

(e) An index fund account which shall be invested by or under the direction of the state investment officer in a portfolio of common stocks designed to closely duplicate the total return of the Standard and Poor's 500 Index;

(f) A fixed income account which shall be invested by or under the direction of the state investment officer in fixed income instruments;

(g) A money market account which shall be invested by or under the direction of the state investment officer in short-term fixed income securities; and

(h) Beginning July 1, 2006, an age-based account which shall be invested under the direction of the state investment officer with an asset allocation and investment strategy that changes based upon the age of the member. The board shall develop an account mechanism that changes the investments as the employee nears retirement age. The asset allocation and asset classes utilized in the investments shall move from aggressive, to moderate, and then to conservative as retirement age approaches.

If a member fails to select an option or combination of options, all of his or her funds shall be placed in the option described in subdivision (b) of this subsection. Each member shall be given a detailed current description of each investment option prior to making or revising his or her allocation.

(2) Members of the retirement system may allocate their contributions to the investment options in percentage increments as set by the board in any proportion, including full allocation to any one option. A member under subdivision (1) of section 23-2321 or his or her beneficiary may transfer any portion of his or her funds among the options, except for restrictions on transfers to or from the stable return account pursuant to rule or regulation. The board shall adopt and promulgate rules and regulations for changes of a member's allocation of contributions to his or her accounts after his or her most recent allocation and for transfers from one investment account to another.

(3) The board shall develop a schedule for the allocation of administrative costs of maintaining the various investment options and shall assess the costs so that each member pays a reasonable fee as determined by the board.

(4) In order to carry out this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the county and its participating employees.

(5) The state, the board, the state investment officer, the members of the Nebraska Investment Council, or the county shall not be liable for any investment results resulting from the member's exercise of control over the assets in the employee account.

Source: Laws 1985, LB 347, § 11; Laws 1991, LB 549, § 7; Laws 1994, LB 833, § 3; Laws 1996, LB 847, § 4; Laws 1999, LB 703, § 2; Laws 2000, LB 1200, § 1; Laws 2001, LB 408, § 2; Laws 2002, LB 407, § 4; Laws 2002, LB 687, § 8; Laws 2005, LB 503, § 1; Laws 2008, LB1147, § 2; Laws 2010, LB950, § 3.
Operative date July 1, 2010.

23-2310.04 County Employees Defined Contribution Retirement Expense Fund; County Employees Cash Balance Retirement Expense Fund; created; use; investment.

(1) The County Employees Defined Contribution Retirement Expense Fund is created. The fund shall be credited with money from the retirement system assets and income sufficient to pay the pro rata share of administrative expenses incurred as directed by the board for the proper administration of the County Employees Retirement Act and necessary in connection with the administration and operation of the retirement system, except as provided in sections 23-2308.01, 23-2309.01, and 23-2310.05. Any money in the fund available for

investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The County Employees Cash Balance Retirement Expense Fund is created. The fund shall be credited with money forfeited pursuant to section 23-2319.01 and with money from the retirement system assets and income sufficient to pay the pro rata share of administrative expenses incurred as directed by the board for the proper administration of the County Employees Retirement Act and necessary in connection with the administration and operation of the retirement system, except as provided in sections 23-2308.01, 23-2309.01, and 23-2310.05. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1997, LB 623, § 2; Laws 2000, LB 1200, § 2; Laws 2001, LB 408, § 3; Laws 2003, LB 451, § 5; Laws 2005, LB 364, § 3; Laws 2007, LB328, § 2; Laws 2010, LB950, § 4.
Operative date July 1, 2010.

Cross References

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

23-2310.05 Defined contribution benefit; employer account; investment options; procedures; administration.

(1) Each member employed and participating in the retirement system prior to January 1, 2003, who has elected not to participate in the cash balance benefit, shall be allowed to allocate all contributions to his or her employer account to various investment options. Such investment options shall be the same as the investment options of the employee account as provided in subsection (1) of section 23-2309.01. If a member fails to select an option or combination of options, all of his or her funds in the employer account shall be placed in the balanced account option described in subdivision (1)(d) of section 23-2309.01. Each member shall be given a detailed current description of each investment option prior to making or revising his or her allocation.

(2) Each member of the retirement system may allocate contributions to his or her employer account to the investment options in percentage increments as set by the board in any proportion, including full allocation to any one option. A member under subdivision (1) of section 23-2321 or his or her beneficiary may transfer any portion of his or her funds among the options. The board shall adopt and promulgate rules and regulations for changes of a member's allocation of contributions to his or her accounts after his or her most recent allocation and for transfers from one investment account to another.

(3) The board shall develop a schedule for the allocation of administrative costs of maintaining the various investment options and shall assess the costs so that each member pays a reasonable fee as determined by the board.

(4) In order to carry out the provisions of this section, the board may enter into administrative services agreements for accounting or record-keeping services. No agreement shall be entered into unless the board determines that it will result in administrative economy and will be in the best interests of the state and participating employees.

(5) The state, the board, the state investment officer, the members of the Nebraska Investment Council, or the county shall not be liable for any invest-

ment results resulting from the member's exercise of control over the assets in the employer account.

Source: Laws 1999, LB 687, § 1; Laws 2000, LB 1200, § 3; Laws 2001, LB 408, § 4; Laws 2002, LB 407, § 5; Laws 2002, LB 687, § 10; Laws 2004, LB 1097, § 4; Laws 2005, LB 364, § 4; Laws 2005, LB 503, § 2; Laws 2008, LB1147, § 3; Laws 2010, LB950, § 5. Operative date July 1, 2010.

23-2315 Retirement system; retirement; when; conditions; application for benefits; deferment of payment; board; duties.

(1) Upon filing an application for benefits with the board, an employee may elect to retire at any time after attaining the age of fifty-five or an employee may retire as a result of disability at any age.

(2) The member shall specify in the application for benefits the manner in which he or she wishes to receive the retirement benefit under the options provided by the County Employees Retirement Act. Payment under the application for benefits shall be made (a) for annuities, no sooner than the annuity start date, and (b) for other distributions, no sooner than the date of final account value.

(3) Payment of any benefit provided under the retirement system may not be deferred later than April 1 of the year following the year in which the employee has both attained at least age seventy and one-half years and terminated his or her employment with the county, except that for members participating in the defined contribution benefit, no distribution is required to be made for the plan year commencing January 1, 2009, through December 31, 2009.

(4) The board shall make reasonable efforts to locate the member or the member's beneficiary and distribute benefits by the required beginning date as specified by section 401(a)(9) of the Internal Revenue Code and the regulations issued thereunder. If the board is unable to make such a distribution, the benefit shall be distributed pursuant to the Uniform Disposition of Unclaimed Property Act and no amounts may be applied to increase the benefits any member would otherwise receive under the County Employees Retirement Act.

Source: Laws 1965, c. 94, § 15, p. 407; Laws 1975, LB 47, § 2; Laws 1979, LB 391, § 1; Laws 1982, LB 287, § 1; Laws 1986, LB 311, § 5; Laws 1987, LB 296, § 1; Laws 1987, LB 60, § 1; Laws 1994, LB 833, § 7; Laws 1996, LB 1076, § 3; Laws 2003, LB 451, § 6; Laws 2009, LB188, § 3.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

23-2315.01 Retirement for disability; application; when; medical examination.

(1) Any member, disregarding the length of service, may be retired as a result of disability either upon his or her own application or upon the application of his or her employer or any person acting in his or her behalf. Before any member may be so retired, a medical examination shall be made at the expense of the retirement system, which examination shall be conducted by a disinterested physician legally authorized to practice medicine under the laws of the state in which he or she practices, such physician to be selected by the

retirement board, and the physician shall certify to the board that the member should be retired because he or she suffers from an inability to engage in a substantially gainful activity by reason of any medically determinable physical or mental impairment which began while the member was a participant in the plan and which can be expected to result in death or to be of long-continued and indefinite duration. The application for disability retirement shall be made within one year of termination of employment.

(2) The retirement board may require any disability beneficiary who has not attained the age of fifty-five to undergo a medical examination at the expense of the board once each year. Should any disability beneficiary refuse to undergo such an examination, his or her disability retirement benefit may be discontinued by the board.

Source: Laws 1975, LB 47, § 3; Laws 1997, LB 623, § 5; Laws 2001, LB 408, § 5; Laws 2010, LB950, § 6.
Operative date July 1, 2010.

23-2317 Retirement system; future service retirement benefit; when payable; how computed; selection of annuity; board; provide tax information.

(1) The future service retirement benefit shall be an annuity, payable monthly with the first payment made no earlier than the annuity start date, which shall be the actuarial equivalent of the retirement value as specified in section 23-2316 based on factors determined by the board, except that gender shall not be a factor when determining the amount of such payments pursuant to subsection (2) of this section.

Except as provided in section 42-1107, at any time before the annuity start date, the retiring employee may choose to receive his or her annuity either in the form of an annuity as provided under subsection (4) of this section or any optional form that is determined by the board.

Except as provided in section 42-1107, in lieu of the future service retirement annuity, a retiring employee may receive a benefit not to exceed the amount in his or her employer and employee accounts as of the date of final account value payable in a lump sum and, if the employee chooses not to receive the entire amount in such accounts, an annuity equal to the actuarial equivalent of the remainder of the retirement value, and the employee may choose any form of such annuity as provided for by the board.

In any case, the amount of the monthly payment shall be such that the annuity chosen shall be the actuarial equivalent of the retirement value as specified in section 23-2316 except as provided in this section.

The board shall provide to any county employee who is eligible for retirement, prior to his or her selecting any of the retirement options provided by this section, information on the federal and state income tax consequences of the various annuity or retirement benefit options.

(2) Except as provided in subsection (4) of this section, the monthly income payable to a member retiring on or after January 1, 1984, shall be as follows:

He or she shall receive at retirement the amount which may be purchased by the accumulated contributions based on annuity rates in effect on the annuity start date which do not utilize gender as a factor, except that such amounts shall not be less than the retirement income which can be provided by the sum

of the amounts derived pursuant to subdivisions (a) and (b) of this subsection as follows:

(a) The income provided by the accumulated contributions made prior to January 1, 1984, based on male annuity purchase rates in effect on the date of purchase; and

(b) The income provided by the accumulated contributions made on and after January 1, 1984, based on the annuity purchase rates in effect on the date of purchase which do not use gender as a factor.

(3) Any amount, in excess of contributions, which may be required in order to purchase the retirement income specified in subsection (2) of this section shall be withdrawn from the County Equal Retirement Benefit Fund.

(4)(a) The normal form of payment shall be a single life annuity with five-year certain, which is an annuity payable monthly during the remainder of the member's life with the provision that, in the event of his or her death before sixty monthly payments have been made, the monthly payments will be continued to his or her estate or to the beneficiary he or she has designated until sixty monthly payments have been made in total. Such annuity shall be equal to the actuarial equivalent of the member cash balance account or the sum of the employee and employer accounts, whichever is applicable, as of the date of final account value. As a part of the annuity, the normal form of payment may include a two and one-half percent cost-of-living adjustment purchased by the member, if the member elects such a payment option.

Except as provided in section 42-1107, a member may elect a lump-sum distribution of his or her member cash balance account as of the date of final account value upon termination of service or retirement.

For a member employed and participating in the retirement system prior to January 1, 2003, who has elected to participate in the cash balance benefit pursuant to section 23-2308.01, or for a member employed and participating in the retirement system beginning on and after January 1, 2003, the balance of his or her member cash balance account as of the date of final account value shall be converted to an annuity using an interest rate used in the actuarial valuation as recommended by the actuary and approved by the board.

For an employee who is a member prior to January 1, 2003, who has elected not to participate in the cash balance benefit prior to January 1, 2003, or on or after November 1, 2007, but before January 1, 2008, pursuant to section 23-2308.01, and who, at the time of retirement, chooses the annuity option rather than the lump-sum option, his or her employee and employer accounts as of the date of final account value shall be converted to an annuity using an interest rate that is equal to the lesser of (i) the Pension Benefits Guarantee Corporation initial interest rate for valuing annuities for terminating plans as of the beginning of the year during which payment begins plus three-fourths of one percent or (ii) the interest rate used in the actuarial valuation as recommended by the actuary and approved by the board.

(b) For the calendar year beginning January 1, 2003, and each calendar year thereafter, the actuary for the board shall perform an actuarial valuation of the system using the entry age actuarial cost method. Under this method, the actuarially required funding rate is equal to the normal cost rate plus the contribution rate necessary to amortize the unfunded actuarial accrued liability on a level-payment basis. The normal cost under this method shall be determined for each individual member on a level percentage of salary basis. The

normal cost amount is then summed for all members. The initial unfunded actual accrued liability as of January 1, 2003, if any, shall be amortized over a twenty-five-year period. During each subsequent actuarial valuation, changes in the unfunded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a twenty-five-year period beginning on the valuation date of such change. If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a twenty-five-year period as of the actuarial valuation date. If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the County Employees Retirement Act, there shall be a supplemental appropriation sufficient to pay for the difference between the actuarially required contribution rate and the rate of all contributions required pursuant to the act.

(c) If the unfunded accrued actuarial liability under the entry age actuarial cost method is less than zero on an actuarial valuation date, and on the basis of all data in the possession of the retirement board, including such mortality and other tables as are recommended by the actuary engaged by the retirement board and adopted by the retirement board, the retirement board may elect to pay a dividend to all members participating in the cash balance option in an amount that would not increase the actuarial contribution rate above ninety percent of the actual contribution rate. Dividends shall be credited to the employee cash balance account and the employer cash balance account based on the account balances on the actuarial valuation date. In the event a dividend is granted and paid after the actuarial valuation date, interest for the period from the actuarial valuation date until the dividend is actually paid shall be paid on the dividend amount. The interest rate shall be the interest credit rate earned on regular contributions.

(5) At the option of the retiring member, any lump sum or annuity provided under this section or section 23-2334 may be deferred to commence at any time, except that no benefit shall be deferred later than April 1 of the year following the year in which the employee has both attained at least seventy and one-half years of age and has terminated his or her employment with the county, except that for members participating in the defined contribution benefit, no distribution is required to be made for the plan year commencing January 1, 2009, through December 31, 2009. Such election by the retiring member may be made at any time prior to the commencement of the lump-sum or annuity payments.

Source: Laws 1965, c. 94, § 17, p. 407; Laws 1979, LB 416, § 2; Laws 1981, LB 462, § 2; Laws 1983, LB 210, § 1; Laws 1985, LB 347, § 8; Laws 1986, LB 311, § 6; Laws 1987, LB 60, § 2; Laws 1992, LB 543, § 1; Laws 1993, LB 417, § 3; Laws 1996, LB 1273, § 15; Laws 2002, LB 687, § 12; Laws 2003, LB 451, § 8; Laws 2006, LB 1019, § 4; Laws 2007, LB328, § 3; Laws 2009, LB188, § 4.

23-2319 Termination of employment; termination benefit; vesting.

(1) Except as provided in section 42-1107, upon termination of employment, except for retirement or disability, and after filing an application with the board, a member may receive:

(a) If not vested, a termination benefit equal to the amount of his or her employee account or member cash balance account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years, except that for members participating in the defined contribution benefit, no distribution is required to be made for the plan year commencing January 1, 2009, through December 31, 2009; or

(b) If vested, a termination benefit equal to (i) the amount of his or her member cash balance account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years or (ii)(A) the amount of his or her employee account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years plus (B) the amount of his or her employer account as of the date of final account value payable in a lump sum or an annuity with the lump-sum or first annuity payment made at any time after termination but no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years. For purposes of subdivision (1)(b) of this section, for members participating in the defined contribution benefit, no distribution is required to be made for the plan year commencing January 1, 2009, through December 31, 2009.

The member cash balance account or employer and employee accounts of a terminating member shall be retained by the board, and the termination benefit shall be deferred until a valid application for benefits has been received.

(2) At the option of the terminating member, any lump sum of the employer account or member cash balance account or any annuity payment provided under subsection (1) of this section shall commence as of the first of the month at any time after such member has terminated his or her employment with the county and no later than April 1 of the year following the year in which the member attains the age of seventy and one-half years, except that for members participating in the defined contribution benefit, no distribution is required to be made for the plan year commencing January 1, 2009, through December 31, 2009. Such election by the terminating member shall be made at any time prior to the commencement of the lump-sum or annuity payments.

(3) Members of the retirement system shall be vested after a total of three years of participation in the system as a member pursuant to section 23-2306, including vesting credit. If an employee retires pursuant to section 23-2315, such employee shall be fully vested in the retirement system.

Source: Laws 1965, c. 94, § 19, p. 408; Laws 1975, LB 47, § 4; Laws 1975, LB 32, § 3; Laws 1984, LB 216, § 4; Laws 1986, LB 311, § 7; Laws 1987, LB 60, § 3; Laws 1991, LB 549, § 11; Laws 1993, LB 417, § 4; Laws 1994, LB 1306, § 1; Laws 1996, LB

1076, § 4; Laws 1996, LB 1273, § 16; Laws 1997, LB 624, § 4; Laws 1998, LB 1191, § 28; Laws 2002, LB 687, § 13; Laws 2003, LB 451, § 9; Laws 2006, LB 366, § 6; Laws 2009, LB188, § 5.

23-2319.02 County Employer Retirement Expense Fund; use.

The County Employer Retirement Expense Fund shall be used to meet expenses of the county employees retirement system whether such expenses are incurred in administering the member's employer account or in administering the member's employer cash balance account when the funds available in the County Employees Defined Contribution Retirement Expense Fund or County Employees Cash Balance Retirement Expense Fund make such use reasonably necessary.

Source: Laws 2005, LB 364, § 22; Laws 2007, LB328, § 5; Laws 2010, LB950, § 7.
Operative date July 1, 2010.

23-2320 Employee; reemployment; status; how treated.

(1) Except as otherwise provided in this section, a member of the retirement system who has a five-year break in service shall upon reemployment be considered a new employee with respect to the County Employees Retirement Act and shall not receive credit for service prior to his or her reemployment date.

(2)(a) A member who ceases to be an employee before becoming eligible for retirement under section 23-2315 and again becomes a permanent full-time or permanent part-time county employee prior to having a five-year break in service shall immediately be reenrolled in the retirement system and resume making contributions. For purposes of vesting employer contributions made prior to and after the reentry into the retirement system under subsection (3) of section 23-2319, years of participation include years of participation prior to such employee's original termination. For a member who is not vested and has received a termination benefit pursuant to section 23-2319, the years of participation prior to such employee's original termination shall be limited in a ratio equal to the amount that the member repays divided by the termination benefit withdrawn pursuant to section 23-2319.

(b) The reemployed member may repay the value of, or a portion of the value of, the termination benefit withdrawn pursuant to section 23-2319. A reemployed member who elects to repay all or a portion of the value of the termination benefit withdrawn pursuant to section 23-2319 shall repay the actual earnings on such value. Repayment of the termination benefit shall commence within three years of reemployment and shall be completed within five years of reemployment or prior to termination of employment, whichever occurs first, through (i) direct payments to the retirement system, (ii) installment payments made pursuant to a binding irrevocable payroll deduction authorization made by the member, (iii) an eligible rollover distribution as provided under the Internal Revenue Code, or (iv) a direct rollover distribution made in accordance with section 401(a)(31) of the Internal Revenue Code.

(c) The value of the member's forfeited employer account or employer cash balance account, as of the date of forfeiture, shall be restored in a ratio equal to the amount of the benefit that the member has repaid divided by the termination benefit received. The employer account or employer cash balance

account shall be restored first out of the current forfeiture amounts and then by additional employer contributions.

(3) For a member who retired pursuant to section 23-2315 and becomes a permanent full-time employee or permanent part-time employee with a county under the County Employees Retirement Act more than one hundred twenty days after his or her retirement date, the member shall continue receiving retirement benefits. Such a retired member or a retired member who received a lump-sum distribution of his or her benefit shall be considered a new employee as of the date of reemployment and shall not receive credit for any service prior to the member's retirement for purposes of the act.

(4) A member who is reinstated as an employee pursuant to a grievance or appeal of his or her termination by the county shall be a member upon reemployment and shall not be considered to have a break in service for such period of time that the grievance or appeal was pending.

Source: Laws 1965, c. 94, § 20, p. 409; Laws 1985, LB 347, § 9; Laws 1991, LB 549, § 12; Laws 1993, LB 417, § 5; Laws 1997, LB 624, § 6; Laws 1999, LB 703, § 3; Laws 2002, LB 407, § 6; Laws 2002, LB 687, § 15; Laws 2003, LB 451, § 11; Laws 2004, LB 1097, § 5; Laws 2007, LB328, § 6; Laws 2008, LB1147, § 4.

23-2321 Retirement system; employee; death before retirement; death benefit.

In the event of the death before his or her retirement date of any employee who is a member of the system, the death benefit shall be equal to (1) for participants in the defined contribution benefit, the total of the employee account and the employer account and (2) for participants in the cash balance benefit, the benefit provided in section 23-2308.01. The death benefit shall be paid to the member's beneficiary, to an alternate payee pursuant to a qualified domestic relations order as provided in section 42-1107, or to the member's estate if there are no designated beneficiaries. If the beneficiary is not the member's surviving spouse, the death benefit shall be paid as a lump-sum payment or payments, except that the entire account must be distributed by the fifth anniversary of the member's death. If the sole primary beneficiary is the member's surviving spouse, the surviving spouse may elect to receive an annuity calculated as if the member retired and selected a one-hundred-percent joint and survivor annuity effective on the annuity purchase date. If the surviving spouse does not elect the annuity option within one hundred eighty days after the death of the member, the surviving spouse shall receive a lump-sum payment or payments, except that the entire account must be distributed by the fifth anniversary of the member's death.

Source: Laws 1965, c. 94, § 21, p. 409; Laws 1975, LB 47, § 5; Laws 1985, LB 347, § 10; Laws 1994, LB 1306, § 2; Laws 1996, LB 1273, § 17; Laws 2002, LB 687, § 16; Laws 2003, LB 451, § 12; Laws 2004, LB 1097, § 6; Laws 2009, LB188, § 6.

ARTICLE 32

COUNTY ASSESSOR

Section

23-3202. County assessor or deputy; county assessor certificate; required; exception.

23-3202 County assessor or deputy; county assessor certificate; required; exception.

No person shall be eligible to file for, be appointed to, or hold the office of county assessor or serve as deputy assessor in any county of this state unless he or she holds a county assessor certificate issued pursuant to section 77-422.

Source: Laws 1969, c. 623, § 3, p. 2521; Laws 1983, LB 245, § 2; R.S.1943, (1986), § 77-423; Laws 1990, LB 821, § 17; Laws 1999, LB 194, § 3; Laws 2000, LB 968, § 14; Laws 2006, LB 808, § 22; Laws 2009, LB121, § 3.
Operative date July 1, 2013.

ARTICLE 37

AUDITOR IN CERTAIN COUNTIES

Section
23-3701. Auditor; duties.

23-3701 Auditor; duties.

In any county in which a city of the metropolitan class is located, the county board shall provide for an auditor who shall report directly to the county board. The auditor shall be the internal auditor of the county and shall examine or cause to be examined books, accounts, vouchers, records, expenditures, and information technology systems of all elected or appointed county officers and offices. Such examinations shall be done in accordance with generally accepted government auditing standards set forth in the most recent Government Auditing Standards, published by the Comptroller General of the United States, Government Accountability Office. The auditor shall report promptly to the county board and the elected official whose office was the subject of the audit regarding the fiscal condition shown by such examination conducted by the auditor, including any irregularities or misconduct of officers or employees, any misappropriation or misuse of public funds or property, and any improper system or method of bookkeeping or condition of accounts.

Source: Laws 2010, LB475, § 2.
Operative date January 1, 2011.

CHAPTER 24
COURTS

Article.
2. Supreme Court.
   (a) Organization. 24-201.01, 24-205.
   (g) Supreme Court Automation Cash Fund. 24-227.01.
   (i) Counsel for Discipline Cash Fund. 24-229.
3. District Court.
   (a) Organization. 24-301.02, 24-313.
   (c) Clerk. 24-337.04.
5. County Court.
   (a) Organization. 24-517.
7. Judges, General Provisions.
   (a) Judges Retirement. 24-701.01 to 24-710.07.
   (c) Retired Judges. 24-730.
8. Selection and Retention of Judges.
   (c) Term of Office. 24-819.

ARTICLE 2
SUPREME COURT

(a) ORGANIZATION

Section
24-201.01. Supreme Court judges; salary; amount; restriction on other employment of judges.
24-205. Supreme Court Education Fund; created; use; investment.

(g) SUPREME COURT AUTOMATION CASH FUND

24-227.01. Supreme Court Automation Cash Fund; created; use; investment.

(i) COUNSEL FOR DISCIPLINE CASH FUND

24-229. Counsel for Discipline Cash Fund; created; use; investment.

(a) ORGANIZATION

24-201.01 Supreme Court judges; salary; amount; restriction on other employment of judges.

On July 1, 2008, the salary of the Chief Justice and the judges of the Supreme Court shall be one hundred thirty-five thousand eight hundred eighty dollars and sixty cents. On July 1, 2009, the salary of the Chief Justice and the judges of the Supreme Court shall be one hundred thirty-nine thousand two hundred seventy-seven dollars and sixty-one cents. On July 1, 2010, the salary of the Chief Justice and the judges of the Supreme Court shall be one hundred forty-two thousand seven hundred fifty-nine dollars and fifty-five cents.

The Chief Justice and the judges of the Supreme Court shall hold no other public office of profit or trust during their terms of office nor accept any public appointment or employment under the authority of the government of the United States for which they receive compensation for their services. Such salaries shall be payable in equal monthly installments.

Source: Laws 1947, c. 345, § 1, p. 1089; Laws 1951, c. 58, § 1, p. 191; Laws 1955, c. 77, § 1, p. 231; Laws 1959, c. 93, § 1, p. 406; Laws

1963, c. 534, § 1, p. 1676; Laws 1963, c. 127, § 1, p. 480; Laws 1967, c. 136, § 1, p. 421; Laws 1969, c. 173, § 1, p. 754; Laws 1969, c. 174, § 1, p. 755; Laws 1972, LB 1293, § 2; Laws 1974, LB 923, § 1; Laws 1976, LB 76, § 1; Laws 1978, LB 672, § 1; Laws 1979, LB 398, § 1; Laws 1983, LB 269, § 1; Laws 1986, LB 43, § 1; Laws 1987, LB 564, § 1; Laws 1990, LB 42, § 1; Laws 1995, LB 189, § 1; Laws 1997, LB 362, § 1; Laws 1999, LB 350, § 1; Laws 2001, LB 357, § 1; Laws 2005, LB 348, § 1; Laws 2007, LB377, § 1; Laws 2009, LB414, § 1.

24-205 Supreme Court Education Fund; created; use; investment.

The Supreme Court Education Fund is created. The State Court Administrator shall administer the fund. The fund shall consist of money remitted pursuant to section 33-154. Except as otherwise directed by the Supreme Court during the period from November 21, 2009, until June 30, 2011, the fund shall only be used to aid in supporting the mandatory training and education program for judges and employees of the Supreme Court, Court of Appeals, district courts, separate juvenile courts, county courts, and Nebraska Probation System as enacted by rule of the Supreme Court. 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 760, § 1; Laws 2009, First Spec. Sess., LB3, § 9. Effective date November 21, 2009.

Cross References

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

(g) SUPREME COURT AUTOMATION CASH FUND

24-227.01 Supreme Court Automation Cash Fund; created; use; investment.

The Supreme Court Automation Cash Fund is created. The State Court Administrator shall administer the fund. Except as otherwise directed by the Supreme Court during the period from November 21, 2009, until June 30, 2011, the fund shall only be used to support automation expenses of the Supreme Court, Court of Appeals, district courts, separate juvenile courts, county courts, and Nebraska Probation System from the computer automation budget program, except that the State Treasurer shall, on or before June 30, 2011, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services, transfer the amount set forth in Laws 2009, LB1, One Hundred First Legislature, First Special Session. Any money in the Supreme Court Automation 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 2002, Second Spec. Sess., LB 13, § 1; Laws 2009, First Spec. Sess., LB3, § 10.
Effective date November 21, 2009.

Cross References

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

(i) COUNSEL FOR DISCIPLINE CASH FUND

24-229 Counsel for Discipline Cash Fund; created; use; investment.

The Counsel for Discipline Cash Fund is created. The fund shall be established within the Supreme Court and administered by the State Court Administrator. The fund shall consist of a portion of the annual membership dues assessed by the Nebraska State Bar Association and remitted to the Supreme Court for credit to the fund. Except as otherwise directed by the Supreme Court during the period from November 21, 2009, until June 30, 2011, the fund shall only be used to pay the costs associated with the operation of the Office of the Counsel for Discipline. 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, LB322, § 1; Laws 2009, First Spec. Sess., LB3, § 11. Effective date November 21, 2009.

Cross References

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

ARTICLE 3
DISTRICT COURT

(a) ORGANIZATION

Section
24-301.02. District court judicial districts; described; number of judges.
24-313. Inferior tribunal; powers over.

(c) CLERK

24-337.04. Clerk of district court; residency.

(a) ORGANIZATION

24-301.02 District court judicial districts; described; number of judges.

The State of Nebraska shall be divided into the following twelve district court judicial districts:

District No. 1 shall contain the counties of Clay, Nuckolls, Saline, Jefferson, Gage, Thayer, Johnson, Pawnee, Nemaha, Fillmore, and Richardson;

District No. 2 shall contain the counties of Sarpy, Cass, and Otoe;

District No. 3 shall contain the county of Lancaster;

District No. 4 shall contain the county of Douglas;

District No. 5 shall contain the counties of Merrick, Platte, Colfax, Boone, Nance, Hamilton, Polk, York, Butler, Seward, and Saunders;

District No. 6 shall contain the counties of Dixon, Dakota, Cedar, Burt, Thurston, Dodge, and Washington;

District No. 7 shall contain the counties of Knox, Cuming, Antelope, Pierce, Wayne, Madison, and Stanton;

District No. 8 shall contain the counties of Cherry, Keya Paha, Brown, Rock, Blaine, Loup, Custer, Boyd, Holt, Garfield, Wheeler, Valley, Greeley, Sherman, and Howard;

District No. 9 shall contain the counties of Buffalo and Hall;

District No. 10 shall contain the counties of Adams, Phelps, Kearney, Harlan, Franklin, and Webster;

District No. 11 shall contain the counties of Hooker, Thomas, Arthur, McPherson, Logan, Keith, Perkins, Lincoln, Dawson, Chase, Hayes, Frontier, Gosper, Dundy, Hitchcock, Red Willow, and Furnas; and

District No. 12 shall contain the counties of Sioux, Dawes, Box Butte, Sheridan, Scotts Bluff, Morrill, Garden, Banner, Kimball, Cheyenne, Grant, and Deuel.

In the fourth district there shall be sixteen judges of the district court. In the third district, until June 30, 2011, there shall be seven judges of the district court and, beginning July 1, 2011, there shall be eight judges of the district court. In the second, fifth, ninth, eleventh, and twelfth districts there shall be four judges of the district court. In the first and sixth districts there shall be three judges of the district court. In the seventh, eighth, and tenth districts there shall be two judges of the district court.

Source: Laws 1911, c. 5, § 1, p. 70; Laws 1913, c. 203, § 1, p. 623; R.S.1913, § 217; Laws 1915, c. 12, § 1, p. 64; Laws 1917, c. 3, § 1, p. 55; Laws 1919, c. 114, § 1, p. 278; Laws 1921, c. 146, § 1, p. 620; C.S.1922, § 199; Laws 1923, c. 119, § 1, p. 283; C.S.1929, § 5-103; R.S.1943, § 5-105; Laws 1961, c. 11, § 1, p. 99; Laws 1963, c. 24, § 1, p. 125; Laws 1965, c. 24, § 1, p. 189; Laws 1965, c. 23, § 1, p. 186; Laws 1969, c. 27, § 1, p. 229; Laws 1972, LB 1301, § 1; Laws 1975, LB 1, § 1; Laws 1980, LB 618, § 1; Laws 1983, LB 121, § 1; Laws 1985, LB 287, § 1; Laws 1986, LB 516, § 1; R.S.1943, (1987), § 5-105; Laws 1990, LB 822, § 10; Laws 1991, LB 181, § 1; Laws 1992, LB 1059, § 3; Laws 1993, LB 306, § 1; Laws 1995, LB 19, § 1; Laws 1995, LB 189, § 2; Laws 1998, LB 404, § 1; Laws 2001, LB 92, § 1; Laws 2004, LB 1207, § 1; Laws 2007, LB377, § 2; Laws 2009, LB35, § 4.

Cross References

Constitutional provisions, see Article V, sections 10 and 11, Constitution of Nebraska.

24-313 Inferior tribunal; powers over.

The district court may by rule compel an inferior court or board to allow an appeal or to make or amend records according to law either by correcting an evident mistake or supplying an evident omission. This section shall not apply if the Administrative Procedure Act otherwise provides.

Source: Laws 1879, § 28, p. 88; R.S.1913, § 1172; C.S.1922, § 1095; C.S.1929, § 27-313; R.S.1943, § 24-313; Laws 1988, LB 352, § 23; Laws 1989, LB 182, § 7; Laws 2010, LB800, § 1.
Effective date July 15, 2010.

Cross References

Administrative Procedure Act, see section 84-920.

(c) CLERK

24-337.04 Clerk of district court; residency.

A clerk of the district court elected after 2008 need not be a resident of the county when he or she files for election as clerk of the district court, but a clerk of the district court shall reside in a county for which he or she holds office.

Source: Laws 2009, LB7, § 1.

ARTICLE 5
COUNTY COURT

(a) ORGANIZATION

Section
24-517. Jurisdiction.

(a) ORGANIZATION

24-517 Jurisdiction.

Each county court shall have the following jurisdiction:

(1) Exclusive original jurisdiction of all matters relating to decedents' estates, including the probate of wills and the construction thereof, except as provided in subsection (c) of section 30-2464 and section 30-2486;

(2) Exclusive original jurisdiction in all matters relating to the guardianship of a person, except if a separate juvenile court already has jurisdiction over a child in need of a guardian, concurrent original jurisdiction with the separate juvenile court in such guardianship;

(3) Exclusive original jurisdiction of all matters relating to conservatorship of any person, including (a) original jurisdiction to consent to and authorize a voluntary selection, partition, and setoff of a ward's interest in real estate owned in common with others and to exercise any right of the ward in connection therewith which the ward could exercise if competent and (b) original jurisdiction to license the sale of such real estate for cash or on such terms of credit as shall seem best calculated to produce the highest price subject only to the requirements set forth in section 30-3201;

(4) Concurrent jurisdiction with the district court to involuntarily partition a ward's interest in real estate owned in common with others;

(5) Concurrent original jurisdiction with the district court in all civil actions of any type when the amount in controversy is forty-five thousand dollars or less through June 30, 2005, and as set by the Supreme Court pursuant to subdivision (b) of this subdivision on and after July 1, 2005.

(a) When the pleadings or discovery proceedings in a civil action indicate that the amount in controversy is greater than the jurisdictional amount of subdivision (5) of this section, the county court shall, upon the request of any party, certify the proceedings to the district court as provided in section 25-2706. An award of the county court which is greater than the jurisdictional amount of subdivision (5) of this section is not void or unenforceable because it is greater than such amount, however, if an award of the county court is greater than the jurisdictional amount, the county court shall tax as additional costs the difference between the filing fee in district court and the filing fee in county court.

(b) The Supreme Court shall adjust the jurisdictional amount for the county court every fifth year commencing July 1, 2005. The adjusted jurisdictional amount shall be equal to the then current jurisdictional amount adjusted by the average percentage change in the unadjusted 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 jurisdictional amount shall be rounded to the nearest one-thousand-dollar amount;

(6) Concurrent original jurisdiction with the district court in any criminal matter classified as a misdemeanor or for any infraction. The district court

shall have concurrent original jurisdiction in any criminal matter classified as a misdemeanor that arises from the same incident as a charged felony;

(7) Concurrent original jurisdiction with the district court in domestic relations matters as defined in section 25-2740 and with the district court and separate juvenile court in paternity or custody determinations as provided in section 25-2740;

(8) Concurrent original jurisdiction with the district court in matters arising under the Nebraska Uniform Trust Code;

(9) Exclusive original jurisdiction in any action based on violation of a city or village ordinance;

(10) Exclusive original jurisdiction in juvenile matters in counties which have not established separate juvenile courts;

(11) Exclusive original jurisdiction in matters of adoption, except if a separate juvenile court already has jurisdiction over the child to be adopted, concurrent original jurisdiction with the separate juvenile court; and

(12) All other jurisdiction heretofore provided and not specifically repealed by Laws 1972, Legislative Bill 1032, and such other jurisdiction as hereafter provided by law.

Source: Laws 1972, LB 1032, § 17; Laws 1973, LB 226, § 6; Laws 1977, LB 96, § 1; Laws 1979, LB 373, § 1; Laws 1983, LB 137, § 1; Laws 1984, LB 13, § 12; Laws 1986, LB 529, § 7; Laws 1986, LB 1229, § 1; Laws 1991, LB 422, § 1; Laws 1996, LB 1296, § 2; Laws 1997, LB 229, § 1; Laws 1998, LB 1041, § 1; Laws 2001, LB 269, § 1; Laws 2003, LB 130, § 114; Laws 2005, LB 361, § 29; Laws 2008, LB280, § 1; Laws 2008, LB1014, § 4; Laws 2009, LB35, § 5.

Cross References

Nebraska Uniform Trust Code, see section 30-3801.

ARTICLE 7
JUDGES, GENERAL PROVISIONS

(a) JUDGES RETIREMENT

Section
24-701.01. Act, how cited.
24-703. Judges; contributions; payment; funding of system; late fees.
24-703.01. Participation in retirement system; requirements.
24-710.07. Benefits; adjustment.

(c) RETIRED JUDGES

24-730. Retired judge; temporary duty; compensation.

(a) JUDGES RETIREMENT

24-701.01 Act, how cited.

Sections 24-701 to 24-714 shall be known and may be cited as the Judges Retirement Act.

Source: Laws 1996, LB 847, § 12; Laws 1997, LB 624, § 10; Laws 1998, LB 532, § 1; Laws 1998, LB 1191, § 36; Laws 2001, LB 408, § 7; Laws 2002, LB 407, § 11; Laws 2004, LB 1097, § 10; Laws 2010, LB950, § 8.
Operative date July 1, 2010.

24-703 Judges; contributions; payment; funding of system; late fees.

(1) Each original member shall contribute monthly four percent of his or her monthly compensation to the fund until the maximum benefit as limited in subsection (1) of section 24-710 has been earned. It shall be the duty of the Director of Administrative Services in accordance with subsection (10) of this section to make a deduction of four percent on the monthly payroll of each original member who is a judge of the Supreme Court, a judge of the Court of Appeals, a judge of the district court, a judge of a separate juvenile court, a judge of the county court, a clerk magistrate of the county court who was an associate county judge and a member of the fund at the time of his or her appointment as a clerk magistrate, or a judge of the Nebraska Workers' Compensation Court showing the amount to be deducted and its credit to the fund. The Director of Administrative Services and the State Treasurer shall credit the four percent as shown on the payroll and the amounts received from the various counties to the fund and remit the same to the director in charge of the judges retirement system who shall keep an accurate record of the contributions of each judge.

(2)(a) In addition to the contribution required under subdivision (c) of this subsection, beginning on July 1, 2004, each future member who has not elected to make contributions and receive benefits as provided in section 24-703.03 shall contribute monthly six percent of his or her monthly compensation to the fund until the maximum benefit as limited in subsection (2) of section 24-710 has been earned. After the maximum benefit as limited in subsection (2) of section 24-710 has been earned, such future member shall make no further contributions to the fund, except that (i) any time the maximum benefit is changed, a future member who has previously earned the maximum benefit as it existed prior to the change shall contribute monthly six percent of his or her monthly compensation to the fund until the maximum benefit as changed and as limited in subsection (2) of section 24-710 has been earned and (ii) such future member shall continue to make the contribution required under subdivision (c) of this subsection.

(b) In addition to the contribution required under subdivision (c) of this subsection, beginning on July 1, 2004, a judge who first serves as a judge on or after such date or a future member who elects to make contributions and receive benefits as provided in section 24-703.03 shall contribute monthly eight percent of his or her monthly compensation to the fund until the maximum benefit as limited by subsection (2) of section 24-710 has been earned. In addition to the contribution required under subdivision (c) of this subsection, after the maximum benefit as limited in subsection (2) of section 24-710 has been earned, such judge or future member shall contribute monthly four percent of his or her monthly compensation to the fund for the remainder of his or her active service.

(c) Beginning on July 1, 2009, and until July 1, 2014, a member or judge described in subdivisions (a) and (b) of this subsection shall contribute monthly an additional one percent of his or her monthly compensation to the fund.

(d) It shall be the duty of the Director of Administrative Services to make a deduction on the monthly payroll of each such future member who is a judge of the Supreme Court, a judge of the Court of Appeals, a judge of the district court, a judge of a separate juvenile court, a judge of the county court, a clerk magistrate of the county court who was an associate county judge and a

member of the fund at the time of his or her appointment as a clerk magistrate, or a judge of the Nebraska Workers' Compensation Court showing the amount to be deducted and its credit to the fund. This shall be done each month. The Director of Administrative Services and the State Treasurer shall credit the amount as shown on the payroll and the amounts received from the various counties to the fund and remit the same to the director in charge of the judges retirement system who shall keep an accurate record of the contributions of each judge.

(3) Except as otherwise provided in this subsection, a Nebraska Retirement Fund for Judges fee of five dollars shall be taxed as costs in each (a) civil cause of action, criminal cause of action, traffic misdemeanor or infraction, and city or village ordinance violation filed in the district courts, the county courts, and the separate juvenile courts, (b) filing in the district court of an order, award, or judgment of the Nebraska Workers' Compensation Court or any judge thereof pursuant to section 48-188, (c) appeal or other proceeding filed in the Court of Appeals, and (d) original action, appeal, or other proceeding filed in the Supreme Court. Beginning on July 1, 2009, and until July 1, 2014, such fee shall be six dollars. In county courts a sum shall be charged which is equal to ten percent of each fee provided by sections 33-125, 33-126.02, 33-126.03, and 33-126.06, rounded to the nearest even dollar. No judges retirement fee shall be charged for filing a report pursuant to sections 33-126.02 and 33-126.06. When collected by the clerk of the district or county court, such fees shall be paid and information submitted to the director in charge of the judges retirement system on forms prescribed by the board by the clerk within ten days after the close of each calendar quarter. The board may charge a late administrative processing fee not to exceed twenty-five dollars if the information is not timely received or the money is delinquent. In addition, the board may charge a late fee of thirty-eight thousandths of one percent of the amount required to be submitted pursuant to this section for each day such amount has not been received. Such director shall promptly thereafter remit the same to the State Treasurer for credit to the fund. No Nebraska Retirement Fund for Judges fee which is uncollectible for any reason shall be waived by a county judge as provided in section 29-2709.

(4) All expenditures from the fund shall be authorized by voucher in the manner prescribed in section 24-713. The fund shall be used for the payment of all annuities and other benefits and for the expenses of administration.

(5) The fund shall consist of the total fund as of December 25, 1969, the contributions of members as provided in this section, all supplementary court fees as provided in subsection (3) of this section, and any required contributions of the state.

(6) Not later than January 1 of each year, the State Treasurer shall transfer to the fund the amount certified by the board as being necessary to pay the cost of any benefits accrued during the fiscal year ending the previous June 30 in excess of member contributions for that fiscal year and court fees as provided in subsection (3) of this section and fees pursuant to sections 25-2804, 33-103, 33-103.01, 33-106, 33-106.02, 33-123, 33-125, 33-126.02, 33-126.03, and 33-126.06 and directed to be remitted to the fund, if any, for that fiscal year plus any required contributions of the state as provided in subsection (9) of this section.

(7) Benefits under the retirement system to members or to their beneficiaries shall be paid from the fund.

(8) Any member who is making contributions to the fund on December 25, 1969, may, on or before June 30, 1970, elect to become a future member by delivering written notice of such election to the board.

(9) Not later than January 1 of each year, the State Treasurer shall transfer to the fund an amount, determined on the basis of an actuarial valuation as of the previous June 30 and certified by the board, to fully fund the unfunded accrued liabilities of the retirement system as of June 30, 1988, by level payments up to January 1, 2000. Such valuation shall be on the basis of actuarial assumptions recommended by the actuary, approved by the board, and kept on file with the board. For the fiscal year beginning July 1, 2002, and each fiscal year thereafter, the actuary for the board shall perform an actuarial valuation of the system using the entry age actuarial cost method. Under this method, the actuarially required funding rate is equal to the normal cost rate, plus the contribution rate necessary to amortize the unfunded actuarial accrued liability on a level payment basis. The normal cost under this method shall be determined for each individual member on a level percentage of salary basis. The normal cost amount is then summed for all members. The initial unfunded actual accrued liability as of July 1, 2002, if any, shall be amortized over a twenty-five-year period. Prior to July 1, 2006, changes in the funded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a twenty-five-year period beginning on the valuation date of such change. Beginning July 1, 2006, any existing unfunded liabilities shall be reinitialized and amortized over a thirty-year period, and during each subsequent actuarial valuation, changes in the funded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a thirty-year period beginning on the valuation date of such change. If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a thirty-year period as of the actuarial valuation date. If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the Judges Retirement Act, there shall be a supplemental appropriation sufficient to pay for the differences between the actuarially required contribution rate and the rate of all contributions required pursuant to the Judges Retirement Act.

(10) The state or county shall pick up the member contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code as defined in section 49-801.01, except that the state or county shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the code, these contributions shall not be included as gross income of the member until such time as they are distributed or made available. The state or county shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The state or county shall pick up these contributions by a compensation deduction through a reduction in the compen-

sation of the member. Member contributions picked up shall be treated for all purposes of the Judges Retirement Act in the same manner and to the extent as member contributions made prior to the date picked up.

Source: Laws 1955, c. 83, § 3, p. 246; Laws 1957, c. 79, § 2, p. 321; Laws 1959, c. 95, § 2, p. 411; Laws 1959, c. 189, § 14, p. 689; Laws 1963, c. 137, § 1, p. 513; Laws 1965, c. 115, § 2, p. 442; Laws 1965, c. 116, § 2, p. 446; Laws 1967, c. 140, § 1, p. 428; Laws 1969, c. 178, § 2, p. 957; Laws 1971, LB 987, § 5; Laws 1972, LB 1032, § 121; Laws 1972, LB 1471, § 1; Laws 1973, LB 226, § 11; Laws 1974, LB 228, § 1; Laws 1977, LB 344, § 2; Laws 1977, LB 467, § 1; Laws 1981, LB 459, § 3; Laws 1984, LB 13, § 33; Laws 1984, LB 218, § 2; Laws 1986, LB 92, § 2; Laws 1986, LB 529, § 18; Laws 1989, LB 233, § 1; Laws 1989, LB 506, § 3; Laws 1991, LB 549, § 16; Laws 1991, LB 732, § 37; Laws 1992, LB 682, § 2; Laws 1992, LB 672, § 31; Laws 1994, LB 833, § 14; Laws 1995, LB 574, § 34; Laws 2001, LB 408, § 9; Laws 2002, LB 407, § 13; Laws 2003, LB 320, § 1; Laws 2003, LB 760, § 4; Laws 2004, LB 1097, § 11; Laws 2005, LB 348, § 2; Laws 2005, LB 364, § 7; Laws 2006, LB 1019, § 5; Laws 2009, LB414, § 2.

24-703.01 Participation in retirement system; requirements.

On and after July 1, 2010, no judge shall be authorized to participate in the retirement system provided for in the Judges Retirement Act unless the judge (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 2010, LB950, § 9.
Operative date July 1, 2010.

24-710.07 Benefits; adjustment.

(1) Beginning July 1, 2000, and each July 1 thereafter, current benefits paid to a member or beneficiary shall be adjusted so that the purchasing power of the benefit being paid is not less than seventy-five percent of the purchasing power of the initial benefit. The purchasing power of the initial benefit in any year following the year in which the initial benefit commenced shall be calculated by dividing the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Urban Wage Earners and Clerical Workers factor on June 30 of the current year by the Consumer Price Index for Urban Wage Earners and Clerical Workers factor on June 30 of the year in which the benefit commenced. The result shall be multiplied by the product that results when the amount of the initial benefit is multiplied by seventy-five percent. In any year in which applying the adjustment provided in subsection (2) of this section results in a benefit which would be less than seventy-five percent of the purchasing power of the initial benefit as calculated above, the adjustment shall instead be equal to the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers factor from the prior year to the current year. In all other years, the adjustment provided under subsection (2) of this section shall be provided. The adjustment pursuant to this subsection shall not cause a current benefit to be reduced.

(2) Except as provided in subsection (1) of this section:

(a) Beginning July 1, 2000, and until July 1, 2001, the current benefit of a member or the beneficiary of such a member shall be increased annually by the lesser of (i) the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers factor published by the Bureau of Labor Statistics of the United States Department of Labor for the prior year or (ii) two percent; and

(b) Beginning July 1, 2001, the current benefit of a member or the beneficiary of such a member shall be increased annually by the lesser of (i) the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers factor published by the Bureau of Labor Statistics of the United States Department of Labor for the prior year or (ii) two and one-half percent.

(3) The state shall contribute to the Nebraska Retirement Fund for Judges an annual level dollar payment certified by the board. For the 1996-97 fiscal year through the 2012-13 fiscal year, the annual level dollar payment certified by the board shall equal 1.04778 percent of six million eight hundred ninety-five thousand dollars.

(4) The board shall adjust the annual benefit adjustment provided in this section so that the total amount of all cost-of-living adjustments provided to the eligible retiree at the time of the annual benefit adjustment does not exceed the percentage change in the National Consumer Price Index for Urban Wage Earners and Clerical Workers factor published by the Bureau of Labor Statistics for the period between June 30 of the prior year to June 30 of the present year. If the consumer price index used in this section is discontinued or replaced, a substitute index published by the United States Department of Labor shall be selected by the board which shall be a reasonable representative measurement of the cost of living for retired employees.

Source: Laws 1996, LB 700, § 2; Laws 1999, LB 674, § 2; Laws 2001, LB 711, § 1; Laws 2004, LB 1097, § 17; Laws 2008, LB1147, § 6; Laws 2010, LB950, § 10.
Operative date July 1, 2010.

(c) RETIRED JUDGES

24-730 Retired judge; temporary duty; compensation.

A retired judge holding court pursuant to sections 24-729 to 24-733 shall receive, in addition to his or her retirement benefits, for each day of temporary duty an amount established by the Supreme Court. In addition, a retired judge who consents to serve a minimum number of temporary duty days annually, as established by the Supreme Court, and is appointed by the Supreme Court for such extended service, may also receive a stipend or an adjusted stipend calculated from the number of days of temporary duty performed by the judge in such annual period in relation to an annual base amount established by the Supreme Court.

Source: Laws 1974, LB 832, § 2; Laws 1983, LB 268, § 1; Laws 2008, LB1014, § 5; Laws 2010, LB727, § 1.
Effective date July 15, 2010.

ARTICLE 8
SELECTION AND RETENTION OF JUDGES

(c) TERM OF OFFICE

Section
24-819. Judges; full term; commencement; end.

(c) TERM OF OFFICE

24-819 Judges; full term; commencement; end.

The full term of office of each judge shall commence: (1) On the first Thursday after the first Tuesday in January next succeeding the election referred to in sections 24-813 to 24-818, or (2) if appointed pursuant to Article V of the Constitution of Nebraska, on the date of his or her appointment, as the case may be. For purposes of sections 24-817 and 24-818, the end of the term of office shall be the first Thursday after the first Tuesday in January next succeeding the retention election required by section 24-814.

Source: Laws 1969, c. 178, § 8, p. 768; Laws 2009, LB343, § 1.

CHAPTER 25
COURTS; CIVIL PROCEDURE

Article.
4. Commencement of Actions; Venue.
(a) General Provisions. 25-410.
5. Commencement of Actions; Process.
(b) Service and Return of Summons. 25-505.01 to 25-507.01.
10. Provisional Remedies.
(a) Attachment and Garnishment. 25-1011.
11. Trial.
(g) New Trial. 25-1144.
13. Judgments.
(f) Conveyance by Commissioners. 25-1326, 25-1327.
16. Jury. 25-1625, 25-1628.
17. Costs. 25-1708.
18. Expenses and Attorney's Fees. 25-1801.
21. Actions and Proceedings in Particular Cases.
(e) Foreclosure of Mortgages. 25-2144.
(y) Motor Vehicle Guest Statute. 25-21,237, 25-21,238. Repealed.
(hh) Change of Name. 25-21,271.
(oo) Successor Asbestos-Related Liability Act. 25-21,283 to 25-21,289.
(pp) Exploited Children's Civil Remedy Act. 25-21,290 to 25-21,296.
22. General Provisions.
(f) Settlements. 25-2240.
24. Interpreters. 25-2405.
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27. Provisions Applicable to County Courts.
(a) Miscellaneous Procedural Provisions. 25-2701.
(d) Judgments. 25-2720.01, 25-2721.
(f) Appeals. 25-2728.
28. Small Claims Court. 25-2802 to 25-2804.
29. Dispute Resolution.
(a) Dispute Resolution Act. 25-2921.
(b) Settlement Escrow. 25-2922 to 25-2929. Repealed.
30. Civil Legal Services for Low-Income Persons.
(b) Civil Legal Services Program. 25-3007, 25-3008.
33. Nonrecourse Civil Litigation Act. 25-3301 to 25-3309.

ARTICLE 4
COMMENCEMENT OF ACTIONS; VENUE

(a) GENERAL PROVISIONS

Section
25-410. Transfer of actions; clerk of transferor court; duties; clerk of transferee court; duties; certain support orders; how treated.

(a) GENERAL PROVISIONS

25-410 Transfer of actions; clerk of transferor court; duties; clerk of transferee court; duties; certain support orders; how treated.

(1) For the convenience of the parties and witnesses or in the interest of justice, a district court of any county, the transferor court, may transfer any

civil action to the district court of any other county in this state, the transferee court. The transfer may occur before or after the entry of judgment, and there shall be no additional fees required for the transfer.

(2) To transfer a civil action, the transferor court shall order transfer of the action to the specific transferee court requested. The clerk of the transferor court shall file with the transferee court within ten days after the entry of the transfer order: Certification of the proceedings; all original documents of the action; certification of the transcript of docket entries; and certification of the payment records of any judgment in the action maintained by the transferor court.

(3) Upon the filing of such documents by the clerk of the transferor court, the clerk of the transferee court shall enter any judgment in the action on the judgment record of the transferee court. The judgment, once filed and entered on the judgment record of the transferee court, shall be a lien on the property of the debtor in any county in which such judgment is filed. Transfer of the action shall not change the obligations of the parties under any judgment entered in the action regardless of the status of the transfer.

(4) If the transferred civil action involves a support order that has payment records maintained by the Title IV-D Division as defined in section 43-3341, the transferor court order shall notify the division to make the necessary changes in the support payment records. Support payments shall commence in the transferee court on the first day of the month following the order of transfer, payments made prior to such date shall be considered payment on a judgment entered by the transferor court, and payments made on and after such date shall be considered payment on a judgment entered by the transferee court.

Source: R.S.1867, Code § 61, p. 402; G.S.1873, c. 57, § 61, p. 532; R.S.1913, § 7621; C.S.1922, § 8564; C.S.1929, § 20-410; R.S.1943, § 25-410; Laws 1971, LB 576, § 8; Laws 2010, LB712, § 1. Operative date July 15, 2010.

Cross References

For disqualification of judge, see sections 24-723.01, 24-739, and 24-740.

ARTICLE 5
COMMENCEMENT OF ACTIONS; PROCESS

(b) SERVICE AND RETURN OF SUMMONS

Section
25-505.01. Service of summons; methods.
25-506.01. Process; by whom served.
25-507.01. Summons; proof of service; return date.

(b) SERVICE AND RETURN OF SUMMONS

25-505.01 Service of summons; methods.

(1) Unless otherwise limited by statute or by the court, a plaintiff may elect to have service made by any of the following methods:

(a) Personal service which shall be made by leaving the summons with the individual to be served;

(b) Residence service which shall be made by leaving the summons at the usual place of residence of the individual to be served, with some person of suitable age and discretion residing therein;

(c) Certified mail service which shall be made by (i) within ten days of issuance, sending the summons to the defendant by certified mail with a return receipt requested showing to whom and where delivered and the date of delivery, and (ii) filing with the court proof of service with the signed receipt attached; or

(d) By depositing with a designated delivery service authorized pursuant to 26 U.S.C. 7502(f)(2) a copy of the summons and complaint, addressed to the party to be served, delivering to the addressee, and obtaining a delivery receipt. As used in this subdivision, delivery receipt includes an electronic or facsimile receipt.

(2) Failure to make service by the method elected by the plaintiff does not affect the validity of the service.

Source: Laws 1983, LB 447, § 22; Laws 1984, LB 845, § 21; Laws 2009, LB35, § 6.

Cross References

Workers' compensation cases, manner of service, see sections 48-174, 48-175, 48-175.01, and 48-190.

25-506.01 Process; by whom served.

(1) Unless the plaintiff has elected certified mail service, the summons shall be served by the sheriff of the county where service is made, by a person authorized by section 25-507 or otherwise authorized by law, or by a person, corporation, partnership, or limited liability company not a party to the action specially appointed by the court for that purpose.

(2) Certified mail service shall be made by plaintiff or plaintiff's attorney.

Source: Laws 1983, LB 447, § 23; Laws 1994, LB 1224, § 36; Laws 1999, LB 319, § 1; Laws 2009, LB35, § 7.

Cross References

Workers' compensation cases, manner of service, see sections 48-174, 48-175, 48-175.01, and 48-190.

25-507.01 Summons; proof of service; return date.

(1) Within twenty days after the date of issue, the person serving the summons, other than by certified mail service, shall make proof of service to the court stating the time, place, including the address if applicable, name of the person with whom the summons was left, and method of service, or return the unserved summons to the court with a statement of the reason for the failure to serve.

(2) When service is by certified mail service, the plaintiff or plaintiff's attorney shall file proof of service within ten days after return of the signed receipt.

(3) Failure to make proof of service or delay in doing so does not affect the validity of the service.

Source: Laws 1983, LB 447, § 24; Laws 2009, LB35, § 8.

Cross References

Workers' compensation cases, manner and time of service, see sections 48-174, 48-175, 48-175.01, and 48-190.

ARTICLE 10
PROVISIONAL REMEDIES

(a) ATTACHMENT AND GARNISHMENT

Section
25-1011. Garnishment; service upon garnishee; forms; notice; hearing.

(a) ATTACHMENT AND GARNISHMENT

25-1011 Garnishment; service upon garnishee; forms; notice; hearing.

(1) The summons and order of garnishment and the interrogatories in duplicate, a notice to judgment debtor form, and a request for hearing form shall be served upon the garnishee in the manner provided for service of a summons in a civil action.

(2) The judgment creditor or his or her agent or attorney shall send to the judgment debtor by certified mail to the last-known address of the judgment debtor a copy of the summons and order of garnishment, a notice to judgment debtor form, and a request for hearing form within seven business days after issuance by the court and shall certify in writing to the court the date of the mailing.

(3) The Supreme Court by rule of court shall promulgate uniform garnishment forms for use in all courts in this state. The forms shall include the summons and order of garnishment, the garnishment interrogatories, a notice to judgment debtor form, and a request for hearing form.

(4) The notice to judgment debtor form shall include the following information:

(a) That certain funds are exempt from garnishment if such funds are from certain government benefits and other sources;

(b) That wages are exempt up to a certain level and the amount that can be garnished varies if the judgment debtor is the head of a family;

(c) That if the judgment debtor believes the court should not allow a garnishment either because the funds sought are exempt or because the amount is not owed on the judgment, the judgment debtor is entitled to a hearing within ten days after a request by the judgment debtor to determine such issues; and

(d) That if the judgment debtor wishes a hearing as prescribed in subdivision (c) of this subsection, the judgment debtor shall make a request by filling out the request for hearing form and file the form with the court within three business days after receipt of the notice to judgment debtor form by the judgment debtor.

(5) If the judgment debtor in a garnishment proceeding requests a hearing, the court shall grant the hearing within ten days of the request.

Source: R.S.1867, Code § 208, p. 427; R.S.1913, § 7742; C.S.1922, § 8686; C.S.1929, § 20-1011; R.S.1943, § 25-1011; Laws 1951, c. 67, § 2, p. 203; Laws 1955, c. 85, § 2, p. 255; Laws 1980, LB 597, § 7; Laws 1983, LB 447, § 39; Laws 1984, LB 845, § 23; Laws 1988, LB 1030, § 14; Laws 2010, LB1085, § 1.
Effective date July 15, 2010.

ARTICLE 11
TRIAL

(g) NEW TRIAL

Section
25-1144. New trial; motion; form.

(g) NEW TRIAL

25-1144 New trial; motion; form.

The application for a new trial shall be by motion, upon written grounds, filed at the time of making the motion. It shall be sufficient, however, in assigning the grounds of the motion to assign the same in the language of the statute and without further or other particularity. The causes enumerated in subdivisions (2), (3), and (7) of section 25-1142 shall be sustained by affidavits showing their truth and may be controverted by affidavits.

Source: R.S.1867, Code § 317, p. 477; R.S.1913, § 7885; C.S.1922, § 8827; C.S.1929, § 20-1144; R.S.1943, § 25-1144; Laws 2009, LB35, § 9.

ARTICLE 13
JUDGMENTS

(f) CONVEYANCE BY COMMISSIONERS

Section
25-1326. Judicial sale; conveyance of land by master commissioner; when allowed; postponement of sale; notice.
25-1327. Judicial sale; sheriff as master commissioner.

(f) CONVEYANCE BY COMMISSIONERS

25-1326 Judicial sale; conveyance of land by master commissioner; when allowed; postponement of sale; notice.

(1) Real property may be conveyed by a master commissioner when (a) by an order or judgment in an action or a proceeding a party is ordered to convey such property to another and he or she neglects or refuses to comply with such order or judgment or (b) specific real property is required to be sold under an order or judgment of the court.

(2) A master commissioner may, for any cause he or she deems expedient, postpone the sale of all or any portion of the real property from time to time until it is completed, and in every such case, notice of postponement shall be given by public declaration thereof by such master commissioner at the time and place last appointed for the sale. The public declaration of the notice of postponement shall include the new date, time, and place of sale. No other notice of the postponed sale need be given unless the sale is postponed for longer than forty-five days beyond the day designated in the notice of sale, in which event the notice thereof shall be given in the same manner as the original notice of sale is required to be given.

Source: R.S.1867, Code § 451, p. 468; R.S.1913, § 8019; C.S.1922, § 8960; C.S.1929, § 20-1326; R.S.1943, § 25-1326; Laws 2010, LB732, § 1.
Effective date July 15, 2010.

25-1327 Judicial sale; sheriff as master commissioner.

A sheriff may act as a master commissioner under subdivision (1)(b) of section 25-1326. Sales made under such subdivision shall conform in all respects to the laws regulating sales of land upon execution.

Source: R.S.1867, Code § 452, p. 468; R.S.1913, § 8020; C.S.1922, § 8961; C.S.1929, § 20-1327; R.S.1943, § 25-1327; Laws 2010, LB732, § 2.
Effective date July 15, 2010.

ARTICLE 16

JURY

Section
25-1625. Jury commissioner; designation; salary; expenses; duties.
25-1628. Jury list; how made up.

25-1625 Jury commissioner; designation; salary; expenses; duties.

(1) In each county of the State of Nebraska there shall be a jury commissioner.

(2) In counties having a population of not more than fifty thousand inhabitants, the clerk of the district court shall be jury commissioner ex officio.

(3) In counties having a population of more than fifty thousand, and not more than two hundred thousand inhabitants, the jury commissioner shall be a separate office in the county government or the duties may be performed, when authorized by the judges of the district court within such counties, by the election commissioner. The jury commissioner shall receive an annual salary of not less than twelve hundred dollars.

(4) In counties having a population in excess of two hundred thousand inhabitants, the judges of the district court within such counties shall determine whether the clerk of the district court will perform the duties of jury commissioner without additional compensation or the election commissioner will be jury commissioner ex officio.

(5) In all counties the necessary expenses incurred in the performance of the duties of jury commissioner shall be paid by the county board of the county out of the general fund, upon proper claims approved by one of the district judges in the judicial district and duly filed with the county board.

(6) In all counties the jury commissioner shall prepare and file the annual inventory statement with the county board of the county of all county personal property in his or her custody or possession, as provided in sections 23-346 to 23-350.

Source: Laws 1915, c. 248, § 1, p. 568; C.S.1922, § 9095; C.S.1929, § 20-1625; Laws 1931, c. 65, § 5, p. 178; Laws 1939, c. 28, § 20, p. 159; C.S.Supp.,1941, § 20-1625; R.S.1943, § 25-1625; Laws 1947, c. 62, § 9, p. 202; Laws 1953, c. 72, § 6, p. 227; Laws 1961, c. 113, § 1, p. 352; Laws 1971, LB 547, § 1; Laws 1975, LB 527, § 1; Laws 1979, LB 234, § 6; Laws 2003, LB 19, § 4; Laws 2010, LB712, § 2.
Operative date July 15, 2010.

Cross References

For designation of election commissioner in counties having a population in excess of one hundred thousand inhabitants, see section 32-207.

For designation of election commissioner in counties having a population of twenty thousand to one hundred thousand inhabitants, see section 32-211.

25-1628 Jury list; how made up.

(1) At least once each calendar year, the officer having charge of the election records shall furnish to the jury commissioner a complete list of the names, dates of birth, addresses, and motor vehicle operator license numbers or state identification card numbers of all registered electors nineteen years of age or older in the county. The Department of Motor Vehicles shall make available to each jury commissioner each December a list in magnetic, optical, digital, or other electronic format mutually agreed to by the jury commissioner and the department containing the names, dates of birth, addresses, and motor vehicle operator license numbers or state identification card numbers of all licensed motor vehicle operators and state identification card holders nineteen years of age or older in the county. The jury commissioner may request such a list of licensed motor vehicle operators and state identification card holders from the county treasurer if the county treasurer has an automated procedure for developing such lists. If a jury commissioner requests similar lists at other times from the department, the cost of processing such lists shall be paid by the county which the requesting jury commissioner serves.

(2) Upon receipt of both lists described in subsection (1) of this section, the jury commissioner shall combine the separate lists and attempt to reduce duplication to the best of his or her ability to produce a master list. In counties having a population of seven thousand inhabitants or more, the jury commissioner shall produce a master list at least once each calendar year. In counties having a population of three thousand inhabitants but less than seven thousand inhabitants, the jury commissioner shall produce a master list at least once every two calendar years. In counties having a population of less than three thousand inhabitants, the jury commissioner shall produce a master list at least once every five calendar years.

(3) The proposed juror list shall be derived by selecting from the master list the name of the person whose numerical order on such list corresponds with the key number and each successive tenth name thereafter. The jury commissioner shall certify that the proposed juror list has been made in accordance with sections 25-1625 to 25-1637.

(4) Any duplication of names on a master list shall not be grounds for quashing any panel pursuant to section 25-1637 or for the disqualification of any juror.

Source: Laws 1915, c. 248, § 4, p. 569; C.S.1922, § 9098; C.S.1929, § 20-1628; R.S.1943, § 25-1628; Laws 1957, c. 88, § 1, p. 337; Laws 1971, LB 11, § 1; Laws 1985, LB 113, § 2; Laws 1988, LB 111, § 1; Laws 1989, LB 82, § 1; Laws 2003, LB 19, § 5; Laws 2005, LB 402, § 1; Laws 2009, LB35, § 10; Laws 2010, LB712, § 3.
Operative date July 15, 2010.

ARTICLE 17
COSTS

Section
25-1708. Plaintiff's costs; when allowed.

25-1708 Plaintiff's costs; when allowed.

Where it is not otherwise provided by this and other statutes, costs shall be allowed of course to the plaintiff, except as waived or released in writing by the plaintiff, upon a voluntary payment to the plaintiff after the action is filed but before judgment, or upon a judgment in favor of the plaintiff, in actions for the recovery of money only or for the recovery of specific real or personal property.

Source: R.S.1867, Code § 620, p. 504; R.S.1913, § 8167; C.S.1922, § 9118; C.S.1929, § 20-1708; R.S.1943, § 25-1708; Laws 2009, LB35, § 11.

Cross References

Agreement to pay costs as part of settlement, authorized, see section 25-2240.

ARTICLE 18
EXPENSES AND ATTORNEY'S FEES

Section
25-1801. Claims of four thousand dollars or less; recovery; costs; interest; attorney's fees.

25-1801 Claims of four thousand dollars or less; recovery; costs; interest; attorney's fees.

Any person, partnership, limited liability company, association, or corporation in this state having a claim which amounts to four thousand dollars or less against any person, partnership, limited liability company, association, or corporation doing business in this state for (1) services rendered, (2) labor done, (3) material furnished, (4) overcharges made and collected, (5) lost or damaged personal property, (6) damage resulting from delay in transmission or transportation, (7) livestock killed or injured in transit, or (8) charges covering articles and service affecting the life and well-being of the debtor which are adjudged by the court to be necessaries of life may present the same to such person, partnership, limited liability company, association, or corporation, or to any agent thereof, for payment in any county where suit may be instituted for the collection of the same. If, at the expiration of ninety days after the presentation of such claim, the same has not been paid or satisfied, he, she, or it may institute suit thereon in the proper court. If payment is made to the plaintiff by or on behalf of the defendant after the filing of the suit but before judgment is taken, except as otherwise agreed in writing by the plaintiff, the plaintiff shall be entitled to receive the costs of suit whether by voluntary payment or judgment. If he, she, or it establishes the claim and secures judgment thereon, he, she, or it shall be entitled to recover the full amount of such judgment and all costs of suit thereon, and, in addition thereto, interest on the amount of the claim at the rate of six percent per annum from the date of presentation thereof, and, if he, she, or it has an attorney employed in the case, an amount for attorney's fees as provided in this section. If the cause is taken to

an appellate court and plaintiff shall recover judgment thereon, the appellate court shall tax as costs in the action, to be paid to the plaintiff, an additional amount for attorney's fees in such appellate court as provided in this section, except that if the party in interest fails to recover a judgment in excess of the amount that may have been tendered by any person, partnership, limited liability company, association, or corporation liable under this section, then such party in interest shall not recover the attorney's fees provided by this section. Attorney's fees shall be assessed by the court in a reasonable amount but shall in no event be less than ten dollars when the judgment is fifty dollars or less and when the judgment is over fifty dollars up to four thousand dollars the attorney's fee shall be ten dollars plus ten percent of the judgment in excess of fifty dollars.

Source: Laws 1919, c. 191, § 1, p. 865; C.S.1922, § 9126; C.S.1929, § 20-1801; R.S.1943, § 25-1801; Laws 1951, c. 70, § 1, p. 225; Laws 1955, c. 92, § 1, p. 269; Laws 1967, c. 150, § 1, p. 446; Laws 1993, LB 121, § 171; Laws 2009, LB35, § 13.

Cross References

For interest on unsettled accounts, see section 45-104.

ARTICLE 21

ACTIONS AND PROCEEDINGS IN PARTICULAR CASES

(e) FORECLOSURE OF MORTGAGES

Section
25-2144. Sale of premises; by whom made; liability and compensation of sheriff; postponement of sale; notice.

(y) MOTOR VEHICLE GUEST STATUTE

25-21,237. Repealed. Laws 2010, LB 216, § 1.
25-21,238. Repealed. Laws 2010, LB 216, § 1.

(hh) CHANGE OF NAME

25-21,271. Change of name; persons; procedure; clerk of the district court; duty.

(oo) SUCCESSOR ASBESTOS-RELATED LIABILITY ACT

25-21,283. Act, how cited.
25-21,284. Terms, defined.
25-21,285. Cumulative successor asbestos-related liabilities of successor corporation; limitations; applicability.
25-21,286. Successor corporation; liability; limitation.
25-21,287. Successor corporation; limitations; fair market value of total gross assets.
25-21,288. Fair market value of total gross assets; adjustment.
25-21,289. Act, how construed; applicability of act.

(pp) EXPLOITED CHILDREN'S CIVIL REMEDY ACT

25-21,290. Act, how cited.
25-21,291. Terms, defined.
25-21,292. Civil action authorized; recovery; attorney's fees and costs; injunctive relief.
25-21,293. Time for bringing action; limitation.
25-21,294. Use of pseudonym.
25-21,295. Defendant; defenses not available.
25-21,296. Attorney General; powers.

(e) FORECLOSURE OF MORTGAGES

25-2144 Sale of premises; by whom made; liability and compensation of sheriff; postponement of sale; notice.

(1) All sales of mortgaged premises under a decree shall be made by a sheriff or some other person authorized by the court in the county where the premises or some part of them are situated. In all cases where the sheriff makes such sale, he or she shall act in his or her official capacity, shall be liable on his or her official bond for all his or her acts therein, and shall receive the same compensation as is provided by law for like services upon sales under execution.

(2) The sheriff or other person conducting the sale may, for any cause he or she deems expedient, postpone the sale of all or any portion of the real property from time to time until it is completed, and in every such case, notice of postponement shall be given by public declaration thereof by the sheriff or such other person at the time and place last appointed for the sale. The public declaration of the notice of postponement shall include the new date, time, and place of sale. No other notice of the postponed sale need be given unless the sale is postponed for longer than forty-five days beyond the day designated in the notice of sale, in which event notice thereof shall be given in the same manner as the original notice of sale is required to be given.

Source: R.S.1867, Code § 852, p. 543; Laws 1875, § 1, p. 42; Laws 1899, c. 90, § 1, p. 345; R.S.1913, § 8261; C.S.1922, § 9214; C.S.1929, § 20-2146; R.S.1943, § 25-2144; Laws 2010, LB732, § 3.
Effective date July 15, 2010.

(y) MOTOR VEHICLE GUEST STATUTE

25-21,237 Repealed. Laws 2010, LB 216, § 1.

25-21,238 Repealed. Laws 2010, LB 216, § 1.

(hh) CHANGE OF NAME

25-21,271 Change of name; persons; procedure; clerk of the district court; duty.

(1) Any person desiring to change his or her name shall file a petition in the district court of the county in which such person may be a resident, setting forth (a) that the petitioner has been a bona fide citizen of such county for at least one year prior to the filing of the petition, (b) the address of the petitioner, (c) the date of birth of the petitioner, (d) the cause for which the change of petitioner's name is sought, and (e) the name asked for.

(2) Notice of the filing of the petition shall be published in a newspaper in the county, and if no newspaper is printed in the county, then in a newspaper of general circulation therein. The notice shall be published (a) once a week for four consecutive weeks if the petitioner is nineteen years of age or older at the time the action is filed and (b) once a week for two consecutive weeks if the petitioner is under nineteen years of age at the time the action is filed. In an action involving a petitioner under nineteen years of age who has a noncustodial parent, notice of the filing of the petition shall be sent by certified mail within five days after publication to the noncustodial parent at the address provided to the clerk of the district court pursuant to subsection (1) of section 42-364.13 for the noncustodial parent if he or she has provided an address. The clerk of the district court shall provide the petitioner with the address upon request.

(3) It shall be the duty of the district court, upon being duly satisfied by proof in open court of the truth of the allegations set forth in the petition, that there exists proper and reasonable cause for changing the name of the petitioner, and that notice of the filing of the petition has been given as required by this section, to order and direct a change of name of such petitioner and that an order for the purpose be made in the journals of the court.

(4) The clerk of the district court shall deliver a copy by hard copy or electronic means of any name-change order issued by the court pursuant to this section to the Department of Health and Human Services for use pursuant to sections 28-376 and 28-718 and to the sex offender registration and community notification division of the Nebraska State Patrol for use pursuant to section 29-4004.

Source: Laws 1871, p. 62; R.S.1913, § 5316; C.S.1922, § 4609; C.S.1929, § 61-102; R.S.1943, § 61-102; Laws 1963, c. 367, § 1, p. 1184; Laws 1994, LB 892, § 1; Laws 1995, LB 161, § 1; R.S.1943, (1996), § 61-102; Laws 2010, LB147, § 1.
Operative date January 1, 2012.

(oo) SUCCESSOR ASBESTOS-RELATED LIABILITY ACT

25-21,283 Act, how cited.

Sections 25-21,283 to 25-21,289 shall be known and may be cited as the Successor Asbestos-Related Liability Act.

Source: Laws 2010, LB763, § 1.
Effective date July 15, 2010.

25-21,284 Terms, defined.

For purposes of the Successor Asbestos-Related Liability Act:

(1) Asbestos claim means any claim, wherever or whenever made, for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos, including:

(a) Any claim involving the health effects of exposure to asbestos, including a claim for personal injury or death, mental or emotional injury, risk of disease or other injury, or the costs of medical monitoring or surveillance;

(b) Any claim made by or on behalf of any person exposed to asbestos, or a representative, spouse, parent, child, or other relative of the person; and

(c) Any claim for damage or loss caused by the installation, presence, or removal of asbestos;

(2) Corporation means a corporation for profit, including a domestic corporation organized under the laws of this state or a foreign corporation organized under laws other than the laws of this state;

(3) Successor asbestos-related liabilities means liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, that are related to asbestos claims and were assumed or incurred by a corporation as a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation with or into another corporation, or that are related in any way to asbestos claims based on the exercise of control or the ownership of stock of the corporation before the

merger or consolidation. Successor asbestos-related liabilities includes liabilities that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined under section 25-21,287, were or are paid or otherwise discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation, or by a successor corporation, or by or on behalf of a transferor, in connection with settlements, judgments, or other discharges in this state or another jurisdiction;

(4) Successor corporation means a corporation that assumes or incurs or has assumed or incurred successor asbestos-related liabilities that is a successor and became a successor before January 1, 1972, or is any of that successor corporation's successors; and

(5) Transferor means a corporation from which successor asbestos-related liabilities are or were assumed or incurred.

Source: Laws 2010, LB763, § 2.
Effective date July 15, 2010.

25-21,285 Cumulative successor asbestos-related liabilities of successor corporation; limitations; applicability.

(1) The limitations in section 25-21,286 shall apply to any successor corporation.

(2) The limitations in section 25-21,286 shall not apply to:

(a) Workers' compensation benefits paid by or on behalf of an employer to an employee under the Nebraska Workers' Compensation Act or a comparable workers' compensation law of another jurisdiction;

(b) Any claim against a successor corporation that does not constitute a successor asbestos-related liability;

(c) Any obligation under the National Labor Relations Act, 29 U.S.C. 151, et seq., as amended, or under any collective-bargaining agreement; or

(d) A successor corporation that, after a merger or consolidation, continued in the business of mining asbestos or in the business of selling or distributing asbestos fibers or in the business of manufacturing, distributing, removing, or installing asbestos-containing products which were the same or substantially the same as those products previously manufactured, distributed, removed, or installed by the transferor.

Source: Laws 2010, LB763, § 3.
Effective date July 15, 2010.

Cross References

Nebraska Workers' Compensation Act, see section 48-1,110.

25-21,286 Successor corporation; liability; limitation.

(1) Except as further limited in subsection (2) of this section, the cumulative successor asbestos-related liabilities of a successor corporation are limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation. The successor corporation does not have responsibility for successor asbestos-related liabilities in excess of this limitation.

(2) If the transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior merger or consolidation with a prior

transferor, then the fair market value of the total gross assets of the prior transferor determined as of the time of the earlier merger or consolidation shall be substituted for the limitation in subsection (1) of this section for purposes of determining the limitation of liability of a successor corporation.

Source: Laws 2010, LB763, § 4.
Effective date July 15, 2010.

25-21,287 Successor corporation; limitations; fair market value of total gross assets.

(1) A successor corporation may establish the fair market value of total gross assets for the purpose of the limitations under section 25-21,286 through any method reasonable under the circumstances, including:

(a) By reference to the going concern value of the assets or to the purchase price attributable to or paid for the assets in an arms-length transaction; or

(b) In the absence of other readily available information from which the fair market value can be determined, by reference to the value of the assets recorded on a balance sheet.

(2) Total gross assets include intangible assets.

(3) To the extent total gross assets include any liability insurance that was issued to the transferor whose assets are being valued for purposes of this section, the applicability, terms, conditions, and limits of such insurance shall not be affected by this section, nor shall this section otherwise affect the rights and obligations of an insurer, transferor, or successor corporation under any insurance contract or any related agreements, including, without limitation, preenactment settlements resolving coverage-related disputes and the rights of an insurer to seek payment for applicable deductibles, retrospective premiums, or self-insured retentions or to seek contribution from a successor corporation for uninsured or self-insured periods or periods when insurance is uncollectible or otherwise unavailable. Without limiting the foregoing, to the extent total gross assets include such liability insurance, a settlement of a dispute concerning any such liability insurance coverage entered into by a transferor or successor corporation with the insurers of the transferor before July 15, 2010, shall be determinative of the total coverage of such liability insurance to be included in the calculation of the transferor's total gross assets.

Source: Laws 2010, LB763, § 5.
Effective date July 15, 2010.

25-21,288 Fair market value of total gross assets; adjustment.

(1) Except as provided in subsections (2) through (4) of this section, the fair market value of total gross assets at the time of the merger or consolidation shall increase annually at a rate equal to the sum of:

(a) The prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since the merger or consolidation, unless the prime rate is not published in that edition of the Wall Street Journal, in which case any reasonable determination of the prime rate on the first day of the year may be used; and

(b) One percent.

(2) The rate found in subsection (1) of this section shall not be compounded.

(3) The adjustment of the fair market value of total gross assets shall continue as provided in subsection (1) of this section until the date the adjusted value is first exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the successor corporation or a predecessor or by or on behalf of a transferor after the time of the merger or consolidation for which the fair market value of total gross assets is being determined.

(4) No adjustment of the fair market value of total gross assets shall be applied to any liability insurance that is included in total gross assets under subsection (3) of section 25-21,287.

Source: Laws 2010, LB763, § 6.
Effective date July 15, 2010.

25-21,289 Act, how construed; applicability of act.

(1) The courts of this state shall construe the provisions of the Successor Asbestos-Related Liability Act liberally with regard to successor corporations.

(2) The act shall apply to all asbestos claims filed against a successor corporation on or after July 15, 2010. The act also shall apply to any pending asbestos claims against a successor corporation in which trial has not commenced as of July 15, 2010, except that any provisions of the act which would be unconstitutional if applied retroactively shall be applied prospectively only.

Source: Laws 2010, LB763, § 7.
Effective date July 15, 2010.

(pp) EXPLOITED CHILDREN'S CIVIL REMEDY ACT

25-21,290 Act, how cited.

Sections 25-21,290 to 25-21,296 shall be known and may be cited as the Exploited Children's Civil Remedy Act.

Source: Laws 2010, LB728, § 1.
Effective date July 15, 2010.

25-21,291 Terms, defined.

For purposes of the Exploited Children's Civil Remedy Act:

(1) Access software provider means a provider of software, including client or server software, or enabling tools that do any one or more of the following: (a) Filter, screen, allow, or disallow content; (b) pick, choose, analyze, or digest content; or (c) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content;

(2) Aid or assist another with the creation, distribution, or active acquisition of child pornography means help a principal in some appreciable manner with the creation, distribution, or active acquisition of a visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers. The term also includes knowingly employing, forcing, authorizing, inducing, or otherwise causing a child to engage in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers. No parent, stepparent, legal guardian, or person with custody and control of a child, knowing the content thereof, may consent to

such child engaging in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers;

(3) Cable operator means any person or group of persons (a) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system or (b) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system;

(4) Child has the same meaning as in section 28-1463.02;

(5) Create means to knowingly create, make, manufacture, direct, publish, finance, or in any manner generate;

(6) Distribute means the actual, constructive, or attempted transfer from one person, source, or location to another person, source, or location. The term includes, but is not limited to, renting, selling, delivering, displaying, advertising, trading, mailing, procuring, circulating, lending, exhibiting, transmitting, transmuting, transferring, disseminating, presenting, or providing any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers;

(7) Interactive computer service means any information service system or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions;

(8) Participant means a child who appears in any visual depiction of sexually explicit conduct and is portrayed or actively engaged in acts of sexually explicit conduct appearing therein;

(9) Portrayed observer means a child who appears in any visual depiction where sexually explicit conduct is likewise portrayed or occurring within the child's presence or in the child's proximity;

(10) Sexually explicit conduct has the same meaning as in section 28-1463.02;

(11) Telecommunications service means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used; and

(12) Visual depiction has the same meaning as in section 28-1463.02.

Source: Laws 2010, LB728, § 2.
Effective date July 15, 2010.

25-21,292 Civil action authorized; recovery; attorney's fees and costs; injunctive relief.

(1) Any participant or portrayed observer in a visual depiction of sexually explicit conduct or his or her parent or legal guardian who suffered or continues to suffer personal or psychological injury as a result of such participation or portrayed observation may bring a civil action against any person who knowingly and willfully (a) created, distributed, or actively acquired such visual depiction while in this state or (b) aided or assisted with the creation, distribution, or active acquisition of such visual depiction while such person or the person aided or assisted was in this state.

(2) A plaintiff who prevails in a civil action brought pursuant to the Exploited Children's Civil Remedy Act may recover his or her actual damages, which are deemed to be a minimum of one hundred fifty thousand dollars, plus any and all attorney's fees and costs reasonably associated with the civil action. In addition to all other remedies available under the act, the court may also award temporary, preliminary, and permanent injunctive relief as the court deems necessary and appropriate.

(3) This section does not create a cause of action if the participant was sixteen years of age or older at the time the visual depiction was created and the participant willfully and voluntarily participated in the creation of the visual depiction.

(4) No law enforcement officer engaged in his or her law enforcement duties, governmental entity, provider of interactive computer service, provider of telecommunications service, or cable operator is subject to a civil action under the Exploited Children's Civil Remedy Act.

Source: Laws 2010, LB728, § 3.
Effective date July 15, 2010.

25-21,293 Time for bringing action; limitation.

Notwithstanding any other provisions of law, any action to recover damages under the Exploited Children's Civil Remedy Act shall be filed within three years after the later of:

(1) The conclusion of any related criminal prosecution against the person or persons from whom recovery is sought;

(2) The receipt of actual or constructive notice sent or given to the participant or portrayed observer or his or her parent or legal guardian by a member of a law enforcement entity informing the participant or portrayed observer or his or her parent or legal guardian that the entity has identified the person:

(a) Who created, distributed, or actively acquired the visual depiction of sexually explicit conduct containing the participant or portrayed observer; or

(b) Who aided or assisted another person with the creation, distribution, or active acquisition of the visual depiction of sexually explicit conduct containing the participant or portrayed observer; or

(3) The participant or portrayed observer reaching the age of eighteen years.

Source: Laws 2010, LB728, § 4.
Effective date July 15, 2010.

25-21,294 Use of pseudonym.

In any action brought pursuant to the Exploited Children's Civil Remedy Act, a plaintiff may request to use a pseudonym instead of his or her legal name in all court proceedings and records. Upon finding that the use of a pseudonym is proper, the court shall ensure that the pseudonym is used in all court proceedings and records.

Source: Laws 2010, LB728, § 5.
Effective date July 15, 2010.

25-21,295 Defendant; defenses not available.

It is not a defense to a cause of action brought pursuant to the Exploited Children's Civil Remedy Act that the defendant:

(1) Did not know the participant or portrayed observer appearing in the visual depiction of sexually explicit conduct;

(2) Did not appear in the visual depiction of sexually explicit conduct containing the participant or portrayed observer; or

(3) Did not commit, assist with the commission of, or personally observe the commission of acts of sexually explicit conduct portrayed in the visual depiction containing the participant or portrayed observer.

Source: Laws 2010, LB728, § 6.
Effective date July 15, 2010.

25-21,296 Attorney General; powers.

To prevent ongoing and further exploitation of any person who was a participant or portrayed observer or his or her parent or legal guardian, the Attorney General, upon request, may pursue cases on behalf of any participant or portrayed observer or his or her parent or legal guardian who has a bona fide cause of action under the Exploited Children's Civil Remedy Act. All damages obtained shall go to the plaintiff or plaintiffs. For his or her role in pursuing a civil action under the act, the Attorney General may seek all of his or her reasonable attorney's fees and costs associated with the civil action.

Source: Laws 2010, LB728, § 7.
Effective date July 15, 2010.

ARTICLE 22

GENERAL PROVISIONS

(f) SETTLEMENTS

Section
25-2240. Civil action; settlement; payment of costs.

(f) SETTLEMENTS

25-2240 Civil action; settlement; payment of costs.

The parties to a civil action may, as part of a settlement of the action, agree to the payment of costs of the action.

Source: Laws 2009, LB35, § 12.

ARTICLE 24

INTERPRETERS

Section
25-2405. Interpreters; oath.

25-2405 Interpreters; oath.

Every interpreter, except those certified under the rules of the Supreme Court and who have taken the prescribed oath of office, appointed pursuant to sections 25-2401 to 25-2407, before entering upon his or her duties as such, shall take an oath that he or she will, to the best of his or her skill and judgment, make a true interpretation to such person unable to communicate

the English language of all the proceedings in a language which such person understands and that he or she will, in the English language, repeat the statements of such person to the court, jury, or officials before whom such proceeding takes place.

Source: Laws 1973, LB 116, § 5; Laws 1987, LB 376, § 15; Laws 2002, LB 22, § 11; Laws 2009, LB35, § 14.

ARTICLE 26

ARBITRATION

Section
25-2602.01. Validity of arbitration agreement.

25-2602.01 Validity of arbitration agreement.

(a) A written agreement to submit any existing controversy to arbitration is valid, enforceable, and irrevocable except upon such grounds as exist at law or in equity for the revocation of any contract.

(b) A provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable, and irrevocable, except upon such grounds as exist at law or in equity for the revocation of any contract, if the provision is entered into voluntarily and willingly.

(c) The Uniform Arbitration Act applies to arbitration agreements between employers and employees or between their respective representatives.

(d) Contract provisions agreed to by the parties to a contract control over contrary provisions of the act other than subsections (e) and (f) of this section.

(e) Subsections (a) and (b) of this section do not apply to a claim for workers' compensation.

(f) Subsection (b) of this section does not apply to:

(1) A claim arising out of personal injury based on tort;

(2) A claim under the Nebraska Fair Employment Practice Act;

(3) Any agreement between parties covered by the Motor Vehicle Industry Regulation Act; and

(4) Except as provided in section 44-811, any agreement concerning or relating to an insurance policy other than a contract between insurance companies including a reinsurance contract.

(g) When a conflict exists, the Uniform Arbitration Act shall not apply to the Uniform Act on Interstate Arbitration and Compromise of Death Taxes and sections 44-811, 44-4824, 54-404 to 54-406, 60-2701 to 60-2709, and 70-1301 to 70-1329.

Source: Laws 1997, LB 151, § 2; Laws 2002, LB 1105, § 426; Laws 2005, LB 645, § 8; Laws 2010, LB816, § 1.
Effective date March 4, 2010.

Cross References

Motor Vehicle Industry Regulation Act, see section 60-1401.
Nebraska Fair Employment Practice Act, see section 48-1125.
Uniform Act on Interstate Arbitration and Compromise of Death Taxes, see section 77-3315.

ARTICLE 27
PROVISIONS APPLICABLE TO COUNTY COURTS

(a) MISCELLANEOUS PROCEDURAL PROVISIONS

Section
25-2701. Rules of procedure; county court power to seal records.

(d) JUDGMENTS

25-2720.01. Power to set aside, vacate, or modify judgments or orders.
25-2721. Judgment; execution; lien on real estate; conditions.

(f) APPEALS

25-2728. Appeals; parties; applicability of sections.

(a) MISCELLANEOUS PROCEDURAL PROVISIONS

25-2701 Rules of procedure; county court power to seal records.

(1) All provisions in the codes of criminal and civil procedure governing actions and proceedings in the district court not in conflict with statutes specifically governing procedure in county courts and related to matters for which no specific provisions have been made for county courts shall govern and apply to all actions and proceedings in the county court.

(2) County courts may seal records of a person as provided under sections 43-2,108.01 to 43-2,108.05.

Source: Laws 1972, LB 1032, § 28; R.S.1943, (1985), § 24-528; Laws 2010, LB800, § 2.
Effective date July 15, 2010.

(d) JUDGMENTS

25-2720.01 Power to set aside, vacate, or modify judgments or orders.

The county court, including the Small Claims Court and the county court when sitting as a juvenile court, shall have the power to set aside default judgments and to vacate or modify its own judgments or orders during or after the term at which such judgments or orders were made in the same manner as provided for actions filed in the district court.

Source: Laws 1998, LB 234, § 10; Laws 2006, LB 1115, § 18; Laws 2010, LB712, § 4.
Operative date July 15, 2010.

25-2721 Judgment; execution; lien on real estate; conditions.

(1) Any person having a judgment rendered by a county court may request the clerk of such court to issue execution on the judgment in the same manner as execution is issued upon other judgments rendered in the county court and direct the execution on the judgment to any county in the state. Such person may request that garnishment, attachment, or any other aid to execution be directed to any county without the necessity of filing a transcript of the judgment in the receiving county, and any hearing or proceeding with regard to such execution or aid in execution shall be heard in the court in which the judgment was originally rendered.

(2) Any person having a judgment rendered by a county court may cause a transcript thereof to be filed in the office of the clerk of the district court in any

county of this state. When the transcript is so filed and entered upon the judgment record, such judgment shall be a lien on real estate in the county where the transcript is filed, and when the transcript is so filed and entered upon such judgment record, the clerk of such court may issue execution thereupon in like manner as execution is issued upon judgments rendered in the district court.

Source: G.S.1873, c. 14, § 18, p. 267; R.S.1913, § 1221; C.S.1922, § 1144; C.S.1929, § 27-532; R.S.1943, § 24-532; Laws 1972, LB 1032, § 39; R.S.1943, (1985), § 24-539; Laws 1991, LB 422, § 3; Laws 2009, LB35, § 15.

(f) APPEALS

25-2728 Appeals; parties; applicability of sections.

(1) Any party in a civil case and any defendant in a criminal case may appeal from the final judgment or final order of the county court to the district court of the county where the county court is located. In a criminal case, a prosecuting attorney may obtain review by exception proceedings pursuant to sections 29-2317 to 29-2319.

(2) Sections 25-2728 to 25-2738 shall not apply to:

(a) Appeals in eminent domain proceedings as provided in sections 76-715 to 76-723;

(b) Appeals in proceedings in the county court sitting as a juvenile court as provided in sections 43-2,106 and 43-2,106.01;

(c) Appeals in matters arising under the Nebraska Probate Code as provided in section 30-1601;

(d) Appeals in matters arising under the Nebraska Uniform Trust Code;

(e) Appeals in adoption proceedings as provided in section 43-112;

(f) Appeals in inheritance tax proceedings as provided in section 77-2023; and

(g) Appeals in domestic relations matters as provided in section 25-2739.

Source: Laws 1981, LB 42, § 1; Laws 1984, LB 13, § 19; Laws 1986, LB 529, § 11; Laws 1989, LB 182, § 8; R.S.Supp.,1989, § 24-541.01; Laws 1991, LB 732, § 69; Laws 1994, LB 1106, § 2; Laws 1995, LB 538, § 2; Laws 2000, LB 921, § 25; Laws 2003, LB 130, § 118; Laws 2010, LB800, § 3.
Effective date July 15, 2010.

Cross References

Nebraska Probate Code, see section 30-2201.
Nebraska Uniform Trust Code, see section 30-3801.

ARTICLE 28
SMALL CLAIMS COURT

Section
25-2802. Jurisdiction.
25-2803. Parties; representation.
25-2804. Actions; how commenced; fee; hearing; notice; setoff or counterclaim; limitations; default judgment; actions authorized.

25-2802 Jurisdiction.

(1) The Small Claims Court shall have subject matter jurisdiction in all civil actions of any type when the amount of money or damages or the value of the personal property claimed does not exceed the jurisdictional amount specified in subsection (4) of this section, exclusive of interest and costs.

(2) The Small Claims Court shall have subject matter jurisdiction in civil matters when the plaintiff seeks to disaffirm, avoid, or rescind a contract or agreement for the purchase of goods or services not in excess of the jurisdictional amount specified in subsection (4) of this section, exclusive of interest and costs.

(3) The Small Claims Court shall have jurisdiction when the party defendant or his or her agent resides or is doing business within the county or when the cause of action arose within the county.

(4) The jurisdictional amount is three thousand five hundred dollars from July 1, 2010, through June 30, 2015.

The Supreme Court shall continue to adjust the jurisdictional limit for the Small Claims Court every fifth year commencing July 1, 2015. The adjusted jurisdictional amount shall be equal to the then current jurisdictional amount adjusted by the average percentage change in the unadjusted 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 jurisdictional amount shall be rounded to the nearest one-hundred-dollar amount.

Source: Laws 1972, LB 1032, § 22; Laws 1976, LB 629, § 1; Laws 1979, LB 117, § 1; Laws 1985, LB 373, § 2; R.S.1943, (1985), § 24-522; Laws 1997, LB 3, § 1; Laws 2001, LB 9, § 1; Laws 2010, LB695, § 1.
Operative date July 1, 2010.

25-2803 Parties; representation.

(1) Parties in the Small Claims Court may be individuals, partnerships, limited liability companies, corporations, unions, associations, or any other kind of organization or entity.

(2) No party shall be represented by an attorney in the Small Claims Court except as provided in sections 25-2804 and 25-2805.

(3) An individual shall represent himself or herself in the Small Claims Court. A partnership shall be represented by a partner or one of its employees. A limited liability company shall be represented by a member, a manager, or one of its employees. A union shall be represented by a union member or union employee. A corporation shall be represented by one of its employees. An association shall be represented by one of its members or by an employee of the association. Any other kind of organization or entity shall be represented by one of its members or employees.

(4) Only a party, natural or otherwise, who has been a party to the transaction with the defendant for which the claim is brought may file and prosecute a claim in the Small Claims Court.

(5) No party may file an assigned claim in the Small Claims Court.

(6) No party shall file more than two claims within any calendar week nor more than ten claims in any calendar year in the Small Claims Court. This subsection shall not apply to actions brought pursuant to section 25-21,194.

(7) Notwithstanding any other provision of this section, a personal representative of a decedent's estate, a guardian, or a conservator may be a party in the Small Claims Court.

Source: Laws 1972, LB 1032, § 23; Laws 1987, LB 77, § 1; Laws 1987, LB 536, § 2; R.S.Supp.,1988, § 24-523; Laws 1993, LB 121, § 174; Laws 2010, LB712, § 5.
Operative date July 15, 2010.

25-2804 Actions; how commenced; fee; hearing; notice; setoff or counterclaim; limitations; default judgment; actions authorized.

(1) Actions in the Small Claims Court shall be commenced by the filing of a claim, personally or by mail, by the plaintiff on a form provided by the clerk of a county court. The claim form shall be executed by the plaintiff in the presence of a judge, a clerk or deputy or assistant clerk of a county court, or a notary public or other person authorized by law to take acknowledgments. If not filed in person, the claim form and appropriate fees shall be mailed by the plaintiff to the court of proper jurisdiction.

(2) At the time of the filing of the claim, the plaintiff shall pay a fee of six dollars and twenty-five cents to the clerk. One dollar and twenty-five cents of such fee shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges.

(3) Upon filing of a claim in the Small Claims Court, the court shall set a time for hearing and shall cause notice to be served upon the defendant. Notice shall be served not less than five days before the time set for hearing. Notice shall consist of a copy of the complaint and a summons directing the defendant to appear at the time set for hearing and informing the defendant that if he or she fails to appear, judgment will be entered against him or her. Notice shall be served in the manner provided for service of a summons in a civil action. If the notice is to be served by certified mail, the clerk shall provide the plaintiff with written instructions, prepared and provided by the State Court Administrator, regarding the proper procedure for service by certified mail. The cost of service shall be paid by the plaintiff, but such cost and filing fee shall be added to any judgment given the plaintiff.

(4) The defendant may file a setoff or counterclaim. Any setoff or counterclaim shall be filed and a copy delivered to the plaintiff at least two days prior to the time of trial. If the setoff or counterclaim exceeds the jurisdictional limits of the Small Claims Court as established pursuant to section 25-2802, the court shall cause the entire matter to be transferred to the regular county court docket and set for trial.

(5) No prejudgment actions for attachment, garnishment, replevin, or other provisional remedy may be filed in the Small Claims Court.

(6) All forms required by this section shall be prescribed by the Supreme Court. The claim form shall provide for the names and addresses of the plaintiff and defendant, a concise statement of the nature, amount, and time and place of accruing of the claim, and an acknowledgment for use by the person in whose presence the claim form is executed and shall also contain a brief

explanation of the Small Claims Court procedure and methods of appeal therefrom.

(7) For a default judgment rendered by a Small Claims Court (a) the default judgment may be appealed as provided in section 25-2807, (b) if a motion for a new trial, by the procedure provided in sections 25-1142, 25-1144, and 25-1144.01, is filed ten days or less after entry of the default judgment, the court may act upon the motion without a hearing, or (c) if more than ten days have passed since the entry of the default judgment, the court may set aside, vacate, or modify the default judgment as provided in section 25-2720.01. Parties may be represented by attorneys for the purpose of filing a motion for a new trial or to set aside, vacate, or modify a default judgment.

Source: Laws 1972, LB 1032, § 24; Laws 1973, LB 226, § 7; Laws 1975, LB 283, § 1; Laws 1979, LB 117, § 2; Laws 1980, LB 892, § 1; Laws 1982, LB 928, § 17; Laws 1983, LB 447, § 14; Laws 1984, LB 13, § 14; Laws 1985, LB 373, § 3; Laws 1986, LB 125, § 1; Laws 1987, LB 77, § 2; R.S.Supp.,1988, § 24-524; Laws 2000, LB 921, § 28; Laws 2005, LB 348, § 4; Laws 2010, LB712, § 6. Operative date July 15, 2010.

ARTICLE 29

DISPUTE RESOLUTION

(a) DISPUTE RESOLUTION ACT

Section
25-2921. Dispute Resolution Cash Fund; created; use; investment.

(b) SETTLEMENT ESCROW

25-2922. Repealed. Laws 2009, LB 1, § 1.
25-2923. Repealed. Laws 2009, LB 1, § 1.
25-2924. Repealed. Laws 2009, LB 1, § 1.
25-2925. Repealed. Laws 2009, LB 1, § 1.
25-2926. Repealed. Laws 2009, LB 1, § 1.
25-2927. Repealed. Laws 2009, LB 1, § 1.
25-2928. Repealed. Laws 2009, LB 1, § 1.
25-2929. Repealed. Laws 2009, LB 1, § 1.

(a) DISPUTE RESOLUTION ACT

25-2921 Dispute Resolution Cash Fund; created; use; investment.

The Dispute Resolution Cash Fund is created. The State Court Administrator shall administer the fund. The fund shall consist of proceeds received pursuant to subdivision (10) of section 25-2908 and section 33-155. Except as otherwise directed by the Supreme Court during the period from November 21, 2009, until June 30, 2011, the fund shall be used to supplement the administration of the office and the support of the approved centers. It is the intent of the Legislature that any General Fund money supplanted by the Dispute Resolution Cash Fund may be used for the support and maintenance of the State Library. 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 1996, LB 922, § 2; Laws 2003, LB 760, § 8; Laws 2009, First Spec. Sess., LB3, § 12.
Effective date November 21, 2009.

Cross References

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

(b) SETTLEMENT ESCROW

25-2922 Repealed. Laws 2009, LB 1, § 1.

25-2923 Repealed. Laws 2009, LB 1, § 1.

25-2924 Repealed. Laws 2009, LB 1, § 1.

25-2925 Repealed. Laws 2009, LB 1, § 1.

25-2926 Repealed. Laws 2009, LB 1, § 1.

25-2927 Repealed. Laws 2009, LB 1, § 1.

25-2928 Repealed. Laws 2009, LB 1, § 1.

25-2929 Repealed. Laws 2009, LB 1, § 1.

ARTICLE 30

CIVIL LEGAL SERVICES FOR LOW-INCOME PERSONS

(b) CIVIL LEGAL SERVICES PROGRAM

Section
25-3007. Civil Legal Services Program; created; use of appropriations; Commission on Public Advocacy; duties.
25-3008. Grant recipients; requirements; application; audit.

(b) CIVIL LEGAL SERVICES PROGRAM

25-3007 Civil Legal Services Program; created; use of appropriations; Commission on Public Advocacy; duties.

The Civil Legal Services Program is created. Appropriations to the program and money in the Civil Legal Services Fund shall be used to provide grants for civil legal services to eligible low-income persons. The Commission on Public Advocacy shall distribute grants pursuant to section 25-3008.

Source: Laws 2006, LB 746, § 3; Laws 2009, LB35, § 16.

25-3008 Grant recipients; requirements; application; audit.

(1) The Commission on Public Advocacy shall establish guidelines for submission of applications for grants to provide civil legal services to eligible low-income persons. To be eligible for a grant under this section, a civil legal services provider shall:

(a) Be a nonprofit organization chartered in Nebraska;

(b) Employ or contract with attorneys admitted to practice before the Nebraska Supreme Court and the United States District Courts;

(c) Have offices located throughout the state;

(d) Have as its principal purpose and mission the delivery of civil legal services to eligible low-income persons who are residents of Nebraska;

(e) Distribute its resources equitably throughout the state;

(f) Be a recipient of financial assistance for the delivery of civil legal services from the Legal Services Corporation established by the federal Legal Services Corporation Act, 42 U.S.C. 2996 et seq.; and

(g) Certify that any grant funds received pursuant to this section will be used to supplement any existing funds used by the applicant and that such funds will not replace other funds appropriated or awarded by a state agency to provide civil legal services to any eligible low-income person.

(2) A civil legal services provider seeking a grant under this section shall file an application with the commission on forms provided by the commission. The application shall include a place for the provider to certify to the commission that it will provide free civil legal services to eligible low-income persons upon receipt of a grant under this section.

(3) The commission shall review the applications and determine which civil legal services providers shall receive grants under this section and the amount of the grants. Grant recipients shall use the grant funds to provide free civil legal services to eligible low-income persons.

(4) An independent certified public accountant shall annually audit the books and accounts of each grant recipient. The grant recipients shall provide the results of such audit to the commission.

Source: Laws 2006, LB 746, § 4; Laws 2009, LB35, § 17.

ARTICLE 33

NONRECOURSE CIVIL LITIGATION ACT

Section
25-3301. Act, how cited.
25-3302. Terms, defined.
25-3303. Contracts for nonrecourse civil litigation funding; right to cancel; notice; statements required.
25-3304. Civil litigation funding company; prohibited acts.
25-3305. Assessment of fees; restrictions; calculations.
25-3306. Effect of communication on privileges.
25-3307. Civil litigation funding company; registration required; application; form; renewal.
25-3308. Registration fee; renewal fee.
25-3309. Secretary of State; issue certificate of registration or renewal of registration; refusal to issue; grounds; suspend, revoke, or refuse renewal; temporary certificate; submission of data; contents; report.

25-3301 Act, how cited.

Sections 25-3301 to 25-3309 shall be known and may be cited as the Nonrecourse Civil Litigation Act.

Source: Laws 2010, LB1094, § 1.
Effective date July 15, 2010.

25-3302 Terms, defined.

For purposes of the Nonrecourse Civil Litigation Act:

(1) Civil litigation funding company means a person or entity that enters into a nonrecourse civil litigation funding transaction with a consumer;

(2) Consumer means a person residing or domiciled in Nebraska or who elects to enter into a transaction under the act, whether it be in person, over the Internet, by facsimile, or by any other electronic means, and who has a pending

legal claim and is represented by an attorney at the time he or she receives the nonrecourse civil litigation funding;

(3) Legal claim means a civil claim or action; and

(4) Nonrecourse civil litigation funding means a transaction in which a civil litigation funding company purchases and a consumer assigns the contingent right to receive an amount of the potential proceeds of the consumer's legal claim to the civil litigation funding company out of the proceeds of any realized settlement, judgment, award, or verdict the consumer may receive in the legal claim.

Source: Laws 2010, LB1094, § 2.
Effective date July 15, 2010.

25-3303 Contracts for nonrecourse civil litigation funding; right to cancel; notice; statements required.

(1) All contracts for nonrecourse civil litigation funding shall comply with the following requirements:

(a) The contract shall be completely filled in and contain on the front page, appropriately headed and in at least twelve-point bold type, the following disclosures:

(i) The total dollar amount to be funded to the consumer;

(ii) An itemization of one-time fees;

(iii) The total dollar amount to be repaid by the consumer, in six-month intervals for thirty-six months, and including all fees;

(iv) The total dollar amount in broker fees that are involved in the transaction; and

(v) The annual percentage rate of return, calculated as of the last day of each six-month interval, including frequency of compounding;

(b) The contract shall provide that the consumer may cancel the contract within five business days following the consumer's receipt of funds without penalty or further obligation. The contract shall contain the following notice written in a clear and conspicuous manner: ''CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS CONTRACT WITHOUT PENALTY OR FURTHER OBLIGATION WITHIN FIVE BUSINESS DAYS FROM THE DATE YOU RECEIVE FUNDING FROM (insert name of civil litigation funding company).'' The contract also shall specify that in order for the cancellation to be effective, the consumer shall either return the full amount of disbursed funds to the civil litigation funding company by delivering the civil litigation funding company's uncashed check to the civil litigation funding company's offices in person, within five business days after the disbursement of funds, or mail a notice of cancellation and include in that mailing a return of the full amount of disbursed funds in the form of the civil litigation funding company's uncashed check or a registered or certified check or money order, by insured, registered, or certified United States mail, postmarked within five business days after receiving funds from the civil litigation funding company, to the address specified in the contract for the cancellation;

(c) The contract shall contain the following statement in at least twelve-point boldface type: ''THE CIVIL LITIGATION FUNDING COMPANY AGREES THAT IT SHALL HAVE NO RIGHT TO AND WILL NOT MAKE ANY DECI-

SIONS WITH RESPECT TO THE CONDUCT OF THE UNDERLYING LEGAL CLAIM OR ANY SETTLEMENT OR RESOLUTION THEREOF AND THAT THE RIGHT TO MAKE THOSE DECISIONS REMAINS SOLELY WITH YOU AND YOUR ATTORNEY IN THE LEGAL CLAIM.'';

(d) The contract shall contain an acknowledgement by the consumer that such consumer has reviewed the contract in its entirety;

(e) The contract shall contain the following statement in at least twelve-point boldface type located immediately above the place on the contract where the consumer's signature is required: ''DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT COMPLETELY OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO A COMPLETELY FILLED IN COPY OF THIS CONTRACT. BEFORE YOU SIGN THIS CONTRACT YOU SHOULD OBTAIN THE ADVICE OF AN ATTORNEY. DEPENDING ON THE CIRCUMSTANCES, YOU MAY WANT TO CONSULT A TAX, PUBLIC OR PRIVATE BENEFIT PLANNING, OR FINANCIAL PROFESSIONAL. YOU ACKNOWLEDGE THAT YOUR ATTORNEY IN THE LEGAL CLAIM HAS PROVIDED NO TAX, PUBLIC OR PRIVATE BENEFIT PLANNING, OR FINANCIAL ADVICE REGARDING THIS TRANSACTION.'';

(f) The contract shall contain a written acknowledgment by the attorney representing the consumer in the legal claim that states all of the following:

(i) The attorney representing the consumer in the legal claim has reviewed the contract and all costs and fees have been disclosed including the annualized rate of return applied to calculate the amount to be paid by the consumer;

(ii) The attorney representing the consumer in the legal claim is being paid on a contingency basis per a written fee agreement;

(iii) All proceeds of the civil litigation will be disbursed via the trust account of the attorney representing the consumer in the legal claim or a settlement fund established to receive the proceeds of the civil litigation from the defendant on behalf of the consumer;

(iv) The attorney representing the consumer in the legal claim is following the written instructions of the consumer with regard to the nonrecourse civil litigation funding;

(v) The attorney representing the consumer in the legal claim shall not be paid or offered to be paid commissions or referral fees; and

(vi) Whether the attorney representing the consumer in the legal claim does or does not have a financial interest in the civil litigation funding company; and

(g) All contracts to the consumer shall have in plain language, in a box with bold fifteen-point font stating the following in capitalized letters: ''IF THERE IS NO RECOVERY OF ANY MONEY FROM YOUR LEGAL CLAIM OR IF THERE IS NOT ENOUGH MONEY TO PAY THE CIVIL LITIGATION FUNDING COMPANY BACK IN FULL, YOU WILL NOT OWE THE CIVIL LITIGATION FUNDING COMPANY ANYTHING IN EXCESS OF YOUR RECOVERY UNLESS YOU HAVE VIOLATED THIS PURCHASE AGREEMENT.''.

(2) If a dispute arises between the consumer and the civil litigation funding company concerning the contract for nonrecourse civil litigation funding, the responsibilities of the attorney representing the consumer in the legal claim

shall be no greater than the attorney's responsibilities under the Nebraska Rules of Professional Conduct.

Source: Laws 2010, LB1094, § 3.
Effective date July 15, 2010.

25-3304 Civil litigation funding company; prohibited acts.

(1) The civil litigation funding company shall not pay or offer to pay commissions or referral fees to any attorney or employee of a law firm or to any medical provider, chiropractor, or physical therapist or their employees for referring a consumer to the civil litigation funding company.

(2) The civil litigation funding company shall not accept any commissions, referral fees, or rebates from any attorney or employee of a law firm or any medical provider, chiropractor, or physical therapist or their employees.

(3) The civil litigation funding company shall not advertise false or intentionally misleading information regarding such company's product or services.

(4) The civil litigation funding company shall not knowingly provide nonrecourse civil litigation funding to a consumer who has previously sold and assigned an amount of such consumer's potential proceeds from the legal claim to another civil litigation funding company without first buying out that civil litigation funding company's entire accrued balance unless otherwise agreed in writing by the civil litigation funding companies and the consumer.

Source: Laws 2010, LB1094, § 4.
Effective date July 15, 2010.

25-3305 Assessment of fees; restrictions; calculations.

(1) A civil litigation funding company may not assess fees for any period exceeding thirty-six months from the date of the contract with the consumer.

(2) Fees assessed by the civil litigation funding company shall compound at least semiannually but shall not compound based on any lesser time period.

(3) In calculating the annual percentage fee or rate of return, a civil litigation funding company shall include all charges payable directly or indirectly by the consumer and shall compute the rate based only on amounts actually received and retained by a consumer.

Source: Laws 2010, LB1094, § 5.
Effective date July 15, 2010.

25-3306 Effect of communication on privileges.

No communication between the attorney and the civil litigation funding company as it pertains to the nonrecourse civil litigation funding contract shall limit, waive, or abrogate the scope or nature of any statutory or common-law privilege, including the work-product doctrine and the attorney-client privilege.

Source: Laws 2010, LB1094, § 6.
Effective date July 15, 2010.

25-3307 Civil litigation funding company; registration required; application; form; renewal.

(1) Unless a civil litigation funding company has first registered pursuant to the Nonrecourse Civil Litigation Act, the civil litigation funding company cannot engage in the business of nonrecourse civil litigation funding.

(2) A civil litigation funding company shall submit an application of registration to the Secretary of State in a form prescribed by the Secretary of State. An application filed under this subsection is a public record and shall contain information that allows the Secretary of State to make an evaluation of the character, fitness, and financial responsibility of the company such that the Secretary of State may determine that the business will be operated honestly or fairly within the purposes of the act. For purposes of determining a civil litigation funding company's character, fitness, and financial responsibility, the Secretary of State shall request a company to submit: A copy of the company's articles of incorporation, articles of organization, certificate of limited partnership, or other organizational documents; proof of registration with a Nebraska registered agent; and proof of a surety bond or irrevocable letter of credit issued and confirmed by a financial institution authorized by law to transact business in the State of Nebraska that is equal to double the amount of the largest funding in the past calendar year or fifty thousand dollars, whichever is greater.

(3) A civil litigation funding company may apply to renew a registration by submitting an application for renewal in a form prescribed by the Secretary of State. An application filed under this subsection is a public record. The registration shall contain current information on all matters required in an original registration.

Source: Laws 2010, LB1094, § 7.
Effective date July 15, 2010.

25-3308 Registration fee; renewal fee.

(1) An application for registration or renewal of registration under section 25-3307 shall be accompanied by either an application for registration fee or a renewal of registration fee, as applicable.

(2) The Secretary of State may, by rule and regulation, establish fees for applications for registration and renewals of registration at rates sufficient to cover the costs of administering the Nonrecourse Civil Litigation Act, in the event any such fees are required. Such fees shall be collected by the Secretary of State and remitted to the State Treasurer for credit to the Secretary of State Administration Cash Fund.

Source: Laws 2010, LB1094, § 8.
Effective date July 15, 2010.

25-3309 Secretary of State; issue certificate of registration or renewal of registration; refusal to issue; grounds; suspend, revoke, or refuse renewal; temporary certificate; submission of data; contents; report.

(1) The Secretary of State shall issue a certificate of registration to a civil litigation funding company who complies with subsection (2) of section 25-3307 or a renewal of registration under subsection (3) of section 25-3307.

(2) The Secretary of State may refuse to issue a certificate of registration if the Secretary of State determines that the character, fitness, or financial responsibility of the civil litigation funding company are such as to warrant

belief that the business will not be operated honestly or fairly within the purposes of the Nonrecourse Civil Litigation Act.

(3) The Secretary of State may suspend, revoke, or refuse to renew a certificate of registration for conduct that would have justified denial of registration under subsection (2) of section 25-3307 or for violating section 25-3304.

(4) The Secretary of State may deny, suspend, revoke, or refuse to renew a certificate of registration only after proper notice and an opportunity for a hearing. The Administrative Procedure Act applies to the Nonrecourse Civil Litigation Act.

(5) The Secretary of State may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

(6) The Secretary of State shall require a civil litigation funding company registered pursuant to the act to annually submit certain data, in a form prescribed by the Secretary of State that contains:

(a) The number of nonrecourse civil litigation fundings;

(b) The amount of nonrecourse civil litigation fundings;

(c) The number of nonrecourse civil litigation fundings required to be repaid by the consumer;

(d) The amount charged to the consumer, including, but not limited to, the annual percentage fee charged to the consumer and the itemized fees charged to the consumer; and

(e) The dollar amount and number of cases in which the realization to the civil litigation funding company was less than contracted.

(7) The Secretary of State shall annually prepare and submit a report to the Clerk of the Legislature and to the Judiciary Committee of the Legislature on the status of nonrecourse civil litigation funding activities in the state. The report shall include aggregate information reported by registered civil litigation funding companies.

Source: Laws 2010, LB1094, § 9.
Effective date July 15, 2010.

Cross References

Administrative Procedure Act, see section 84-920.

CHAPTER 27
COURTS; RULES OF EVIDENCE

Article.
4. Relevancy and Its Limits. 27-404 to 27-415.
11. Miscellaneous Rules. 27-1103.
12. Inadmissibility of Certain Conduct as Evidence. 27-1201.
13. Evidence of Visual Depiction of Sexually Explicit Conduct. 27-1301.

ARTICLE 4
RELEVANCY AND ITS LIMITS

Section
27-404. Rule 404. Character evidence; not admissible to prove conduct; exceptions; evidence of other crimes, wrongs, or acts; standard of proof; sexual assault; provisions applicable.
27-412. Sex offense cases; relevance of alleged victim's past sexual behavior or alleged sexual predisposition.
27-413. Offense of sexual assault, defined.
27-414. Criminal use; evidence of similar crimes in sexual assault cases.
27-415. Civil case; evidence of crimes in sexual assault cases.

27-404 Rule 404. Character evidence; not admissible to prove conduct; exceptions; evidence of other crimes, wrongs, or acts; standard of proof; sexual assault; provisions applicable.

(1) Evidence of a person's character or a trait of his or her character is not admissible for the purpose of proving that he or she acted in conformity therewith on a particular occasion, except:

(a) Evidence of a pertinent trait of his or her character offered by an accused, or by the prosecution to rebut the same;

(b) Evidence of a pertinent trait of character of the victim of the crime offered by an accused or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor. In a sexual assault case, reputation, opinion, or other evidence of past sexual behavior of the victim is governed by section 27-412; or

(c) Evidence of the character of a witness as provided in sections 27-607 to 27-609.

(2) Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he or she acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(3) When such evidence is admissible pursuant to this section, in criminal cases evidence of other crimes, wrongs, or acts of the accused may be offered in evidence by the prosecution if the prosecution proves to the court by clear and convincing evidence that the accused committed the crime, wrong, or act. Such proof shall first be made outside the presence of any jury.

(4) Regarding the admissibility in a civil or criminal action of evidence of a person's commission of another offense or offenses of sexual assault under sections 28-319 to 28-322.04, see sections 27-413 to 27-415.

Source: Laws 1975, LB 279, § 14; Laws 1984, LB 79, § 2; Laws 1993, LB 598, § 1; Laws 2009, LB97, § 7.

27-412 Sex offense cases; relevance of alleged victim's past sexual behavior or alleged sexual predisposition.

(1) The following evidence is not admissible in any civil or criminal proceeding involving alleged sexual misconduct except as provided in subsections (2) and (3) of this section:

(a) Evidence offered to prove that any victim engaged in other sexual behavior; and

(b) Evidence offered to prove any victim's sexual predisposition.

(2)(a) In a criminal case, the following evidence is admissible, if otherwise admissible under the Nebraska Evidence Rules:

(i) Evidence of specific instances of sexual behavior by the victim offered to prove that a person other than the accused was the source of semen, injury, or other physical evidence;

(ii) Evidence of specific instances of sexual behavior of the victim with respect to the accused offered by the accused to prove consent of the victim if it is first established to the court that such behavior is similar to the behavior involved in the case and tends to establish a pattern of behavior of the victim relevant to the issue of consent; and

(iii) Evidence, the exclusion of which would violate the constitutional rights of the accused.

(b) In a civil case, evidence offered to prove the sexual behavior or sexual predisposition of any victim is admissible if it is otherwise admissible under the Nebraska Evidence Rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. Evidence of a victim's reputation is admissible only if it has been placed in controversy by the victim.

(3)(a) A party intending to offer evidence under subsection (2) of this section shall:

(i) File a written motion at least fifteen days before trial specifically describing the evidence and stating the purpose for which it is offered unless the court, for good cause, requires a different time for filing or permits filing during trial; and

(ii) Serve the motion on all parties and notify the victim or, when appropriate, the victim's guardian or representative.

(b) Before admitting evidence under this section, the court shall conduct a hearing in camera outside the presence of any jury.

Source: Laws 2009, LB97, § 3.

27-413 Offense of sexual assault, defined.

For purposes of sections 27-414 and 27-415, offense of sexual assault means sexual assault under section 28-319 or 28-320, sexual assault of a child under section 28-319.01 or 28-320.01, sexual assault by use of an electronic communi-

cation device under section 28-320.02, sexual abuse of an inmate or parolee under sections 28-322.01 to 28-322.03, and sexual abuse of a protected individual under section 28-322.04.

Source: Laws 2009, LB97, § 4.

27-414 Criminal use; evidence of similar crimes in sexual assault cases.

(1) In a criminal case in which the accused is accused of an offense of sexual assault, evidence of the accused's commission of another offense or offenses of sexual assault is admissible if there is clear and convincing evidence otherwise admissible under the Nebraska Evidence Rules that the accused committed the other offense or offenses. If admissible, such evidence may be considered for its bearing on any matter to which it is relevant.

(2) In a case in which the prosecution intends to offer evidence under this section, the prosecuting attorney shall disclose the evidence to the accused, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

(3) Before admitting evidence of the accused's commission of another offense or offenses of sexual assault under this section, the court shall conduct a hearing outside the presence of any jury. At the hearing, the rules of evidence shall apply and the court shall apply a section 27-403 balancing and admit the evidence unless the risk of prejudice substantially outweighs the probative value of the evidence. In assessing the balancing, the court may consider any relevant factor such as (a) the probability that the other offense occurred, (b) the proximity in time and intervening circumstances of the other offenses, and (c) the similarity of the other acts to the crime charged.

(4) This section shall not be construed to limit the admission or consideration of evidence under any other section of the Nebraska Evidence Rules.

Source: Laws 2009, LB97, § 5.

27-415 Civil case; evidence of crimes in sexual assault cases.

(1) In a civil case in which a claim for damages or other relief is predicated on a party's alleged commission of conduct constituting an offense of sexual assault, evidence of that party's commission of another offense or offenses of sexual assault is admissible if there is clear and convincing evidence otherwise admissible under the Nebraska Evidence Rules that the party committed the other offense or offenses. If admissible, such evidence may be considered for its bearing on any matter to which it is relevant.

(2) A party who intends to offer evidence under this section shall disclose the evidence to the party against whom it will be offered, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.

(3) Before admitting evidence of a party's commission of another offense or offenses of sexual assault under this section, the court shall conduct a hearing outside the presence of any jury. At the hearing, the rules of evidence shall apply and the court shall apply a section 27-403 balancing and admit the evidence unless the risk of prejudice substantially outweighs the probative value

of the evidence. In assessing the balancing, the court may consider any relevant factor such as (a) the probability that the other offense occurred, (b) the proximity in time and intervening circumstances of the other offenses, and (c) the similarity of the other acts to the crime charged.

(4) This section shall not be construed to limit the admission or consideration of evidence under any other section of the Nebraska Evidence Rules.

Source: Laws 2009, LB97, § 6.

ARTICLE 11

MISCELLANEOUS RULES

Section
27-1103. Rule 1103. Act, how cited.

27-1103 Rule 1103. Act, how cited.

These rules and sections 27-412 to 27-415 may be known and cited as the Nebraska Evidence Rules.

Source: Laws 1975, LB 279, § 73; Laws 2009, LB97, § 8.

ARTICLE 12

INADMISSIBILITY OF CERTAIN CONDUCT AS EVIDENCE

Section
27-1201. Unanticipated outcome of medical care; civil action; health care provider or employee; use of certain statements and conduct; limitations.

27-1201 Unanticipated outcome of medical care; civil action; health care provider or employee; use of certain statements and conduct; limitations.

(1) In any civil action brought by an alleged victim of an unanticipated outcome of medical care, or in any arbitration proceeding related to such civil action, any and all statements, affirmations, gestures, or conduct expressing apology, sympathy, commiseration, condolence, compassion, or a general sense of benevolence which are made by a health care provider or an employee of a health care provider to the alleged victim, a relative of the alleged victim, or a representative of the alleged victim and which relate to the discomfort, pain, suffering, injury, or death of the alleged victim as a result of the unanticipated outcome of medical care shall be inadmissible as evidence of an admission of liability or as evidence of an admission against interest. A statement of fault which is otherwise admissible and is part of or in addition to any such communication shall be admissible.

(2) For purposes of this section, unless the context otherwise requires:

(a) Health care provider means any person licensed or certified by the State of Nebraska to deliver health care under the Uniform Credentialing Act and any health care facility licensed under the Health Care Facility Licensure Act. Health care provider includes any professional corporation or other professional entity comprised of such health care providers;

(b) Relative means a patient's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, stepbrother, stepsister, half brother, half sister, or spouse's parents. Relative includes persons related to the patient through adoptive relationships. Relative also includes any person who has a family-type relationship with the patient;

(c) Representative means a legal guardian, attorney, person designated to make health care decisions on behalf of a patient under a power of attorney, or any person recognized in law or custom as a patient's agent; and

(d) Unanticipated outcome means the outcome of a medical treatment or procedure that differs from the expected result.

Source: Laws 2007, LB373, § 1; Laws 2009, LB35, § 18.

Cross References

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

ARTICLE 13

EVIDENCE OF VISUAL DEPICTION OF SEXUALLY EXPLICIT CONDUCT

Section
27-1301. Evidence of visual depiction of sexually explicit conduct; restrictions on care, custody, and control; Supreme Court; duties.

27-1301 Evidence of visual depiction of sexually explicit conduct; restrictions on care, custody, and control; Supreme Court; duties.

(1) In any judicial or administrative proceeding, any property or material that constitutes a visual depiction of sexually explicit conduct, as defined in section 28-1463.02, and which has a child, as defined in such section, as one of its participants or portrayed observers, shall remain constantly and continuously in the care, custody, and control of law enforcement, the prosecuting attorney, or the court having properly received it into evidence, except as provided in subsection (3) of this section.

(2) All courts and administrative agencies shall unequivocally deny any request by the defendant, his or her attorney, or any other person, agency, or organization, regardless of whether such defendant, attorney, or other person, agency, or organization is a party in interest or not, to acquire possession of, copy, photograph, duplicate, or otherwise reproduce any property or material that constitutes a visual depiction of sexually explicit conduct, as defined in section 28-1463.02, and which has a child, as defined in such section, as one of its participants or portrayed observers, so long as the state makes the property or material reasonably available to the defendant in a criminal proceeding. Nothing in this section shall be deemed to prohibit the review of the proscribed materials or property by a federal court when considering a habeas corpus claim.

(3)(a) For purposes of this section, property or material are deemed to be reasonably available to a defendant if the state provides ample opportunity for inspection, viewing, examination, and analysis of the property or material, at a law enforcement or state-operated facility, to the defendant, his or her attorney, and any individual the defendant seeks to use for the purpose of furnishing expert testimony.

(b) Notwithstanding the provisions of this subsection, a court may order a copy of the property or material to be delivered to a person identified as a defense expert for the purpose of evaluating the evidence, subject to the same restrictions placed upon law enforcement. The defense expert shall return all copies and materials to law enforcement upon completion of the evaluation.

(4) On or before July 1, 2009, the Supreme Court shall adopt and promulgate rules and regulations regarding the proper control, care, custody, transfer, and disposition of property or material that constitutes a visual depiction of sexually explicit conduct, as defined in section 28-1463.02, and which has a child, as defined in such section, as one of its participants or portrayed observers, that has been received into evidence at any judicial or administrative proceeding. Among the issues addressed by these rules and regulations, the Supreme Court should devise procedures regarding the preparation and delivery of bills of exception containing evidence as described in this section, as well as procedures for storing, accessing, and disposing of such bills of exception after preparation and receipt.

Source: Laws 2009, LB97, § 22.

CHAPTER 28
CRIMES AND PUNISHMENTS

Article.
1. Provisions Applicable to Offenses Generally.
(a) General Provisions. 28-101.
(b) Discrimination-Based Offenses. 28-111, 28-115.
2. Inchoate Offenses. 28-201.
3. Offenses against the Person.
(a) General Provisions. 28-308 to 28-340.
(b) Adult Protective Services Act. 28-376.
(e) Pain-Capable Unborn Child Protection Act. 28-3,102 to 28-3,111.
4. Drugs and Narcotics. 28-401 to 28-456.01.
5. Offenses against Property. 28-502 to 28-524.
6. Offenses Involving Fraud. 28-603 to 28-640.
7. Offenses Involving the Family Relation. 28-707 to 28-720.
8. Offenses Relating to Morals. 28-813.01.
9. Offenses Involving Integrity and Effectiveness of Government Operation. 28-929 to 28-933.
10. Offenses against Animals. 28-1005.01 to 28-1020.
12. Offenses against Public Health and Safety. 28-1201 to 28-1252.
13. Miscellaneous Offenses.
(g) Locks and Keys. 28-1316.
(n) Shooting from Highway or Bridge. 28-1335.
(r) Unlawful Membership Recruitment. 28-1351.
(s) Public Protection Act. 28-1352 to 28-1356.
14. Noncode Provisions.
(k) Child Pornography Prevention Act. 28-1463.02 to 28-1463.05.

ARTICLE 1
PROVISIONS APPLICABLE TO OFFENSES GENERALLY

(a) GENERAL PROVISIONS

Section
28-101. Code, how cited.

(b) DISCRIMINATION-BASED OFFENSES

28-111. Enhanced penalty; enumerated offenses.
28-115. Criminal offense against a pregnant woman; enhanced penalty.

(a) GENERAL PROVISIONS

28-101 Code, how cited.

Sections 28-101 to 28-1356 shall be known and may be cited as the Nebraska Criminal Code.

Source: Laws 1977, LB 38, § 1; Laws 1980, LB 991, § 8; Laws 1982, LB 465, § 1; Laws 1985, LB 371, § 1; Laws 1985, LB 406, § 1; Laws 1986, LB 969, § 1; Laws 1986, LB 956, § 12; Laws 1987, LB 451, § 1; Laws 1988, LB 170, § 1; Laws 1988, LB 463, § 41; Laws 1989, LB 372, § 1; Laws 1990, LB 50, § 10; Laws 1990, LB 1018, § 1; Laws 1990, LB 571, § 2; Laws 1991, LB 135, § 1; Laws 1991, LB 477, § 2; Laws 1992, LB 1098, § 5; Laws 1992, LB

1184, § 8; Laws 1994, LB 988, § 1; Laws 1994, LB 1035, § 1; Laws 1994, LB 1129, § 1; Laws 1995, LB 371, § 1; Laws 1995, LB 385, § 11; Laws 1996, LB 908, § 2; Laws 1997, LB 90, § 1; Laws 1997, LB 814, § 6; Laws 1998, LB 218, § 2; Laws 1999, LB 6, § 1; Laws 1999, LB 49, § 1; Laws 1999, LB 163, § 1; Laws 1999, LB 511, § 1; Laws 2002, LB 276, § 1; Laws 2002, LB 824, § 1; Laws 2003, LB 17, § 1; Laws 2003, LB 43, § 8; Laws 2003, LB 273, § 2; Laws 2004, LB 943, § 1; Laws 2006, LB 57, § 1; Laws 2006, LB 287, § 4; Laws 2006, LB 1086, § 6; Laws 2006, LB 1199, § 1; Laws 2007, LB142, § 1; Laws 2008, LB764, § 1; Laws 2008, LB1055, § 1; Laws 2009, LB63, § 2; Laws 2009, LB97, § 9; Laws 2009, LB155, § 1; Laws 2010, LB252, § 1; Laws 2010, LB594, § 1; Laws 2010, LB894, § 1; Laws 2010, LB1103, § 11.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB252, section 1, with LB594, section 1, LB894, section 1, and LB1103, section 11, to reflect all amendments.

Note: Changes made by LB252, LB594, and LB894 became effective July 15, 2010. Changes made by LB1103 became operative October 15, 2010.

(b) DISCRIMINATION-BASED OFFENSES

28-111 Enhanced penalty; enumerated offenses.

Any person who commits one or more of the following criminal offenses against a person or a person's property because of the person's race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of the person's association with a person of a certain race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability shall be punished by the imposition of the next higher penalty classification than the penalty classification prescribed for the criminal offense, unless such criminal offense is already punishable as a Class IB felony or higher classification: Manslaughter, section 28-305; assault in the first degree, section 28-308; assault in the second degree, section 28-309; assault in the third degree, section 28-310; terroristic threats, section 28-311.01; stalking, section 28-311.03; kidnapping, section 28-313; false imprisonment in the first degree, section 28-314; false imprisonment in the second degree, section 28-315; sexual assault in the first degree, section 28-319; sexual assault in the second or third degree, section 28-320; sexual assault of a child, sections 28-319.01 and 28-320.01; arson in the first degree, section 28-502; arson in the second degree, section 28-503; arson in the third degree, section 28-504; criminal mischief, section 28-519; unauthorized application of graffiti, section 28-524; criminal trespass in the first degree, section 28-520; or criminal trespass in the second degree, section 28-521.

Source: Laws 1997, LB 90, § 3; Laws 2006, LB 1199, § 2; Laws 2009, LB63, § 3.

28-115 Criminal offense against a pregnant woman; enhanced penalty.

(1) Any person who commits any of the following criminal offenses against a pregnant woman shall be punished by the imposition of the next higher penalty classification than the penalty classification prescribed for the criminal offense, unless such criminal offense is already punishable as a Class IB felony or higher classification: Assault in the first degree, section 28-308; assault in the second degree, section 28-309; assault in the third degree, section 28-310; sexual assault in the first degree, section 28-319; sexual assault in the second or

third degree, section 28-320; sexual assault of a child in the second or third degree, section 28-320.01; sexual abuse of an inmate or parolee in the first degree, section 28-322.01; sexual abuse of an inmate or parolee in the second degree, section 28-322.03; sexual abuse of a protected individual in the first or second degree, section 28-322.04; domestic assault in the first, second, or third degree, section 28-323; assault on an officer in the first degree, section 28-929; assault on an officer in the second degree, section 28-930; assault on an officer in the third degree, section 28-931; assault on an officer using a motor vehicle, section 28-931.01; assault by a confined person, section 28-932; confined person committing offenses against another person, section 28-933; proximately causing serious bodily injury while operating a motor vehicle, section 60-6,198; and sexual assault of a child in the first degree, section 28-319.01.

(2) The prosecution shall allege and prove beyond a reasonable doubt that the victim was pregnant at the time of the offense.

Source: Laws 2006, LB 57, § 9; Laws 2010, LB771, § 1.
Effective date July 15, 2010.

ARTICLE 2
INCHOATE OFFENSES

Section
28-201. Criminal attempt; conduct; penalties.

28-201 Criminal attempt; conduct; penalties.

(1) A person shall be guilty of an attempt to commit a crime if he or she:

(a) Intentionally engages in conduct which would constitute the crime if the attendant circumstances were as he or she believes them to be; or

(b) Intentionally engages in conduct which, under the circumstances as he or she believes them to be, constitutes a substantial step in a course of conduct intended to culminate in his or her commission of the crime.

(2) When causing a particular result is an element of the crime, a person shall be guilty of an attempt to commit the crime if, acting with the state of mind required to establish liability with respect to the attendant circumstances specified in the definition of the crime, he or she intentionally engages in conduct which is a substantial step in a course of conduct intended or known to cause such a result.

(3) Conduct shall not be considered a substantial step under this section unless it is strongly corroborative of the defendant's criminal intent.

(4) Criminal attempt is:

(a) A Class II felony when the crime attempted is a Class I, IA, IB, IC, or ID felony;

(b) A Class III felony when the crime attempted is a Class II felony;

(c) A Class IIIA felony when the crime attempted is sexual assault in the second degree under section 28-320, a violation of subdivision (2)(b) of section 28-416, incest under section 28-703, child abuse under subsection (5) of section 28-707, or assault by a confined person with a deadly or dangerous weapon under section 28-932;

(d) A Class IV felony when the crime attempted is a Class III felony not listed in subdivision (4)(c) of this section;

(e) A Class I misdemeanor when the crime attempted is a Class IIIA or Class IV felony;

(f) A Class II misdemeanor when the crime attempted is a Class I misdemeanor; and

(g) A Class III misdemeanor when the crime attempted is a Class II misdemeanor.

Source: Laws 1977, LB 38, § 10; Laws 1997, LB 364, § 2; Laws 1998, LB 1266, § 3; Laws 2010, LB712, § 7; Laws 2010, LB771, § 2.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB712, section 7, with LB771, section 2, to reflect all amendments.

Note: Changes made by LB771 became effective July 15, 2010. Changes made by LB712 became operative July 15, 2010.

ARTICLE 3

OFFENSES AGAINST THE PERSON

(a) GENERAL PROVISIONS

Section
28-308. Assault in the first degree; penalty.
28-309. Assault in the second degree; penalty.
28-311. Criminal child enticement; attempt; penalties.
28-318. Terms, defined.
28-319.01. Sexual assault of a child; first degree; penalty.
28-320.02. Sexual assault; use of electronic communication device; prohibited acts; penalties.
28-321. Repealed. Laws 2009, LB 97, § 36.
28-322.05. Unlawful use of the Internet by a prohibited sex offender; penalties.
28-323. Domestic assault; penalties.
28-325. Abortion; declaration of purpose.
28-326. Terms, defined.
28-327. Abortion; voluntary and informed consent required; exception.
28-327.01. Department of Health and Human Services; printed materials; duties; availability; Internet web site information.
28-327.03. Civil liability; limitation.
28-327.04. Civil cause of action; authorized; evidence of professional negligence; attorney's fee.
28-327.06. Waiver of evaluations and notices; void and unenforceable.
28-327.07. Damages.
28-327.08. Action for civil remedies.
28-327.09. Minor; burden of proof.
28-327.10. Time requirement.
28-327.11. Civil action; rebuttable presumption; noneconomic damages; expert witness; physician deemed transacting business; affirmative defense; additional remedies.
28-327.12. Statute of limitations; tolled; section, how construed; violations; how treated.
28-340. Discrimination against person refusing to participate in an abortion; damages.

(b) ADULT PROTECTIVE SERVICES ACT

28-376. Adult Protective Services Central Registry; established; access; name-change order; treatment.

(c) PAIN-CAPABLE UNBORN CHILD PROTECTION ACT

28-3,102. Act, how cited.
28-3,103. Terms, defined.
28-3,104. Legislative findings.
28-3,105. Determination of probable postfertilization age of unborn child; physician; duties.

Section
28-3,106. Abortion; performance; restrictions.
28-3,107. Report to Department of Health and Human Services; contents; department; issue public report; failure to file report; late fee; prohibited acts; penalty.
28-3,108. Prohibited abortion; penalty.
28-3,109. Action for damages; action for injunctive relief; attorney's fees.
28-3,110. Anonymity; court orders authorized.
28-3,111. Severability.

(a) GENERAL PROVISIONS

28-308 Assault in the first degree; penalty.

(1) A person commits the offense of assault in the first degree if he or she intentionally or knowingly causes serious bodily injury to another person.

(2) Assault in the first degree shall be a Class II felony.

Source: Laws 1977, LB 38, § 23; Laws 2009, LB63, § 4.

28-309 Assault in the second degree; penalty.

(1) A person commits the offense of assault in the second degree if he or she:

(a) Intentionally or knowingly causes bodily injury to another person with a dangerous instrument;

(b) Recklessly causes serious bodily injury to another person with a dangerous instrument; or

(c) Unlawfully strikes or wounds another (i) while legally confined in a jail or an adult correctional or penal institution, (ii) while otherwise in legal custody of the Department of Correctional Services, or (iii) while committed as a dangerous sex offender under the Sex Offender Commitment Act.

(2) Assault in the second degree shall be a Class III felony.

Source: Laws 1977, LB 38, § 24; Laws 1982, LB 347, § 7; Laws 1997, LB 364, § 4; Laws 2009, LB63, § 5; Laws 2010, LB771, § 3. Effective date July 15, 2010.

Cross References

Sex Offender Commitment Act, see section 71-1201.

28-311 Criminal child enticement; attempt; penalties.

(1) No person, by any means and without privilege to do so, shall knowingly solicit, coax, entice, or lure or attempt to solicit, coax, entice, or lure any child under the age of fourteen years to enter into any vehicle, whether or not the person knows the age of the child.

(2) It is an affirmative defense to a charge under this section that:

(a) The person had the express or implied permission of the parent, guardian, or other legal custodian of the child in undertaking the activity;

(b)(i) The person is a law enforcement officer, emergency services provider as defined in section 71-507, firefighter, or other person who regularly provides emergency services, is the operator of a bookmobile or other such vehicle operated by the state or a political subdivision and used for informing, educating, organizing, or transporting children, is a paid employee of, or a volunteer for, a nonprofit or religious organization which provides activities for children, or is an employee or agent of or a volunteer acting under the direction of any

board of education and (ii) the person listed in subdivision (2)(b)(i) of this section was, at the time the person undertook the activity, acting within the scope of his or her lawful duties in that capacity; or

(c) The person undertook the activity in response to a bona fide emergency situation or the person undertook the activity in response to a reasonable belief that it was necessary to preserve the health, safety, or welfare of the child.

(3) Any person who violates this section commits criminal child enticement and is guilty of a Class IIIA felony. If such person has previously been convicted of (a) criminal child enticement under this section, (b) sexual assault of a child in the first degree under section 28-319.01, (c) sexual assault of a child in the second or third degree under section 28-320.01, (d) child enticement by means of an electronic communication device under section 28-320.02, or (e) assault under section 28-308, 28-309, or 28-310, kidnapping under section 28-313, or false imprisonment under section 28-314 or 28-315 when the victim was under eighteen years of age when such person violates this section, such person is guilty of a Class III felony.

Source: Laws 1999, LB 49, § 2; Laws 2006, LB 1199, § 3; Laws 2009, LB97, § 10.

Cross References

Registration of sex offenders, see sections 29-4001 to 29-4014.

28-318 Terms, defined.

As used in sections 28-317 to 28-322.04, unless the context otherwise requires:

(1) Actor means a person accused of sexual assault;

(2) Intimate parts means the genital area, groin, inner thighs, buttocks, or breasts;

(3) Past sexual behavior means sexual behavior other than the sexual behavior upon which the sexual assault is alleged;

(4) Serious personal injury means great bodily injury or disfigurement, extreme mental anguish or mental trauma, pregnancy, disease, or loss or impairment of a sexual or reproductive organ;

(5) Sexual contact means the intentional touching of the victim's sexual or intimate parts or the intentional touching of the victim's clothing covering the immediate area of the victim's sexual or intimate parts. Sexual contact shall also mean the touching by the victim of the actor's sexual or intimate parts or the clothing covering the immediate area of the actor's sexual or intimate parts when such touching is intentionally caused by the actor. Sexual contact shall include only such conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party. Sexual contact shall also include the touching of a child with the actor's sexual or intimate parts on any part of the child's body for purposes of sexual assault of a child under sections 28-319.01 and 28-320.01;

(6) Sexual penetration means sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the actor's or victim's body or any object manipulated by the actor into the genital or anal openings of the victim's body which can be reasonably construed as being for nonmedical or nonhealth purposes. Sexual penetration shall not require emission of semen;

(7) Victim means the person alleging to have been sexually assaulted;

(8) Without consent means:

(a)(i) The victim was compelled to submit due to the use of force or threat of force or coercion, or (ii) the victim expressed a lack of consent through words, or (iii) the victim expressed a lack of consent through conduct, or (iv) the consent, if any was actually given, was the result of the actor's deception as to the identity of the actor or the nature or purpose of the act on the part of the actor;

(b) The victim need only resist, either verbally or physically, so as to make the victim's refusal to consent genuine and real and so as to reasonably make known to the actor the victim's refusal to consent; and

(c) A victim need not resist verbally or physically where it would be useless or futile to do so; and

(9) Force or threat of force means (a) the use of physical force which overcomes the victim's resistance or (b) the threat of physical force, express or implied, against the victim or a third person that places the victim in fear of death or in fear of serious personal injury to the victim or a third person where the victim reasonably believes that the actor has the present or future ability to execute the threat.

Source: Laws 1977, LB 38, § 33; Laws 1978, LB 701, § 1; Laws 1984, LB 79, § 3; Laws 1985, LB 2, § 2; Laws 1995, LB 371, § 3; Laws 2004, LB 943, § 4; Laws 2006, LB 1199, § 4; Laws 2009, LB97, § 11.

28-319.01 Sexual assault of a child; first degree; penalty.

(1) A person commits sexual assault of a child in the first degree:

(a) When he or she subjects another person under twelve years of age to sexual penetration and the actor is at least nineteen years of age or older; or

(b) When he or she subjects another person who is at least twelve years of age but less than sixteen years of age to sexual penetration and the actor is twenty-five years of age or older.

(2) Sexual assault of a child in the first degree is a Class IB felony with a mandatory minimum sentence of fifteen years in prison for the first offense.

(3) Any person who is found guilty of sexual assault of a child in the first degree under this section and who has previously been convicted (a) under this section, (b) under section 28-319 of first degree or attempted first degree sexual assault, (c) under section 28-320.01 before July 14, 2006, of sexual assault of a child or attempted sexual assault of a child, (d) under section 28-320.01 on or after July 14, 2006, of sexual assault of a child in the second or third degree or attempted sexual assault of a child in the second or third degree, or (e) in any other state or federal court under laws with essentially the same elements as this section, section 28-319, or section 28-320.01 as it existed before, on, or after July 14, 2006, shall be guilty of a Class IB felony with a mandatory minimum sentence of twenty-five years in prison.

(4) In any prosecution under this section, the age of the actor shall be an essential element of the offense that must be proved beyond a reasonable doubt.

Source: Laws 2006, LB 1199, § 6; Laws 2009, LB97, § 12.

28-320.02 Sexual assault; use of electronic communication device; prohibited acts; penalties.

(1) No person shall knowingly solicit, coax, entice, or lure (a) a child sixteen years of age or younger or (b) a peace officer who is believed by such person to be a child sixteen years of age or younger, by means of an electronic communication device as that term is defined in section 28-833, to engage in an act which would be in violation of section 28-319, 28-319.01, or 28-320.01 or subsection (1) or (2) of section 28-320. A person shall not be convicted of both a violation of this subsection and a violation of section 28-319, 28-319.01, or 28-320.01 or subsection (1) or (2) of section 28-320 if the violations arise out of the same set of facts or pattern of conduct and the individual solicited, coaxed, enticed, or lured under this subsection is also the victim of the sexual assault under section 28-319, 28-319.01, or 28-320.01 or subsection (1) or (2) of section 28-320.

(2) A person who violates this section is guilty of a Class ID felony. If a person who violates this section has previously been convicted of a violation of this section or section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01, 28-813.01, 28-833, 28-1463.03, or 28-1463.05 or subsection (1) or (2) of section 28-320, the person is guilty of a Class IC felony.

Source: Laws 2004, LB 943, § 3; Laws 2006, LB 1199, § 8; Laws 2009, LB97, § 13.

28-321 Repealed. Laws 2009, LB 97, § 36.

28-322.05 Unlawful use of the Internet by a prohibited sex offender; penalties.

(1) Any person required to register under the Sex Offender Registration Act who is required to register because of a conviction for one or more of the following offenses, including any substantially equivalent offense committed in another state, territory, commonwealth, or other jurisdiction of the United States, and who knowingly and intentionally uses a social networking web site, instant messaging, or chat room service that allows a person who is less than eighteen years of age to access or use its social networking web site, instant messaging, or chat room service, commits the offense of unlawful use of the Internet by a prohibited sex offender:

(a) Kidnapping of a minor pursuant to section 28-313;

(b) Sexual assault of a child in the first degree pursuant to section 28-319.01;

(c) Sexual assault of a child in the second or third degree pursuant to section 28-320.01;

(d) Incest of a minor pursuant to section 28-703;

(e) Pandering of a minor pursuant to section 28-802;

(f) Visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03 or 28-1463.05;

(g) Possessing any visual depiction of sexually explicit conduct pursuant to section 28-813.01;

(h) Criminal child enticement pursuant to section 28-311;

(i) Child enticement by means of an electronic communication device pursuant to section 28-320.02;

(j) Enticement by electronic communication device pursuant to section 28-833; or

(k) An attempt or conspiracy to commit an offense listed in subdivisions (1)(a) through (1)(j) of this section.

(2) Unlawful use of the Internet by a prohibited sex offender is a Class I misdemeanor for a first offense. Any second or subsequent conviction under this section is a Class IIIA felony.

Source: Laws 2009, LB97, § 14; Laws 2009, LB285, § 1.

Cross References

Sex Offender Registration Act, see section 29-4001.

28-323 Domestic assault; penalties.

(1) A person commits the offense of domestic assault in the third degree if he or she:

(a) Intentionally and knowingly causes bodily injury to his or her intimate partner;

(b) Threatens an intimate partner with imminent bodily injury; or

(c) Threatens an intimate partner in a menacing manner.

(2) A person commits the offense of domestic assault in the second degree if he or she intentionally and knowingly causes bodily injury to his or her intimate partner with a dangerous instrument.

(3) A person commits the offense of domestic assault in the first degree if he or she intentionally and knowingly causes serious bodily injury to his or her intimate partner.

(4) Violation of subdivision (1)(a) or (b) of this section is a Class I misdemeanor, except that for any subsequent violation of subdivision (1)(a) or (b) of this section, any person so offending is guilty of a Class IV felony.

(5) Violation of subdivision (1)(c) of this section is a Class I misdemeanor.

(6) Violation of subsection (2) of this section is a Class IIIA felony, except that for any second or subsequent violation of such subsection, any person so offending is guilty of a Class III felony.

(7) Violation of subsection (3) of this section is a Class III felony, except that for any second or subsequent violation under such subsection, any person so offending is guilty of a Class II felony.

(8) For purposes of this section, intimate partner means a spouse; a former spouse; persons who have a child in common whether or not they have been married or lived together at any time; and persons who are or were involved in a dating relationship. For purposes of this subsection, dating relationship means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement, but does not include a casual relationship or an ordinary association between persons in a business or social context.

Source: Laws 2004, LB 613, § 5; Laws 2010, LB507, § 2.
Operative date July 15, 2010.

28-325 Abortion; declaration of purpose.

The Legislature hereby finds and declares:

(1) That the following provisions were motivated by the legislative intrusion of the United States Supreme Court by virtue of its decision removing the protection afforded the unborn. Sections 28-325 to 28-345 are in no way to be construed as legislatively encouraging abortions at any stage of unborn human development, but are rather an expression of the will of the people of the State of Nebraska and the members of the Legislature to provide protection for the life of the unborn child whenever possible;

(2) That the members of the Legislature expressly deplore the destruction of the unborn human lives which has and will occur in Nebraska as a consequence of the United States Supreme Court's decision on abortion of January 22, 1973;

(3) That it is in the interest of the people of the State of Nebraska that every precaution be taken to insure the protection of every viable unborn child being aborted, and every precaution be taken to provide life-supportive procedures to insure the unborn child its continued life after its abortion;

(4) That currently this state is prevented from providing adequate legal remedies to protect the life, health, and welfare of pregnant women and unborn human life;

(5) That it is in the interest of the people of the State of Nebraska to maintain accurate statistical data to aid in providing proper maternal health regulations and education;

(6) That the existing standard of care for preabortion screening and counseling is not always adequate to protect the health needs of women;

(7) That clarifying the minimum standard of care for preabortion screening and counseling in statute is a practical means of protecting the well-being of women and may better ensure that abortion doctors are sufficiently aware of each patient's risk profile so they may give each patient a well-informed medical opinion regarding her unique case; and

(8) That providing right to redress against nonphysicians who perform illegal abortions or encourage self-abortions is an important means of protecting women's health.

Source: Laws 1977, LB 38, § 40; Laws 1997, LB 23, § 1; Laws 2010, LB594, § 2.
Effective date July 15, 2010.

28-326 Terms, defined.

For purposes of sections 28-325 to 28-345, unless the context otherwise requires:

(1) Abortion means the use or prescription of any instrument, medicine, drug, or other substance or device intentionally to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child, and which causes the premature termination of the pregnancy;

(2) Complications associated with abortion means any adverse physical, psychological, or emotional reaction that is reported in a peer-reviewed journal to be statistically associated with abortion such that there is less than a five percent probability ($P < .05$) that the result is due to chance;

(3) Conception means the fecundation of the ovum by the spermatozoa;

(4) Emergency situation means that condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial impairment of a major bodily function;

(5) Hospital means those institutions licensed by the Department of Health and Human Services pursuant to the Health Care Facility Licensure Act;

(6) Negligible risk means a risk that a reasonable person would consider to be immaterial to a decision to undergo an elective medical procedure;

(7) Partial-birth abortion means an abortion procedure in which the person performing the abortion partially delivers vaginally a living unborn child before killing the unborn child and completing the delivery. For purposes of this subdivision, the term partially delivers vaginally a living unborn child before killing the unborn child means deliberately and intentionally delivering into the vagina a living unborn child, or a substantial portion thereof, for the purpose of performing a procedure that the person performing such procedure knows will kill the unborn child and does kill the unborn child;

(8) Physician means any person licensed to practice medicine in this state as provided in the Uniform Credentialing Act;

(9) Pregnant means that condition of a woman who has unborn human life within her as the result of conception;

(10) Probable gestational age of the unborn child means what will with reasonable probability, in the judgment of the physician, be the gestational age of the unborn child at the time the abortion is planned to be performed;

(11) Risk factor associated with abortion means any factor, including any physical, psychological, emotional, demographic, or situational factor, for which there is a statistical association with one or more complications associated with abortion such that there is less than a five percent probability ($P < .05$) that such statistical association is due to chance. Such information on risk factors shall have been published in any peer-reviewed journals indexed by the United States National Library of Medicine's search services (PubMed or MEDLINE) or in any journal included in the Thomson Reuters Scientific Master Journal List not less than twelve months prior to the day preabortion screening was provided;

(12) Self-induced abortion means any abortion or menstrual extraction attempted or completed by a pregnant woman on her own body;

(13) Ultrasound means the use of ultrasonic waves for diagnostic or therapeutic purposes, specifically to monitor an unborn child;

(14) Viability means that stage of human development when the unborn child is potentially able to live more than merely momentarily outside the womb of the mother by natural or artificial means; and

(15) Woman means any female human being whether or not she has reached the age of majority.

Source: Laws 1977, LB 38, § 41; Laws 1979, LB 316, § 1; Laws 1984, LB 695, § 1; Laws 1986, LB 663, § 1; Laws 1993, LB 110, § 1; Laws 1996, LB 1044, § 59; Laws 1997, LB 23, § 2; Laws 2000, LB 819,

§ 64; Laws 2007, LB296, § 27; Laws 2009, LB675, § 1; Laws 2010, LB594, § 3.
Effective date July 15, 2010.

Cross References

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

28-327 Abortion; voluntary and informed consent required; exception.

No abortion shall be performed except with the voluntary and informed consent of the woman upon whom the abortion is to be performed. Except in the case of an emergency situation, consent to an abortion is voluntary and informed only if:

(1) The woman is told the following by the physician who is to perform the abortion, by the referring physician, or by a physician assistant or registered nurse licensed under the Uniform Credentialing Act who is an agent of either physician, at least twenty-four hours before the abortion:

(a) The particular medical risks associated with the particular abortion procedure to be employed including, when medically accurate, the risks of infection, hemorrhage, perforated uterus, danger to subsequent pregnancies, and infertility;

(b) The probable gestational age of the unborn child at the time the abortion is to be performed;

(c) The medical risks associated with carrying her child to term; and

(d) That she cannot be forced or required by anyone to have an abortion and is free to withhold or withdraw her consent for an abortion.

The person providing the information specified in this subdivision to the person upon whom the abortion is to be performed shall be deemed qualified to so advise and provide such information only if, at a minimum, he or she has had training in each of the following subjects: Sexual and reproductive health; abortion technology; contraceptive technology; short-term counseling skills; community resources and referral; and informed consent. The physician or the physician's agent may provide this information by telephone without conducting a physical examination or tests of the patient, in which case the information required to be supplied may be based on facts supplied by the patient and whatever other relevant information is reasonably available to the physician or the physician's agent;

(2) The woman is informed by telephone or in person, by the physician who is to perform the abortion, by the referring physician, or by an agent of either physician, at least twenty-four hours before the abortion:

(a) The name of the physician who will perform the abortion;

(b) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

(c) That the father is liable to assist in the support of her child, even in instances in which the father has offered to pay for the abortion;

(d) That she has the right to review the printed materials described in section 28-327.01. The physician or his or her agent shall orally inform the woman that the materials have been provided by the Department of Health and Human Services and that they describe the unborn child and list agencies which offer

alternatives to abortion. If the woman chooses to review the materials, they shall either be given to her at least twenty-four hours before the abortion or mailed to her at least seventy-two hours before the abortion by certified mail, restricted delivery to addressee, which means the postal employee can only deliver the mail to the addressee. The physician and his or her agent may disassociate themselves from the materials and may comment or refrain from commenting on them as they choose; and

(e) That she has the right to request a comprehensive list, compiled by the Department of Health and Human Services, of health care providers, facilities, and clinics that offer to have ultrasounds performed by a person at least as qualified as a registered nurse licensed under the Uniform Credentialing Act, including and specifying those that offer to perform such ultrasounds free of charge. The list shall be arranged geographically and shall include the name, address, hours of operation, and telephone number of each entity. If requested by the woman, the physician who is to perform the abortion, the referring physician, or his or her agent shall provide such a list as compiled by the department;

(3) If an ultrasound is used prior to the performance of an abortion, the physician who is to perform the abortion, the referring physician, or a physician assistant or registered nurse licensed under the Uniform Credentialing Act who is an agent of either physician, or any qualified agent of either physician, shall:

(a) Perform an ultrasound of the woman's unborn child of a quality consistent with standard medical practice in the community at least one hour prior to the performance of the abortion;

(b) Simultaneously display the ultrasound images so that the woman may choose to view the ultrasound images or not view the ultrasound images. The woman shall be informed that the ultrasound images will be displayed so that she is able to view them. Nothing in this subdivision shall be construed to require the woman to view the displayed ultrasound images; and

(c) If the woman requests information about the displayed ultrasound image, her questions shall be answered. If she requests a detailed, simultaneous, medical description of the ultrasound image, one shall be provided that includes the dimensions of the unborn child, the presence of cardiac activity, if present and viewable, and the presence of external members and internal organs, if present and viewable;

(4) At least one hour prior to the performance of an abortion, a physician, psychiatrist, psychologist, mental health practitioner, physician assistant, registered nurse, or social worker licensed under the Uniform Credentialing Act has:

(a) Evaluated the pregnant woman to identify if the pregnant woman had the perception of feeling pressured or coerced into seeking or consenting to an abortion;

(b) Evaluated the pregnant woman to identify the presence of any risk factors associated with abortion;

(c) Informed the pregnant woman and the physician who is to perform the abortion of the results of the evaluation in writing. The written evaluation shall include, at a minimum, a checklist identifying both the positive and negative results of the evaluation for each risk factor associated with abortion and both the licensed person's written certification and the woman's written certification

that the pregnant woman was informed of the risk factors associated with abortion as discussed; and

(d) Retained a copy of the written evaluation results in the pregnant woman's permanent record;

(5) If any risk factors associated with abortion were identified, the pregnant woman was informed of the following in such manner and detail that a reasonable person would consider material to a decision of undergoing an elective medical procedure:

(a) Each complication associated with each identified risk factor; and

(b) Any quantifiable risk rates whenever such relevant data exists;

(6) The physician performing the abortion has formed a reasonable medical judgment, documented in the permanent record, that:

(a) The preponderance of statistically validated medical studies demonstrates that the physical, psychological, and familial risks associated with abortion for patients with risk factors similar to the patient's risk factors are negligible risks;

(b) Continuance of the pregnancy would involve risk of injury to the physical or mental health of the pregnant woman greater than if the pregnancy were terminated by induced abortion; or

(c) Continuance of the pregnancy would involve less risk of injury to the physical or mental health of the pregnant woman than if the pregnancy were terminated by an induced abortion;

(7) The woman certifies in writing, prior to the abortion, that:

(a) The information described in subdivisions (1) and (2)(a), (b), and (c) of this section has been furnished her;

(b) She has been informed of her right to review the information referred to in subdivision (2)(d) of this section; and

(c) The requirements of subdivision (3) of this section have been performed if an ultrasound is performed prior to the performance of the abortion; and

(8) Prior to the performance of the abortion, the physician who is to perform the abortion or his or her agent receives a copy of the written certification prescribed by subdivision (7) of this section. The physician or his or her agent shall retain a copy of the signed certification form in the woman's medical record.

Source: Laws 1977, LB 38, § 42; Laws 1979, LB 316, § 2; Laws 1984, LB 695, § 2; Laws 1993, LB 110, § 2; Laws 1996, LB 1044, § 60; Laws 2009, LB675, § 2; Laws 2010, LB594, § 4.
Effective date July 15, 2010.

Cross References

Uniform Credentialing Act, see section 38-101.

28-327.01 Department of Health and Human Services; printed materials; duties; availability; Internet web site information.

(1) The Department of Health and Human Services shall cause to be published the following easily comprehensible printed materials:

(a) Geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth, and while the child is dependent, including adoption

agencies and agencies and services for prevention of unintended pregnancies, which materials shall include a comprehensive list of the agencies available, a description of the services they offer, and a description of the manner, including telephone numbers and addresses in which such agencies may be contacted or printed materials including a toll-free, twenty-four-hour-a-day telephone number which may be called to orally obtain such a list and description of agencies in the locality of the caller and of the services they offer;

(b) Materials designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a woman can be known to be pregnant to full term, including pictures or drawings representing the development of unborn children at the two-week gestational increments, and any relevant information on the possibility of the unborn child's survival. Any such pictures or drawings shall contain the dimensions of the unborn child and shall be realistic and appropriate for the stage of pregnancy depicted. The materials shall be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages. The materials shall also contain objective information describing the methods of abortion procedures commonly employed, the medical risks commonly associated with each such procedure, the possible detrimental psychological effects of abortion, the medical risks commonly associated with abortion, and the medical risks commonly associated with carrying a child to term; and

(c) A comprehensive list of health care providers, facilities, and clinics that offer to have ultrasounds performed by a person at least as qualified as a registered nurse licensed under the Uniform Credentialing Act, including and specifying those that offer to perform such ultrasounds free of charge. The list shall be arranged geographically and shall include the name, address, hours of operation, and telephone number of each entity.

(2) The printed materials shall be printed in a typeface large enough to be clearly legible.

(3) The printed materials required under this section shall be available from the department upon the request by any person, facility, or hospital for an amount equal to the cost incurred by the department to publish the materials.

(4) The Department of Health and Human Services shall make available on its Internet web site a printable publication of geographically indexed materials designed to inform the woman of public and private agencies with services available to assist a woman with mental health concerns, following a risk factor evaluation. Such services shall include, but not be limited to, outpatient and crisis intervention services and crisis hotlines. The materials shall include a comprehensive list of the agencies available, a description of the services offered, and a description of the manner in which such agencies may be contacted, including addresses and telephone numbers of such agencies, as well as a toll-free, twenty-four-hour-a-day telephone number to be provided by the department which may be called to orally obtain the names of the agencies and the services they provide in the locality of the woman. The department shall update the publication as necessary.

Source: Laws 1993, LB 110, § 3; Laws 1996, LB 1044, § 61; Laws 2009, LB675, § 3; Laws 2010, LB594, § 12.
Effective date July 15, 2010.

Cross References

Uniform Credentialing Act, see section 38-101.

28-327.03 Civil liability; limitation.

No civil liability for failure to comply with subdivision (2)(d) of section 28-327 or that portion of subdivision (7) of such section requiring a written certification that the woman has been informed of her right to review the information referred to in subdivision (2)(d) of such section may be imposed unless the Department of Health and Human Services has published and made available the printed materials at the time the physician or his or her agent is required to inform the woman of her right to review them.

Source: Laws 1993, LB 110, § 5; Laws 1996, LB 1044, § 62; Laws 2009, LB675, § 4; Laws 2010, LB594, § 13.
Effective date July 15, 2010.

28-327.04 Civil cause of action; authorized; evidence of professional negligence; attorney's fee.

Any person upon whom an abortion has been performed or attempted in violation of section 28-327 or the parent or guardian of a minor upon whom an abortion has been performed or attempted in violation of such section shall have a right to maintain a civil cause of action against the person who performed the abortion or attempted to perform the abortion. A violation of subdivision (1), (2), (3), (7), or (8) of section 28-327 shall be prima facie evidence of professional negligence. The written certifications prescribed by subdivisions (4) and (7) of section 28-327 signed by the person upon whom an abortion has been performed or attempted shall constitute and create a rebuttable presumption of full compliance with all provisions of section 28-327 in favor of the physician who performed or attempted to perform the abortion, the referring physician, or the agent of either physician. The written certification shall be admissible as evidence in the cause of action for professional negligence or in any criminal action. If judgment is rendered in favor of the plaintiff in any such action, the court shall also render judgment for a reasonable attorney's fee in favor of the plaintiff against the defendant.

Source: Laws 1993, LB 110, § 6; Laws 2009, LB675, § 5; Laws 2010, LB594, § 14.
Effective date July 15, 2010.

28-327.06 Waiver of evaluations and notices; void and unenforceable.

Any waiver of the evaluations and notices provided for in subdivision (4) of section 28-327 is void and unenforceable.

Source: Laws 2010, LB594, § 5.
Effective date July 15, 2010.

28-327.07 Damages.

In addition to whatever remedies are available under the common or statutory laws of this state, the intentional, knowing, or negligent failure to comply with the requirements of section 28-327 shall provide a basis for the following damages:

(1) The award of reasonable costs and attorney's fees; and

(2) A recovery for the pregnant woman for the wrongful death of her unborn child under section 30-809 upon proving by a preponderance of evidence that the physician knew or should have known that the pregnant woman's consent was either not fully informed or not fully voluntary pursuant to section 28-327.

Source: Laws 2010, LB594, § 6.
Effective date July 15, 2010.

28-327.08 Action for civil remedies.

Any action for civil remedies based on a failure to comply with the requirements of section 28-327 shall be commenced in accordance with section 25-222 or 44-2828.

Source: Laws 2010, LB594, § 7.
Effective date July 15, 2010.

28-327.09 Minor; burden of proof.

If a physician performed an abortion on a pregnant woman who is a minor without providing the information required in section 28-327 to the pregnant woman's parent or legal guardian, then the physician bears the burden of proving that the pregnant woman was capable of independently evaluating the information given to her.

Source: Laws 2010, LB594, § 8.
Effective date July 15, 2010.

28-327.10 Time requirement.

Except in the case of an emergency situation, if a pregnant woman is provided with the information required by section 28-327 less than twenty-four hours before her scheduled abortion, the physician shall bear the burden of proving that the pregnant woman had sufficient reflection time, given her age, maturity, emotional state, and mental capacity, to comprehend and consider such information.

Source: Laws 2010, LB594, § 9.
Effective date July 15, 2010.

28-327.11 Civil action; rebuttable presumption; noneconomic damages; expert witness; physician deemed transacting business; affirmative defense; additional remedies.

In a civil action involving section 28-327, the following shall apply:

(1) In determining the liability of the physician and the validity of the consent of a pregnant woman, the failure to comply with the requirements of section 28-327 shall create a rebuttable presumption that the pregnant woman would not have undergone the recommended abortion had section 28-327 been complied with by the physician;

(2) The absence of physical injury shall not preclude an award of noneconomic damages including pain, suffering, inconvenience, mental suffering, emotional distress, psychological trauma, loss of society or companionship, loss of consortium, injury to reputation, or humiliation associated with the abortion;

(3) The fact that a physician does not perform elective abortions or has not performed elective abortions in the past shall not automatically disqualify such

physician from being an expert witness. A licensed obstetrician or family practitioner who regularly assists pregnant women in resolving medical matters related to pregnancy may be qualified to testify as an expert on the screening, counseling, management, and treatment of pregnancies;

(4) Any physician advertising services in this state shall be deemed to be transacting business in this state pursuant to section 25-536 and shall be subject to the provisions of section 28-327;

(5) It shall be an affirmative defense to an allegation of inadequate disclosure under the requirements of section 28-327 that the defendant omitted the contested information because statistically validated surveys of the general population of women of reproductive age, conducted within the three years before or after the contested abortion, demonstrate that less than five percent of women would consider the contested information to be relevant to an abortion decision; and

(6) In addition to the other remedies available under the common or statutory law of this state, a woman or her survivors shall have a cause of action for reckless endangerment against any person, other than a physician or pharmacist licensed under the Uniform Credentialing Act, who attempts or completes an abortion on the pregnant woman or aids or abets the commission of a self-induced abortion. Proof of injury shall not be required to recover an award, including reasonable costs and attorney's fees, for wrongful death under this subdivision.

Source: Laws 2010, LB594, § 10.
Effective date July 15, 2010.

Cross References

Uniform Credentialing Act, see section 38-101.

28-327.12 Statute of limitations; tolled; section, how construed; violations; how treated.

(1) In the event that any portion of section 28-327 is enjoined and subsequently upheld, the statute of limitations for filing a civil suit under section 28-327 shall be tolled during the period for which the injunction is pending and for two years thereafter.

(2) Nothing in section 28-327 shall be construed as defining a standard of care for any medical procedure other than an induced abortion.

(3) A violation of subdivision (4), (5), or (6) of section 28-327 shall not provide grounds for any criminal action or disciplinary action against or revocation of a license to practice medicine and surgery pursuant to the Uniform Credentialing Act.

Source: Laws 2010, LB594, § 11.
Effective date July 15, 2010.

Cross References

Uniform Credentialing Act, see section 38-101.

28-340 Discrimination against person refusing to participate in an abortion; damages.

Any person whose employment or position has been in any way altered, impaired, or terminated in violation of sections 28-325 to 28-345 may sue in the

district court for all consequential damages, lost wages, reasonable attorney's fees incurred, and the cost of litigation.

Source: Laws 1977, LB 38, § 55; Laws 1997, LB 23, § 4; Laws 2010, LB594, § 15.
Effective date July 15, 2010.

(b) ADULT PROTECTIVE SERVICES ACT

28-376 Adult Protective Services Central Registry; established; access; name-change order; treatment.

(1) The department shall establish and maintain an Adult Protective Services Central Registry for recording each report of alleged abuse.

(2) Upon request, a vulnerable adult who is the subject of a report or, if the vulnerable adult is legally incapacitated, the guardian or guardian ad litem of the vulnerable adult shall be entitled to receive a copy of all information contained in the registry pertaining to his or her case. The department shall not release data that would be harmful or detrimental to the vulnerable adult or that would identify or locate a person who, in good faith, made a report or cooperated in a subsequent investigation unless ordered to do so by a court of competent jurisdiction.

(3) The department shall establish classifications for all cases in the registry. All cases determined to be unfounded shall be expunged from the registry.

(4) The department shall determine whether a name-change order received from the clerk of a district court pursuant to section 25-21,271 is for a person on the Adult Protective Services Central Registry and, if so, shall include the changed name with the former name in the registry and file or cross-reference the information under both names.

Source: Laws 1988, LB 463, § 29; Laws 2010, LB147, § 2.
Operative date January 1, 2012.

(e) PAIN-CAPABLE UNBORN CHILD PROTECTION ACT

28-3,102 Act, how cited.

Sections 28-3,102 to 28-3,111 shall be known and may be cited as the Pain-Capable Unborn Child Protection Act.

Source: Laws 2010, LB1103, § 1.
Operative date October 15, 2010.

28-3,103 Terms, defined.

For purposes of the Pain-Capable Unborn Child Protection Act:

(1) Abortion means the use or prescription of any instrument, medicine, drug, or other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead unborn child who died as the result of natural causes in utero, accidental trauma, or a criminal assault on the pregnant woman or her unborn child, and which causes the premature termination of the pregnancy;

(2) Attempt to perform or induce an abortion means an act, or an omission of a statutorily required act, that, under the circumstances as the actor believes

them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion in this state in violation of the Pain-Capable Unborn Child Protection Act;

(3) Fertilization means the fusion of a human spermatozoon with a human ovum;

(4) Medical emergency means a condition which, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function;

(5) Postfertilization age means the age of the unborn child as calculated from the fertilization of the human ovum;

(6) Reasonable medical judgment means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved;

(7) Physician means any person licensed to practice medicine and surgery or osteopathic medicine under the Uniform Credentialing Act;

(8) Probable postfertilization age of the unborn child means what, in reasonable medical judgment, will with reasonable probability be the postfertilization age of the unborn child at the time the abortion is planned to be performed;

(9) Unborn child or fetus each mean an individual organism of the species homo sapiens from fertilization until live birth; and

(10) Woman means a female human being whether or not she has reached the age of majority.

Source: Laws 2010, LB1103, § 2.
Operative date October 15, 2010.

Cross References

Uniform Credentialing Act, see section 38-101.

28-3,104 Legislative findings.

The Legislature makes the following findings:

(1) At least by twenty weeks after fertilization there is substantial evidence that an unborn child has the physical structures necessary to experience pain;

(2) There is substantial evidence that, by twenty weeks after fertilization, unborn children seek to evade certain stimuli in a manner which in an infant or an adult would be interpreted as a response to pain;

(3) Anesthesia is routinely administered to unborn children who have developed twenty weeks or more past fertilization who undergo prenatal surgery;

(4) Even before twenty weeks after fertilization, unborn children have been observed to exhibit hormonal stress responses to painful stimuli. Such responses were reduced when pain medication was administered directly to such unborn children; and

(5) It is the purpose of the State of Nebraska to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain.

Source: Laws 2010, LB1103, § 3.
Operative date October 15, 2010.

28-3,105 Determination of probable postfertilization age of unborn child; physician; duties.

(1) Except in the case of a medical emergency which prevents compliance with this section, no abortion shall be performed or induced or be attempted to be performed or induced unless the physician performing or inducing it has first made a determination of the probable postfertilization age of the unborn child or relied upon such a determination made by another physician. In making such a determination, a physician shall make such inquiries of the woman and perform or cause to be performed such medical examinations and tests as a reasonably prudent physician, knowledgeable about the case and the medical conditions involved, would consider necessary to perform in making an accurate diagnosis with respect to postfertilization age.

(2) Failure by any physician to conform to any requirement of this section constitutes unprofessional conduct pursuant to section 38-2021.

Source: Laws 2010, LB1103, § 4.
Operative date October 15, 2010.

28-3,106 Abortion; performance; restrictions.

No person shall perform or induce or attempt to perform or induce an abortion upon a woman when it has been determined, by the physician performing or inducing the abortion or by another physician upon whose determination that physician relies, that the probable postfertilization age of the woman's unborn child is twenty or more weeks unless, in reasonable medical judgment (1) she has a condition which so complicates her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function or (2) it is necessary to preserve the life of an unborn child. No such condition shall be deemed to exist if it is based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function. In such a case, the physician shall terminate the pregnancy in the manner which, in reasonable medical judgment, provides the best opportunity for the unborn child to survive, unless, in reasonable medical judgment, termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function of the woman than would another available method. No such greater risk shall be deemed to exist if it is based on a claim or diagnosis that the woman will engage in conduct which would result in her death or in substantial and irreversible physical impairment of a major bodily function.

Source: Laws 2010, LB1103, § 5.
Operative date October 15, 2010.

28-3,107 Report to Department of Health and Human Services; contents; department; issue public report; failure to file report; late fee; prohibited acts; penalty.

(1) Any physician who performs or induces or attempts to perform or induce an abortion shall report to the Department of Health and Human Services, on a schedule and in accordance with forms and rules and regulations adopted and promulgated by the department:

(a) If a determination of probable postfertilization age was made, the probable postfertilization age determined and the method and basis of the determination;

(b) If a determination of probable postfertilization age was not made, the basis of the determination that a medical emergency existed;

(c) If the probable postfertilization age was determined to be twenty or more weeks, the basis of the determination that the pregnant woman had a condition which so complicated her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, or the basis of the determination that it was necessary to preserve the life of an unborn child; and

(d) The method used for the abortion and, in the case of an abortion performed when the probable postfertilization age was determined to be twenty or more weeks, whether the method of abortion used was one that, in reasonable medical judgment, provided the best opportunity for the unborn child to survive or, if such a method was not used, the basis of the determination that termination of the pregnancy in that manner would pose a greater risk either of the death of the pregnant woman or of the substantial and irreversible physical impairment of a major bodily function of the woman than would other available methods.

(2) By June 30 of each year, the department shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this section for each of the items listed in subsection (1) of this section. Each such report shall also provide the statistics for all previous calendar years during which this section was in effect, adjusted to reflect any additional information from late or corrected reports. The department shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any pregnant woman upon whom an abortion was performed.

(3) Any physician who fails to submit a report by the end of thirty days following the due date shall be subject to a late fee of five hundred dollars for each additional thirty-day period or portion of a thirty-day period the report is overdue. Any physician required to report in accordance with the Pain-Capable Unborn Child Protection Act who has not submitted a report, or has submitted only an incomplete report, more than one year following the due date, may, in an action brought in the manner in which actions are brought to enforce the Uniform Credentialing Act pursuant to section 38-1,139, be directed by a court of competent jurisdiction to submit a complete report within a time period stated by court order or be subject to civil contempt. Failure by any physician to conform to any requirement of this section, other than late filing of a report, constitutes unprofessional conduct pursuant to section 38-2021. Failure by any physician to submit a complete report in accordance with a court order constitutes unprofessional conduct pursuant to section 38-2021. Intentional or

reckless falsification of any report required under this section is a Class V misdemeanor.

(4) Within ninety days after October 15, 2010, the department shall adopt and promulgate rules and regulations to assist in compliance with this section.

Source: Laws 2010, LB1103, § 6.
Operative date October 15, 2010.

Cross References

Uniform Credentialing Act, see section 38-101.

28-3,108 Prohibited abortion; penalty.

Any person who intentionally or recklessly performs or attempts to perform an abortion in violation of section 28-3,106 is guilty of a Class IV felony. No penalty shall be assessed against the woman upon whom the abortion is performed or attempted to be performed.

Source: Laws 2010, LB1103, § 7.
Operative date October 15, 2010.

28-3,109 Action for damages; action for injunctive relief; attorney's fees.

(1) Any woman upon whom an abortion has been performed in violation of the Pain-Capable Unborn Child Protection Act or the father of the unborn child who was the subject of such an abortion may maintain an action against the person who performed the abortion in an intentional or a reckless violation of the Pain-Capable Unborn Child Protection Act for actual damages. Any woman upon whom an abortion has been attempted in violation of the Pain-Capable Unborn Child Protection Act may maintain an action against the person who attempted to perform the abortion in an intentional or a reckless violation of the Pain-Capable Unborn Child Protection Act for actual damages.

(2) A cause of action for injunctive relief against any person who has intentionally violated the Pain-Capable Unborn Child Protection Act may be maintained by the woman upon whom an abortion was performed or attempted to be performed in violation of the Pain-Capable Unborn Child Protection Act, by any person who is the spouse, parent, sibling, or guardian of, or a current or former licensed health care provider of, the woman upon whom an abortion has been performed or attempted to be performed in violation of the Pain-Capable Unborn Child Protection Act, by a county attorney with appropriate jurisdiction, or by the Attorney General. The injunction shall prevent the abortion provider from performing further abortions in violation of the Pain-Capable Unborn Child Protection Act in this state.

(3) If judgment is rendered in favor of the plaintiff in an action described in this section, the court shall also render judgment for reasonable attorney's fees in favor of the plaintiff against the defendant.

(4) If judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall also render judgment for reasonable attorney's fees in favor of the defendant against the plaintiff.

(5) No damages or attorney's fees may be assessed against the woman upon whom an abortion was performed or attempted to be performed except as provided in subsection (4) of this section.

Source: Laws 2010, LB1103, § 8.
Operative date October 15, 2010.

28-3,110 Anonymity; court orders authorized.

In every civil or criminal proceeding or action brought under the Pain-Capable Unborn Child Protection Act, the court shall rule whether the anonymity of any woman upon whom an abortion has been performed or attempted shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or attempted, anyone, other than a public official, who brings an action under section 28-3,109 shall do so under a pseudonym. This section shall not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

Source: Laws 2010, LB1103, § 9.
Operative date October 15, 2010.

28-3,111 Severability.

If any one or more provisions, sections, subsections, sentences, clauses, phrases, or words of the Pain-Capable Unborn Child Protection Act or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of the Pain-Capable Unborn Child Protection Act shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed the Pain-Capable Unborn Child Protection Act, and each provision, section, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that any one or more provisions, sections, subsections, sentences, clauses, phrases, or words of the Pain-Capable Unborn Child Protection Act, or the application of the Pain-Capable Unborn Child Protection Act, would be declared unconstitutional.

Source: Laws 2010, LB1103, § 10.
Operative date October 15, 2010.

ARTICLE 4

DRUGS AND NARCOTICS

Section
28-401. Terms, defined.
28-405. Controlled substances; schedules; enumerated.
28-407. Registration required; exceptions.

Section
28-414. Controlled substance; prescription; transfer; destruction; requirements.
28-416. Prohibited acts; violations; penalties.
28-421. Act, exceptions.
28-429. Division of Drug Control; established; personnel; powers and duties; Nebraska State Patrol Drug Control and Education Cash Fund; created; use; investment; report; contents.
28-448. Repealed. Laws 2009, LB 151, § 5.
28-454. Repealed. Laws 2009, LB 151, § 5.
28-456. Phenylpropanolamine or pseudoephedrine; sold without a prescription; requirements; enforcement.
28-456.01. Pseudoephedrine or phenylpropanolamine; limitation on acquisition; violation; penalty.

28-401 Terms, defined.

As used in the Uniform Controlled Substances Act, unless the context otherwise requires:

(1) Administer shall mean to directly apply a controlled substance by injection, inhalation, ingestion, or any other means to the body of a patient or research subject;

(2) Agent shall mean an authorized person who acts on behalf of or at the direction of another person but shall not include a common or contract carrier, public warehouse keeper, or employee of a carrier or warehouse keeper;

(3) Administration shall mean the Drug Enforcement Administration, United States Department of Justice;

(4) Controlled substance shall mean a drug, biological, substance, or immediate precursor in Schedules I to V of section 28-405. Controlled substance shall not include distilled spirits, wine, malt beverages, tobacco, or any nonnarcotic substance if such substance may, under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as such act existed on January 1, 2009, and the law of this state, be lawfully sold over the counter without a prescription;

(5) Counterfeit substance shall mean a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser;

(6) Department shall mean the Department of Health and Human Services;

(7) Division of Drug Control shall mean the personnel of the Nebraska State Patrol who are assigned to enforce the Uniform Controlled Substances Act;

(8) Dispense shall mean to deliver a controlled substance to an ultimate user or a research subject pursuant to a medical order issued by a practitioner authorized to prescribe, including the packaging, labeling, or compounding necessary to prepare the controlled substance for such delivery;

(9) Distribute shall mean to deliver other than by administering or dispensing a controlled substance;

(10) Prescribe shall mean to issue a medical order;

(11) Drug shall mean (a) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States,

official National Formulary, or any supplement to any of them, (b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or animals, and (c) substances intended for use as a component of any article specified in subdivision (a) or (b) of this subdivision, but shall not include devices or their components, parts, or accessories;

(12) Deliver or delivery shall mean the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship;

(13) Marijuana shall mean all parts of the plant of the genus cannabis, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds, but shall not include the mature stalks of such plant, hashish, tetrahydrocannabinols extracted or isolated from the plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, or the sterilized seed of such plant which is incapable of germination. When the weight of marijuana is referred to in the Uniform Controlled Substances Act, it shall mean its weight at or about the time it is seized or otherwise comes into the possession of law enforcement authorities, whether cured or uncured at that time;

(14) Manufacture shall mean the production, preparation, propagation, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and shall include any packaging or repackaging of the substance or labeling or relabeling of its container. Manufacture shall not include the preparation or compounding of a controlled substance by an individual for his or her own use, except for the preparation or compounding of components or ingredients used for or intended to be used for the manufacture of methamphetamine, or the preparation, compounding, conversion, packaging, or labeling of a controlled substance: (a) By a practitioner as an incident to his or her prescribing, administering, or dispensing of a controlled substance in the course of his or her professional practice; or (b) by a practitioner, or by his or her authorized agent under his or her supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale;

(15) Narcotic drug shall mean any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: (a) Opium, opium poppy and poppy straw, coca leaves, and opiates; (b) a compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates; or (c) a substance and any compound, manufacture, salt, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivisions (a) and (b) of this subdivision, except that the words narcotic drug as used in the Uniform Controlled Substances Act shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine, or isoquinoline alkaloids of opium;

(16) Opiate shall mean any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. Opiate

shall not include the dextrorotatory isomer of 3-methoxy-n methylmorphinan and its salts. Opiate shall include its racemic and levorotatory forms;

(17) Opium poppy shall mean the plant of the species Papaver somniferum L., except the seeds thereof;

(18) Poppy straw shall mean all parts, except the seeds, of the opium poppy after mowing;

(19) Person shall mean any corporation, association, partnership, limited liability company, or one or more individuals;

(20) Practitioner shall mean a physician, a physician assistant, a dentist, a veterinarian, a pharmacist, a podiatrist, an optometrist, a certified nurse midwife, a certified registered nurse anesthetist, a nurse practitioner, a scientific investigator, a pharmacy, a hospital, or any other person licensed, registered, or otherwise permitted to distribute, dispense, prescribe, conduct research with respect to, or administer a controlled substance in the course of practice or research in this state, including an emergency medical service as defined in section 38-1207;

(21) Production shall include the manufacture, planting, cultivation, or harvesting of a controlled substance;

(22) Immediate precursor shall mean a substance which is the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit such manufacture;

(23) State shall mean the State of Nebraska;

(24) Ultimate user shall mean a person who lawfully possesses a controlled substance for his or her own use, for the use of a member of his or her household, or for administration to an animal owned by him or her or by a member of his or her household;

(25) Hospital shall have the same meaning as in section 71-419;

(26) Cooperating individual shall mean any person, other than a commissioned law enforcement officer, who acts on behalf of, at the request of, or as agent for a law enforcement agency for the purpose of gathering or obtaining evidence of offenses punishable under the Uniform Controlled Substances Act;

(27) Hashish or concentrated cannabis shall mean: (a) The separated resin, whether crude or purified, obtained from a plant of the genus cannabis; or (b) any material, preparation, mixture, compound, or other substance which contains ten percent or more by weight of tetrahydrocannabinols;

(28) Exceptionally hazardous drug shall mean (a) a narcotic drug, (b) thiophene analog of phencyclidine, (c) phencyclidine, (d) amobarbital, (e) secobarbital, (f) pentobarbital, (g) amphetamine, or (h) methamphetamine;

(29) Imitation controlled substance shall mean a substance which is not a controlled substance but which, by way of express or implied representations and consideration of other relevant factors including those specified in section 28-445, would lead a reasonable person to believe the substance is a controlled substance. A placebo or registered investigational drug manufactured, distributed, possessed, or delivered in the ordinary course of practice or research by a health care professional shall not be deemed to be an imitation controlled substance;

(30)(a) Controlled substance analogue shall mean a substance (i) the chemical structure of which is substantially similar to the chemical structure of a Schedule I or Schedule II controlled substance as provided in section 28-405 or (ii) which has a stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system of a Schedule I or Schedule II controlled substance as provided in section 28-405. A controlled substance analogue shall, to the extent intended for human consumption, be treated as a controlled substance under Schedule I of section 28-405 for purposes of the Uniform Controlled Substances Act; and

(b) Controlled substance analogue shall not include (i) a controlled substance, (ii) any substance generally recognized as safe and effective within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as such act existed on January 1, 2009, (iii) any substance for which there is an approved new drug application, or (iv) with respect to a particular person, any substance if an exemption is in effect for investigational use for that person, under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355, as such section existed on January 1, 2009, to the extent conduct with respect to such substance is pursuant to such exemption;

(31) Anabolic steroid shall mean any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids), that promotes muscle growth and includes any controlled substance in Schedule III(d) of section 28-405. Anabolic steroid shall not include any anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and has been approved by the Secretary of Health and Human Services for such administration, but if any person prescribes, dispenses, or distributes such a steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subdivision;

(32) Chart order shall mean an order for a controlled substance issued by a practitioner for a patient who is in the hospital where the chart is stored or for a patient receiving detoxification treatment or maintenance treatment pursuant to section 28-412. Chart order shall not include a prescription;

(33) Medical order shall mean a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner;

(34) Prescription shall mean an order for a controlled substance issued by a practitioner. Prescription shall not include a chart order;

(35) Registrant shall mean any person who has a controlled substances registration issued by the state or the administration;

(36) Reverse distributor shall mean a person whose primary function is to act as an agent for a pharmacy, wholesaler, manufacturer, or other entity by receiving, inventorying, and managing the disposition of outdated, expired, or otherwise nonsaleable controlled substances;

(37) Signature shall mean the name, word, or mark of a person written in his or her own hand with the intent to authenticate a writing or other form of communication or a digital signature which complies with section 86-611 or an electronic signature;

(38) Facsimile shall mean a copy generated by a system that encodes a document or photograph into electrical signals, transmits those signals over

telecommunications lines, and reconstructs the signals to create an exact duplicate of the original document at the receiving end;

(39) Electronic signature shall have the definition found in section 86-621;

(40) Electronic transmission shall mean transmission of information in electronic form. Electronic transmission may include computer-to-computer transmission or computer-to-facsimile transmission; and

(41) Long-term care facility shall mean an intermediate care facility, an intermediate care facility for the mentally retarded, a long-term care hospital, a mental health center, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act.

Source: Laws 1977, LB 38, § 61; Laws 1978, LB 276, § 1; Laws 1980, LB 696, § 1; Laws 1985, LB 323, § 1; Laws 1985, LB 406, § 2; Laws 1988, LB 537, § 1; Laws 1988, LB 273, § 3; Laws 1992, LB 1019, § 30; Laws 1993, LB 121, § 175; Laws 1996, LB 1044, § 68; Laws 1996, LB 1108, § 1; Laws 1997, LB 307, § 3; Laws 1999, LB 379, § 1; Laws 2001, LB 398, § 1; Laws 2002, LB 1105, § 428; Laws 2003, LB 200, § 1; Laws 2005, LB 117, § 1; Laws 2005, LB 256, § 16; Laws 2005, LB 382, § 1; Laws 2007, LB247, § 1; Laws 2007, LB296, § 35; Laws 2007, LB463, § 1119; Laws 2009, LB195, § 1.

Cross References

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

28-405 Controlled substances; schedules; enumerated.

The following are the schedules of controlled substances referred to in the Uniform Controlled Substances Act:

Schedule I

(a) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetylmethadol;

(2) Allylprodine;

(3) Alphacetylmethadol, except levo-alphacetylmethadol which is also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM;

(4) Alphameprodine;

(5) Alphamethadol;

(6) Benzethidine;

(7) Betacetylmethadol;

(8) Betameprodine;

(9) Betamethadol;

(10) Betaprodine;

(11) Clonitazene;

(12) Dextromoramide;

(13) Difenoxin;

(14) Diampromide;

(15) Diethylthiambutene;

(16) Dimenoxadol;

(17) Dimepheptanol;

(18) Dimethylthiambutene;

(19) Dioxaphetyl butyrate;

(20) Dipipanone;

(21) Ethylmethylthiambutene;

(22) Etonitazene;

(23) Etoxeridine;

(24) Furethidine;

(25) Hydroxypethidine;

(26) Ketobemidone;

(27) Levomoramide;

(28) Levophenacylmorphan;

(29) Morpheridine;

(30) Noracymethadol;

(31) Norlevorphanol;

(32) Normethadone;

(33) Norpipanone;

(34) Phenadoxone;

(35) Phenampromide;

(36) Phenomorphan;

(37) Phenoperidine;

(38) Piritramide;

(39) Proheptazine;

(40) Properidine;

(41) Propiram;

(42) Racemoramide;

(43) Trimeperidine;

(44) Alpha-methylfentanyl, N-(1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl) propionanilide, 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine;

(45) Tilidine;

(46) 3-Methylfentanyl, N-(3-methyl-1-(2-phenylethyl)-4-piperidyl)-N-phenyl-propanamide, its optical and geometric isomers, salts, and salts of isomers;

(47) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP), its optical isomers, salts, and salts of isomers;

(48) PEPAP, 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine, its optical isomers, salts, and salts of isomers;

(49) Acetyl-alpha-methylfentanyl, N-(1-(1-methyl-2-phenethyl)-4-piperidinyl)-N-phenylacetamide, its optical isomers, salts, and salts of isomers;

(50) Alpha-methylthiofentanyl, N-(1-methyl-2-(2-thienyl)ethyl-4-piperidinyl)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;

(51) Benzylfentanyl, N-(1-benzyl-4-piperidyl)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;

(52) Beta-hydroxyfentanyl, N-(1-(2-hydroxy-2-phenethyl)-4-piperidinyl)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;

(53) Beta-hydroxy-3-methylfentanyl, (other name: N-(1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl)-N-phenylpropanamide), its optical and geometric isomers, salts, and salts of isomers;

(54) 3-methylthiofentanyl, N-(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl)-N-phenylpropanamide, its optical and geometric isomers, salts, and salts of isomers;

(55) N-(1-(2-thienyl)methyl-4-piperidyl)-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts, and salts of isomers;

(56) Thiofentanyl, N-phenyl-N-(1-(2-thienyl)ethyl-4-piperidinyl)-propanamide, its optical isomers, salts, and salts of isomers; and

(57) Para-fluorofentanyl, N-(4-fluorophenyl)-N-(1-(2-phenethyl)-4-piperidinyl)propanamide, its optical isomers, salts, and salts of isomers.

(b) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;

(2) Acetyldihydrocodeine;

(3) Benzylmorphine;

(4) Codeine methylbromide;

(5) Codeine-N-Oxide;

(6) Cyprenorphine;

(7) Desomorphine;

(8) Dihydromorphine;

(9) Drotebanol;

(10) Etorphine, except hydrochloride salt;

(11) Heroin;

(12) Hydromorphinol;

(13) Methyldesorphine;

(14) Methyldihydromorphine;

(15) Morphine methylbromide;

(16) Morphine methylsulfonate;

(17) Morphine-N-Oxide;

(18) Myrophine;

(19) Nicocodeine;

(20) Nicomorphine;

(21) Normorphine;

(22) Pholcodine; and

(23) Thebacon.

(c) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, and, for purposes of this subdivision only, isomer shall include the optical, position, and geometric isomers:

(1) Bufotenine. Trade and other names shall include, but are not limited to: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; and mappine;

(2) Diethyltryptamine. Trade and other names shall include, but are not limited to: N,N-Diethyltryptamine; and DET;

(3) Dimethyltryptamine. Trade and other names shall include, but are not limited to: DMT;

(4) 4-bromo-2,5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; and 4-bromo-2,5-DMA;

(5) 4-methoxyamphetamine. Trade and other names shall include, but are not limited to: 4-methoxy-alpha-methylphenethylamine; and paramethoxyamphetamine, PMA;

(6) 4-methyl-2,5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; DOM; and STP;

(7) 5-methoxy-N,N-dimethyltryptamine;

(8) Ibogaine. Trade and other names shall include, but are not limited to: 7-Ethyl-6,6beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido (1',2':1,2) azepino (5,4-b) indole; and Tabernanthe iboga;

(9) Lysergic acid diethylamide;

(10) Marijuana;

(11) Mescaline;

(12) Peyote. Peyote shall mean all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant or its seeds or extracts;

(13) Psilocybin;

(14) Psilocyn;

(15) Tetrahydrocannabinols, including, but not limited to, synthetic equivalents of the substances contained in the plant or in the resinous extractives of cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Delta 1 cis or trans tetrahydrocannabinol and their optical isomers, excluding dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the federal Food and Drug Administration; Delta 6 cis or trans tetrahydrocannabinol and their optical isomers; and Delta 3,4 cis or trans tetrahydrocannabinol and its optical isomers. Since nomenclature of these substances is not internationally standardized, compounds of these structures shall be included regardless of the numerical designation of atomic positions covered;

(16) 3,4-methylenedioxy amphetamine;

(17) 5-methoxy-3,4-methylenedioxy-amphetamine;

(18) 3,4,5-trimethoxy amphetamine;

(19) N-ethyl-3-piperidyl benzilate;

(20) N-methyl-3-piperidyl benzilate;

(21) Thiophene analog of phencyclidine. Trade and other names shall include, but are not limited to: 1-(1-(2-thienyl)-cyclohexyl)-piperidine; 2-thienyl analog of phencyclidine; TPCP; and TCP;

(22) 2,5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 2,5-dimethoxy-alpha-methylphenethylamine; and 2,5-DMA;

(23) Hashish or concentrated cannabis;

(24) Parahexyl. Trade and other names shall include, but are not limited to: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo(b,d)pyran; and Synhexyl;

(25) Ethylamine analog of phencyclidine. Trade and other names shall include, but are not limited to: N-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl)ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; and PCE;

(26) Pyrrolidine analog of phencyclidine. Trade and other names shall include, but are not limited to: 1-(1-phenylcyclohexyl)-pyrrolidine; PCPy; and PHP;

(27) 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional, and geometric isomers, salts, and salts of isomers;

(28) 4-Bromo-2,5-dimethoxyphenethylamine. Some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B; and Nexus;

(29) Alpha-ethyltryptamine. Some trade or other names: etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; and AET;

(30) 2,5-dimethoxy-4-ethylamphet-amine; and DOET;

(31) 1-(1-(2-thienyl)cyclohexyl)pyrrolidine; and TCPy;

(32) Alpha-methyltryptamine, which is also known as AMT;

(33) 5-Methoxy-N,N-diisopropyltryptamine, which is also known as 5-MeO-DIPT; and

(34) Salvia divinorum or Salvinorin A. Salvia divinorum or Salvinorin A includes all parts of the plant presently classified botanically as Salvia divinorum, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, derivative, mixture, or preparation of such plant, its seeds, or its extracts, including salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone;

(2) Methaqualone; and

(3) Gamma-Hydroxybutyric Acid. Some other names include: GHB; Gamma-hydroxybutyrate; 4-Hydroxybutyrate; 4-Hydroxybutanoic Acid; Sodium Oxybate; and Sodium Oxybutyrate.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Fenethylline;

(2) N-ethylamphetamine;

(3) Aminorex; aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine;

(4) Cathinone; 2-amino-1-phenyl-1-propanone; alpha-aminopropiophenone; 2-aminopropiophenone; and norephedrone;

(5) Methcathinone, its salts, optical isomers, and salts of optical isomers. Some other names: 2-(methylamino)-propiophenone; alpha-(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; methylcathinone; monomethylpropion; ephedrone; N-methylcathinone; AL-464; AL-422; AL-463; and UR1432;

(6) (+/-)cis-4-methylaminorex; and (+/-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine;

(7) N,N-dimethylamphetamine; N,N-alpha-trimethyl-benzeneethanamine; and N,N-alpha-trimethylphenethylamine; and

(8) Benzylpiperazine, 1-benzylpiperazine.

(f) Any controlled substance analogue to the extent intended for human consumption.

Schedule II

(a) Any of the following substances except those narcotic drugs listed in other schedules whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, buprenorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone and their salts, but including the following:

(i) Raw opium;

(ii) Opium extracts;

(iii) Opium fluid;

(iv) Powdered opium;

(v) Granulated opium;

(vi) Tincture of opium;

(vii) Codeine;

(viii) Ethylmorphine;

(ix) Etorphine hydrochloride;

(x) Hydrocodone;

(xi) Hydromorphone;

(xii) Metopon;

(xiii) Morphine;

(xiv) Oxycodone;

(xv) Oxymorphone;

(xvi) Oripavine;

(xvii) Thebaine; and

(xviii) Dihydroetorphine;

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivision (1) of this subdivision, except that these substances shall not include the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of these substances, including cocaine and its salts, optical isomers, and salts of optical isomers, except that the substances shall not include decocainized coca leaves or extractions which do not contain cocaine or ecgonine; and

(5) Concentrate of poppy straw, the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy.

(b) Unless specifically excepted or unless in another schedule any of the following opiates, including their isomers, esters, ethers, salts, and salts of their isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan excepted:

(1) Alphaprodine;

(2) Anileridine;

(3) Bezitramide;

(4) Diphenoxylate;

(5) Fentanyl;

(6) Isomethadone;

(7) Levomethorphan;

(8) Levorphanol;

(9) Metazocine;

(10) Methadone;

(11) Methadone-intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane;

(12) Moramide-intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid;

(13) Pethidine or meperidine;

(14) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

(15) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

(16) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

(17) Phenazocine;

(18) Piminodine;

(19) Racemethorphan;

(20) Racemorphan;

(21) Dihydrocodeine;

(22) Bulk Propoxyphene in nondosage forms;

(23) Sufentanil;

(24) Alfentanil;

(25) Levo-alphacetylmethadol which is also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM;

(26) Carfentanil;

(27) Remifentanil; and

(28) Tapentadol.

(c) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(2) Phenmetrazine and its salts;

(3) Methamphetamine, its salts, isomers, and salts of its isomers; and

(4) Methylphenidate.

(d) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designations:

(1) Amobarbital;

(2) Secobarbital;

(3) Pentobarbital;

(4) Phencyclidine; and

(5) Glutethimide.

(e) Hallucinogenic substances known as:

(1) Nabilone. Another name for nabilone: (+/-)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-Hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo(b,d)pyran-9-one.

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine: Phenylacetone. Trade and other names shall include, but are not limited to: Phenyl-2-propanone; P2P; benzyl methyl ketone; and methyl benzyl ketone; or

(2) Immediate precursors to phencyclidine, PCP:

(i) 1-phenylcyclohexylamine; or

(ii) 1-piperidinocyclohexanecarbonitrile, PCC.

Schedule III

(a) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system, including their salts, isomers, whether optical, position, or geometric, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Benzphetamine;

(2) Chlorphentermine;

(3) Clortermine; and

(4) Phendimetrazine.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Any substance which contains any quantity of a derivative of barbituric acid or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules of this section;

(2) Chlorhexadol;

(3) Lysergic acid;

(4) Lysergic acid amide;

(5) Methyprylon;

(6) Sulfondiethylmethane;

(7) Sulfonethylmethane;

(8) Sulfonmethane;

(9) Nalorphine;

(10) Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule;

(11) Any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository;

(12) Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355, as such section existed on July 20, 2002;

(13) Ketamine, its salts, isomers, and salts of isomers. Some other names for ketamine: (+/-)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone; and

(14) Tiletamine and zolazepam or any salt thereof. Trade or other names for a tiletamine-zolazepam combination product shall include, but are not limited to: telazol. Trade or other names for tiletamine shall include, but are not limited to: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Trade or other names for zolazepam shall include, but are not limited to: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-(3,4-e) (1,4)-diazepin-7(1H)-one, and flupyrazapon.

(c) Unless specifically excepted or unless listed in another schedule:

(1) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(i) Not more than one and eight-tenths grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(ii) Not more than one and eight-tenths grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(iii) Not more than three hundred milligrams of dihydrocodeinone which is also known as hydrocodone per one hundred milliliters or not more than fifteen milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(iv) Not more than three hundred milligrams of dihydrocodeinone which is also known as hydrocodone per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(v) Not more than one and eight-tenths grams of dihydrocodeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(vi) Not more than three hundred milligrams of ethylmorphine per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(vii) Not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams, or not more than twenty-five milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(viii) Not more than fifty milligrams of morphine per one hundred milliliters or per one hundred grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(2) Any material, compound, mixture, or preparation containing any of the following narcotic drug or its salts, as set forth below:

(i) Buprenorphine.

(d) Unless contained on the administration's list of exempt anabolic steroids as the list existed on June 1, 2007, any anabolic steroid, which shall include any material, compound, mixture, or preparation containing any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts of isomers is possible within the specific chemical designation:

(1) Boldenone;

(2) Boldione;

(3) Chlorotestosterone (4-chlortestosterone);

(4) Clostebol;

(5) Dehydrochloromethyltestosterone;

(6) Desoxymethyltestosterone;

(7) Dihydrotestosterone (4-dihydrotestosterone);

(8) Drostanolone;

(9) Ethylestrenol;

(10) Fluoxymesterone;

(11) Formebulone (formebolone);

(12) Mesterolone;

(13) Methandienone;

(14) Methandranone;

(15) Methandriol;

(16) Methandrostenolone;

(17) Methenolone;

(18) Methyltestosterone;

(19) Mibolerone;

(20) Nandrolone;

(21) Norethandrolone;

(22) Oxandrolone;

(23) Oxymesterone;

(24) Oxymetholone;

(25) Stanolone;

(26) Stanozolol;

(27) Testolactone;

(28) Testosterone;

(29) Trenbolone;

(30) 19-nor-4,9(10)-androstadienedione; and

(31) Any salt, ester, or ether of a drug or substance described or listed in this subdivision if the salt, ester, or ether promotes muscle growth.

(e) Hallucinogenic substances known as:

(1) Dronabinol, synthetic, in sesame oil and encapsulated in a soft gelatin capsule in a Food and Drug Administration approved drug product. Some other names for dronabinol are (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo (b,d)pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol.

Schedule IV

(a) Any material, compound, mixture, or preparation which contains any quantity of the following substances, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Barbital;

(2) Chloral betaine;

(3) Chloral hydrate;

(4) Chlordiazepoxide, but not including librax (chlordiazepoxide hydrochloride and clindinium bromide) or menrium (chlordiazepoxide and water soluble esterified estrogens);

(5) Clonazepam;

(6) Clorazepate;

(7) Diazepam;
(8) Ethchlorvynol;
(9) Ethinamate;
(10) Flurazepam;
(11) Mebutamate;
(12) Meprobamate;
(13) Methohexital;
(14) Methylphenobarbital;
(15) Oxazepam;
(16) Paraldehyde;
(17) Petrichloral;
(18) Phenobarbital;
(19) Prazepam;
(20) Alprazolam;
(21) Bromazepam;
(22) Camazepam;
(23) Clobazam;
(24) Clotiazepam;
(25) Cloxazolam;
(26) Delorazepam;
(27) Estazolam;
(28) Ethyl loflazepate;
(29) Fludiazepam;
(30) Flunitrazepam;
(31) Halazepam;
(32) Haloxazolam;
(33) Ketazolam;
(34) Loprazolam;
(35) Lorazepam;
(36) Lormetazepam;
(37) Medazepam;
(38) Nimetazepam;
(39) Nitrazepam;
(40) Nordiazepam;
(41) Oxazolam;
(42) Pinazepam;
(43) Temazepam;
(44) Tetrazepam;
(45) Triazolam;
(46) Midazolam;
(47) Quazepam;

(48) Zolpidem;

(49) Dichloralphenazone; and

(50) Zaleplon.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, isomers, whether optical, position, or geometric, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, whether optical, position, or geometric, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Diethylpropion;

(2) Phentermine;

(3) Pemoline, including organometallic complexes and chelates thereof;

(4) Mazindol;

(5) Pipradrol;

(6) SPA, ((-)-1-dimethylamino- 1,2-diphenylethane);

(7) Cathine. Another name for cathine is ((+)-norpseudoephedrine);

(8) Fencamfamin;

(9) Fenproporex;

(10) Mefenorex;

(11) Modafinil; and

(12) Sibutramine.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following narcotic drugs, or their salts or isomers calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Propoxyphene in manufactured dosage forms; and

(2) Not more than one milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts: Pentazocine.

(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, isomers, and salts of such isomers: Butorphanol.

(g)(1) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, optical isomers, and salts of such optical isomers: Ephedrine.

(2) The following drug products containing ephedrine, its salts, optical isomers, and salts of such optical isomers, are excepted from subdivision (g)(1) of Schedule IV if they (A) are stored behind a counter, in an area not accessible

to customers, or in a locked case so that a customer needs assistance from an employee to access the drug product; (B) are sold by a person, eighteen years of age or older, in the course of his or her employment to a customer eighteen years of age or older with the following restrictions: No customer shall be allowed to purchase, receive, or otherwise acquire more than three and six-tenths grams of ephedrine base during a twenty-four-hour period; no customer shall purchase, receive, or otherwise acquire more than nine grams of ephedrine base during a thirty-day period; and the customer shall display a valid driver's or operator's license, a Nebraska state identification card, a military identification card, an alien registration card, or a passport as proof of identification; (C) are labeled and marketed in a manner consistent with the pertinent OTC Tentative Final or Final Monograph; (D) are manufactured and distributed for legitimate medicinal use in a manner that reduces or eliminates the likelihood of abuse; and (E) are not marketed, advertised, or represented in any manner for the indication of stimulation, mental alertness, euphoria, ecstasy, a buzz or high, heightened sexual performance, or increased muscle mass:

(i) Primatene Tablets;

(ii) Bronkaid Dual Action Caplets; and

(iii) Pazo Hemorrhoidal Ointment.

Schedule V

(a) Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs or salts calculated as the free anhydrous base or alkaloid, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than two hundred milligrams of codeine per one hundred milliliters or per one hundred grams;

(2) Not more than one hundred milligrams of dihydrocodeine per one hundred milliliters or per one hundred grams;

(3) Not more than one hundred milligrams of ethylmorphine per one hundred milliliters or per one hundred grams;

(4) Not more than two and five-tenths milligrams of diphenoxylate and not less than twenty-five micrograms of atropine sulfate per dosage unit;

(5) Not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams; and

(6) Not more than five-tenths milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

(b) Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers: Pyrovalerone.

Source: Laws 1977, LB 38, § 65; Laws 1978, LB 748, § 50; Laws 1980, LB 696, § 2; Laws 1985, LB 323, § 2; Laws 1985, LB 406, § 3; Laws 1986, LB 1160, § 1; Laws 1987, LB 473, § 1; Laws 1990, LB 571, § 6; Laws 1992, LB 1019, § 32; Laws 1994, LB 1210, § 3; Laws 1995, LB 406, § 5; Laws 1996, LB 1213, § 4; Laws

1998, LB 1073, § 8; Laws 1999, LB 594, § 1; Laws 2000, LB 1115, § 2; Laws 2001, LB 113, § 10; Laws 2002, LB 500, § 1; Laws 2003, LB 245, § 1; Laws 2005, LB 382, § 2; Laws 2007, LB247, § 2; Laws 2008, LB902, § 1; Laws 2009, LB123, § 1; Laws 2009, LB151, § 1; Laws 2010, LB792, § 1.
Effective date July 15, 2010.

28-407 Registration required; exceptions.

(1) Except as otherwise provided in this section, every person who manufactures, prescribes, distributes, administers, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, prescribing, administering, distribution, or dispensing of any controlled substance within this state shall obtain a registration issued by the department, except that on and after January 1, 2000, health care providers credentialed by the department and facilities licensed by the department shall not be required to obtain a separate Nebraska controlled substances registration upon providing proof of a Federal Controlled Substances Registration to the department. Federal Controlled Substances Registration numbers obtained under this section shall not be public information but may be shared by the department for investigative and regulatory purposes if necessary and only under appropriate circumstances to ensure against any unauthorized access to such information.

(2) The following persons shall not be required to register and may lawfully possess controlled substances under the provisions of the Uniform Controlled Substances Act:

(a) An agent, or an employee thereof, of any practitioner, registered manufacturer, distributor, or dispenser of any controlled substance if such agent is acting in the usual course of his or her business or employment;

(b) A common or contract carrier or warehouse keeper, or an employee thereof, whose possession of any controlled substance is in the usual course of his or her business or employment; and

(c) An ultimate user or a person in possession of any controlled substance pursuant to a medical order issued by a practitioner authorized to prescribe.

(3) A separate registration shall be required at each principal place of business of professional practice where the applicant manufactures, distributes, or dispenses controlled substances, except that no registration shall be required in connection with the placement of an emergency box within a long-term care facility pursuant to the provisions of the Emergency Box Drug Act.

(4) The department is authorized to inspect the establishment of a registrant or applicant for registration in accordance with the rules and regulations promulgated.

Source: Laws 1977, LB 38, § 67; Laws 1994, LB 1210, § 4; Laws 1997, LB 307, § 5; Laws 1997, LB 550, § 2; Laws 1999, LB 828, § 1; Laws 2001, LB 398, § 5; Laws 2009, LB195, § 2.

Cross References

Emergency Box Drug Act, see section 71-2410.

28-414 Controlled substance; prescription; transfer; destruction; requirements.

(1)(a) Except as otherwise provided in this subsection or section 28-412 or when administered directly by a practitioner to an ultimate user, a controlled substance listed in Schedule II of section 28-405 shall not be dispensed without the written prescription bearing the signature of a practitioner authorized to prescribe. No prescription for a controlled substance listed in Schedule II of section 28-405 shall be filled more than six months from the date of issuance. A prescription for a controlled substance listed in Schedule II of section 28-405 shall not be refilled.

(b) In emergency situations as defined by rule and regulation of the department, a controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed prescription bearing the word ''emergency'' or pursuant to an oral prescription reduced to writing in accordance with subdivision (3)(b) of this section, except for the prescribing practitioner's signature, and bearing the word ''emergency''.

(c) In nonemergency situations:

(i) A controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed prescription if the original written, signed prescription is presented to the pharmacist for review before the controlled substance is dispensed, except as provided in subdivision (1)(c)(ii) or (1)(c)(iii) of this section;

(ii) A narcotic drug listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed prescription (A) to be compounded for direct parenteral administration to a patient for the purpose of home infusion therapy or (B) for administration to a patient enrolled in a hospice care program and bearing the words ''hospice patient'';

(iii) A controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed prescription for administration to a resident of a long-term care facility; and

(iv) For purposes of subdivisions (1)(c)(ii) and (1)(c)(iii) of this section, a facsimile of a written, signed prescription shall serve as the original written prescription and shall be maintained in accordance with subdivision (3)(a) of this section.

(d)(i) A prescription for a controlled substance listed in Schedule II of section 28-405 may be partially filled if the pharmacist does not supply the full quantity prescribed and he or she makes a notation of the quantity supplied on the face of the prescription. The remaining portion of the prescription may be filled within seventy-two hours of the first partial filling. The pharmacist shall notify the prescribing practitioner if the remaining portion of the prescription is not or cannot be filled within such period. No further quantity may be supplied after such period without a new written, signed prescription.

(ii) A prescription for a controlled substance listed in Schedule II of section 28-405 written for a patient in a long-term care facility or for a patient with a medical diagnosis documenting a terminal illness may be partially filled. Such prescription shall bear the words ''terminally ill'' or ''long-term care facility patient'' on its face. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the prescribing practitioner prior to partially filling the prescription. Both the pharmacist and the prescribing practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient. For each partial filling, the dispensing pharmacist shall record on the back of the prescription or on

another appropriate record, uniformly maintained and readily retrievable, the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist. The total quantity of controlled substances listed in Schedule II which is dispensed in all partial fillings shall not exceed the total quantity prescribed. A prescription for a Schedule II controlled substance for a patient in a long-term care facility or a patient with a medical diagnosis documenting a terminal illness is valid for sixty days from the date of issuance or until discontinuance of the prescription, whichever occurs first.

(2)(a) Except as otherwise provided in this subsection or when administered directly by a practitioner to an ultimate user, a controlled substance listed in Schedule III, IV, or V of section 28-405 shall not be dispensed without a written or oral medical order. Such medical order is valid for six months after the date of issuance. Authorization from a practitioner authorized to prescribe is required to refill a prescription for a controlled substance listed in Schedule III, IV, or V of section 28-405. Such prescriptions shall not be refilled more than five times within six months after the date of issuance. Original prescription information for any controlled substance listed in Schedule III, IV, or V of section 28-405 may be transferred between pharmacies for purposes of refill dispensing pursuant to section 38-2871.

(b) A controlled substance listed in Schedule III, IV, or V of section 28-405 may be dispensed pursuant to a facsimile of a written, signed prescription. The facsimile of a written, signed prescription shall serve as the original written prescription for purposes of this subsection and shall be maintained in accordance with the provisions of subdivision (3)(c) of this section.

(c) A prescription for a controlled substance listed in Schedule III, IV, or V of section 28-405 may be partially filled if (i) each partial filling is recorded in the same manner as a refilling, (ii) the total quantity dispensed in all partial fillings does not exceed the total quantity prescribed, and (iii) each partial filling is dispensed within six months after the prescription was issued.

(3)(a) Prescriptions for all controlled substances listed in Schedule II of section 28-405 shall be kept in a separate file by the dispensing practitioner and shall be maintained for a minimum of five years. The practitioner shall make all such files readily available to the department and law enforcement for inspection without a search warrant.

(b) All prescriptions for controlled substances listed in Schedule II of section 28-405 shall contain the name and address of the patient, the name and address of the prescribing practitioner, the Drug Enforcement Administration number of the prescribing practitioner, the date of issuance, and the prescribing practitioner's signature. The practitioner filling such prescription shall write the date of filling and his or her own signature on the face of the prescription. If the prescription is for an animal, it shall also state the name and address of the owner of the animal and the species of the animal.

(c) Prescriptions for all controlled substances listed in Schedule III, IV, or V of section 28-405 shall be maintained either separately from other prescriptions or in a form in which the information required is readily retrievable from ordinary business records of the dispensing practitioner and shall be maintained for a minimum of five years. The practitioner shall make all such records readily available to the department and law enforcement for inspection without a search warrant.

(d) All prescriptions for controlled substances listed in Schedule III, IV, or V of section 28-405 shall contain the name and address of the patient, the name and address of the prescribing practitioner, the Drug Enforcement Administration number of the prescribing practitioner, the date of issuance, and for written prescriptions, the prescribing practitioner's signature. If the prescription is for an animal, it shall also state the owner's name and address and species of the animal.

(e) A registrant who is the owner of a controlled substance may transfer:

(i) Any controlled substance listed in Schedule I or II of section 28-405 to another registrant as provided by law or by rule and regulation of the department; and

(ii) Any controlled substance listed in Schedule III, IV, or V of section 28-405 to another registrant if such owner complies with subsection (4) of section 28-411.

(f)(i) The owner of any stock of controlled substances may cause such controlled substances to be destroyed pursuant to this subdivision when the need for such substances ceases. Complete records of controlled substances destruction pursuant to this subdivision shall be maintained by the registrant for five years from the date of destruction.

(ii) When the owner is a registrant:

(A) Controlled substances listed in Schedule II, III, IV, or V of section 28-405 may be destroyed by a pharmacy inspector, by a reverse distributor, or by the federal Drug Enforcement Administration. Upon destruction, any forms required by the administration to document such destruction shall be completed;

(B) Liquid controlled substances in opened containers which originally contained fifty milliliters or less or compounded liquid controlled substances within the facility where they were compounded may be destroyed if witnessed by two individuals credentialed under the Uniform Credentialing Act and designated by the facility and recorded in accordance with subsection (4) of section 28-411; or

(C) Solid controlled substances in opened unit-dose containers or which have been adulterated within a hospital where they were to be administered to patients at such hospital may be destroyed if witnessed by two individuals credentialed under the Uniform Credentialing Act and designated by the hospital and recorded in accordance with subsection (4) of section 28-411.

(iii) When the owner is a patient, such owner may transfer the controlled substances to a pharmacy for immediate destruction by two individuals credentialed under the Uniform Credentialing Act and designated by the pharmacy.

(iv) When the owner is a resident of a long-term care facility or hospital, a controlled substance listed in Schedule II, III, IV, or V of section 28-405 shall be destroyed by two individuals credentialed under the Uniform Credentialing Act and designated by the facility or hospital.

(g) Before dispensing any controlled substance listed in Schedule II, III, IV, or V of section 28-405, the dispensing practitioner shall affix a label to the container in which the controlled substance is dispensed. Such label shall bear the name and address of the pharmacy or dispensing practitioner, the name of the patient, the date of filling, the consecutive number of the prescription under which it is recorded in the practitioner's prescription records, the name of the

prescribing practitioner, and the directions for use of the controlled substance. Unless the prescribing practitioner writes ''do not label'' or words of similar import on the original written prescription or so designates in an oral prescription, such label shall also bear the name of the controlled substance.

Source: Laws 1977, LB 38, § 74; Laws 1988, LB 273, § 5; Laws 1995, LB 406, § 7; Laws 1996, LB 1108, § 4; Laws 1997, LB 307, § 8; Laws 1999, LB 594, § 4; Laws 2000, LB 819, § 65; Laws 2001, LB 398, § 12; Laws 2004, LB 1005, § 2; Laws 2005, LB 382, § 3; Laws 2007, LB463, § 1122; Laws 2009, LB195, § 3.

Cross References

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

28-416 Prohibited acts; violations; penalties.

(1) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person knowingly or intentionally: (a) To manufacture, distribute, deliver, dispense, or possess with intent to manufacture, distribute, deliver, or dispense a controlled substance; or (b) to create, distribute, or possess with intent to distribute a counterfeit controlled substance.

(2) Except as provided in subsections (4), (5), (7), (8), (9), and (10) of this section, any person who violates subsection (1) of this section with respect to: (a) A controlled substance classified in Schedule I, II, or III of section 28-405 which is an exceptionally hazardous drug shall be guilty of a Class II felony; (b) any other controlled substance classified in Schedule I, II, or III of section 28-405 shall be guilty of a Class III felony; or (c) a controlled substance classified in Schedule IV or V of section 28-405 shall be guilty of a Class IIIA felony.

(3) A person knowingly or intentionally possessing a controlled substance, except marijuana, unless such substance was obtained directly or pursuant to a medical order issued by a practitioner authorized to prescribe while acting in the course of his or her professional practice, or except as otherwise authorized by the act, shall be guilty of a Class IV felony.

(4)(a) Except as authorized by the Uniform Controlled Substances Act, any person eighteen years of age or older who knowingly or intentionally manufactures, distributes, delivers, dispenses, or possesses with intent to manufacture, distribute, deliver, or dispense a controlled substance or a counterfeit controlled substance (i) to a person under the age of eighteen years, (ii) in, on, or within one thousand feet of the real property comprising a public or private elementary, vocational, or secondary school, a community college, a public or private college, junior college, or university, or a playground, or (iii) within one hundred feet of a public or private youth center, public swimming pool, or video arcade facility shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, depending upon the controlled substance involved, for the first violation and for a second or subsequent violation shall be punished by the next higher penalty classification than that prescribed for a first violation of this subsection, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(b) For purposes of this subsection:

(i) Playground shall mean any outdoor facility, including any parking lot appurtenant to the facility, intended for recreation, open to the public, and with any portion containing three or more apparatus intended for the recreation of children, including sliding boards, swingsets, and teeterboards;

(ii) Video arcade facility shall mean any facility legally accessible to persons under eighteen years of age, intended primarily for the use of pinball and video machines for amusement, and containing a minimum of ten pinball or video machines; and

(iii) Youth center shall mean any recreational facility or gymnasium, including any parking lot appurtenant to the facility or gymnasium, intended primarily for use by persons under eighteen years of age which regularly provides athletic, civic, or cultural activities.

(5)(a) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person eighteen years of age or older to knowingly and intentionally employ, hire, use, cause, persuade, coax, induce, entice, seduce, or coerce any person under the age of eighteen years to manufacture, transport, distribute, carry, deliver, dispense, prepare for delivery, offer for delivery, or possess with intent to do the same a controlled substance or a counterfeit controlled substance.

(b) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person eighteen years of age or older to knowingly and intentionally employ, hire, use, cause, persuade, coax, induce, entice, seduce, or coerce any person under the age of eighteen years to aid and abet any person in the manufacture, transportation, distribution, carrying, delivery, dispensing, preparation for delivery, offering for delivery, or possession with intent to do the same of a controlled substance or a counterfeit controlled substance.

(c) Any person who violates subdivision (a) or (b) of this subsection shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, depending upon the controlled substance involved, for the first violation and for a second or subsequent violation shall be punished by the next higher penalty classification than that prescribed for a first violation of this subsection, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(6) It shall not be a defense to prosecution for violation of subsection (4) or (5) of this section that the defendant did not know the age of the person through whom the defendant violated such subsection.

(7) Any person who violates subsection (1) of this section with respect to cocaine or any mixture or substance containing a detectable amount of cocaine in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(8) Any person who violates subsection (1) of this section with respect to base cocaine (crack) or any mixture or substance containing a detectable amount of base cocaine in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(9) Any person who violates subsection (1) of this section with respect to heroin or any mixture or substance containing a detectable amount of heroin in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(10) Any person who violates subsection (1) of this section with respect to amphetamine, its salts, optical isomers, and salts of its isomers, or with respect to methamphetamine, its salts, optical isomers, and salts of its isomers, in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(11) Any person knowingly or intentionally possessing marijuana weighing more than one ounce but not more than one pound shall be guilty of a Class III misdemeanor.

(12) Any person knowingly or intentionally possessing marijuana weighing more than one pound shall be guilty of a Class IV felony.

(13) Any person knowingly or intentionally possessing marijuana weighing one ounce or less shall:

(a) For the first offense, be guilty of an infraction, receive a citation, be fined three hundred dollars, and be assigned to attend a course as prescribed in section 29-433 if the judge determines that attending such course is in the best interest of the individual defendant;

(b) For the second offense, be guilty of a Class IV misdemeanor, receive a citation, and be fined four hundred dollars and may be imprisoned not to exceed five days; and

(c) For the third and all subsequent offenses, be guilty of a Class IIIA misdemeanor, receive a citation, be fined five hundred dollars, and be imprisoned not to exceed seven days.

(14) Any person convicted of violating this section, if placed on probation, shall, as a condition of probation, satisfactorily attend and complete appropriate treatment and counseling on drug abuse provided by a program authorized under the Nebraska Behavioral Health Services Act or other licensed drug treatment facility.

(15) Any person convicted of violating this section, if sentenced to the Department of Correctional Services, shall attend appropriate treatment and counseling on drug abuse.

(16) Any person knowingly or intentionally possessing a firearm while in violation of subsection (1) of this section shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(17) A person knowingly or intentionally in possession of money used or intended to be used to facilitate a violation of subsection (1) of this section shall be guilty of a Class IV felony.

(18) In addition to the penalties provided in this section:

(a) If the person convicted or adjudicated of violating this section is eighteen years of age or younger and has one or more licenses or permits issued under the Motor Vehicle Operator's License Act:

(i) For the first offense, the court may, as a part of the judgment of conviction or adjudication, (A) impound any such licenses or permits for thirty days and (B) require such person to attend a drug education class;

(ii) For a second offense, the court may, as a part of the judgment of conviction or adjudication, (A) impound any such licenses or permits for ninety days and (B) require such person to complete no fewer than twenty and no more than forty hours of community service and to attend a drug education class; and

(iii) For a third or subsequent offense, the court may, as a part of the judgment of conviction or adjudication, (A) impound any such licenses or permits for twelve months and (B) require such person to complete no fewer than sixty hours of community service, to attend a drug education class, and to submit to a drug assessment by a licensed alcohol and drug counselor; and

(b) If the person convicted or adjudicated of violating this section is eighteen years of age or younger and does not have a permit or license issued under the Motor Vehicle Operator's License Act:

(i) For the first offense, the court may, as part of the judgment of conviction or adjudication, (A) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until thirty days after the date of such order and (B) require such person to attend a drug education class;

(ii) For a second offense, the court may, as part of the judgment of conviction or adjudication, (A) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until ninety days after the date of such order and (B) require such person to complete no fewer than twenty hours and no more than forty hours of community service and to attend a drug education class; and

(iii) For a third or subsequent offense, the court may, as part of the judgment of conviction or adjudication, (A) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until twelve months after the date of such order and (B) require such person to complete no fewer than sixty hours of community service, to attend a drug education class, and to submit to a drug assessment by a licensed alcohol and drug counselor.

A copy of an abstract of the court's conviction or adjudication shall be transmitted to the Director of Motor Vehicles pursuant to sections 60-497.01 to 60-497.04.

Source: Laws 1977, LB 38, § 76; Laws 1978, LB 808, § 2; Laws 1980, LB 696, § 3; Laws 1985, LB 406, § 4; Laws 1986, LB 504, § 1; Laws 1989, LB 592, § 2; Laws 1991, LB 742, § 1; Laws 1993, LB 117, § 2; Laws 1995, LB 371, § 6; Laws 1997, LB 364, § 8; Laws 1999, LB 299, § 1; Laws 2001, LB 398, § 14; Laws 2003, LB 46, § 1; Laws 2004, LB 1083, § 86; Laws 2005, LB 117, § 3; Laws 2008, LB844, § 1; Laws 2010, LB800, § 4.
Effective date July 15, 2010.

Cross References

Motor Vehicle Operator's License Act, see section 60-462.
Nebraska Behavioral Health Services Act, see section 71-801.

28-421 Act, exceptions.

The provisions of sections 28-419 to 28-424 shall not apply to the use or sale of such substances, as defined in sections 28-419 and 28-420, when such use or sale is administered or prescribed for medical or dental purposes, nor shall the provisions of sections 28-419 to 28-424 apply to the use or sale of alcoholic liquors as defined by section 53-103.02.

Source: Laws 1977, LB 38, § 81; Laws 2010, LB861, § 5.
Effective date July 15, 2010.

28-429 Division of Drug Control; established; personnel; powers and duties; Nebraska State Patrol Drug Control and Education Cash Fund; created; use; investment; report; contents.

(1) There is hereby established in the Nebraska State Patrol a Division of Drug Control. The division shall consist of such personnel as may be designated by the Superintendent of Law Enforcement and Public Safety. It shall be the duty of the division to enforce all of the provisions of the Uniform Controlled Substances Act and any other provisions of the law dealing with controlled substances and to conduct drug education activities as directed by the superintendent. The Nebraska State Patrol shall cooperate with federal agencies, the department, other state agencies, elementary and secondary schools, and County Drug Law Enforcement and Education Fund Boards in discharging their responsibilities concerning traffic in controlled substances, in suppressing the abuse of controlled substances, and in conducting drug education activities. To this end the division is authorized to: (a) Arrange for the exchange of information between governmental officials concerning the use and abuse of controlled substances; (b) coordinate and cooperate in training programs on controlled substance law enforcement and education at the local and state levels; (c) establish a centralized unit which will accept, catalog, file, and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the state, and make such information available for federal, state, and local law enforcement purposes on request; (d) cooperate in locating, eradicating, and destroying wild or illicit growth of plant species from which controlled substances may be extracted, and for these purposes a peace officer is hereby authorized to enter onto property upon which there are no buildings or upon which there are only uninhabited buildings without first obtaining a

search warrant or consent; (e) develop a priority program so as to focus the bulk of its efforts on the reduction and elimination of the most damaging drugs including narcotic drugs, depressant and stimulant drugs, and hallucinogenic drugs; and (f) develop and conduct drug education activities in cooperation with elementary and secondary schools in Nebraska and with County Drug Law Enforcement and Education Fund Boards.

(2) There is hereby created the Nebraska State Patrol Drug Control and Education Cash Fund which shall be used for the purposes of (a) obtaining evidence for enforcement of any state law relating to the control of drug abuse and (b) drug education activities conducted pursuant to subsection (1) of this section, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Nebraska State Patrol Drug Control and Education Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(3) For the purpose of establishing and maintaining legislative oversight and accountability, the Appropriations Committee of the Legislature shall formulate record-keeping procedures to be adhered to by the Nebraska State Patrol for all expenditures, disbursements, and transfers of cash from the Nebraska State Patrol Drug Control and Education Cash Fund. Based on these record-keeping procedures, the Nebraska State Patrol shall prepare and deliver to the Clerk of the Legislature at the commencement of each succeeding session a detailed report which shall contain, but not be limited to: (a) Current total in the cash fund; (b) total amount of expenditures; (c) purpose of the expenditures to include: (i) Salaries and any expenses of all agents and informants; (ii) front money for drug purchases; (iii) names of drugs and quantity of purchases; (iv) amount of front money recovered; and (v) drug education activities; (d) total number of informers on payroll; (e) amounts delivered to patrol supervisors for distribution to agents and informants and the method of accounting for such transactions and the results procured through such transactions; and (f) a description of the drug education activities conducted since the date of the previous report. Each member of the Legislature shall receive a copy of such report by making a request for it to the superintendent.

(4) The superintendent shall adopt and promulgate rules and regulations to carry out this section.

Source: Laws 1977, LB 38, § 89; Laws 1979, LB 322, § 8; Laws 1991, LB 773, § 1; Laws 1994, LB 1066, § 19; Laws 2001, LB 398, § 17; Laws 2009, First Spec. Sess., LB3, § 13.
Effective date November 21, 2009.

Cross References

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

28-448 Repealed. Laws 2009, LB 151, § 5.

28-454 Repealed. Laws 2009, LB 151, § 5.

28-456 Phenylpropanolamine or pseudoephedrine; sold without a prescription; requirements; enforcement.

(1) Any drug products containing phenylpropanolamine, pseudoephedrine, or their salts, optical isomers, or salts of such optical isomers may be sold without a prescription only if they are:

(a) Labeled and marketed in a manner consistent with the pertinent OTC Tentative Final or Final Monograph;

(b) Manufactured and distributed for legitimate medicinal use in a manner that reduces or eliminates the likelihood of abuse;

(c) Packaged as follows:

(i) Except for liquids, sold in package sizes of not more than three and six-tenths grams of pseudoephedrine base or three and six-tenths grams of phenylpropanolamine base, in blister packs, each blister containing not more than two dosage units, or if the use of blister packs is technically infeasible, in unit dose packets or pouches; and

(ii) For liquids, sold in package sizes of not more than three and six-tenths grams of pseudoephedrine base or three and six-tenths grams of phenylpropanolamine base;

(d) Sold by a person, eighteen years of age or older, in the course of his or her employment to a customer, eighteen years of age or older, with the following restrictions:

(i) No customer shall be allowed to purchase, receive, or otherwise acquire more than three and six-tenths grams of pseudoephedrine base or three and six-tenths grams of phenylpropanolamine base during a twenty-four-hour period;

(ii) No customer shall purchase, receive, or otherwise acquire more than nine grams of pseudoephedrine base or nine grams of phenylpropanolamine base during a thirty-day period; and

(iii) The customer shall display a valid driver's or operator's license, a Nebraska state identification card, a military identification card, an alien registration card, or a passport as proof of identification; and

(e) Stored behind a counter, in an area not accessible to customers, or in a locked case so that a customer needs assistance from an employee to access the drug product.

(2) Any person who sells drug products in violation of this section may be subject to a civil penalty of fifty dollars per day, and for a second or any subsequent violation, the penalty may be one hundred dollars per day. Any such drug products shall be seized and destroyed upon the finding of a violation of this section. The department, in conjunction with the Attorney General, the Nebraska State Patrol, and local law enforcement agencies, shall have authority to make inspections and investigations to enforce this section. In addition, the department may seek injunctive relief for suspected violations of this section.

Source: Laws 2001, LB 113, § 9; Laws 2005, LB 117, § 5; Laws 2007, LB218, § 1; Laws 2007, LB296, § 36; Laws 2009, LB151, § 2.

28-456.01 Pseudoephedrine or phenylpropanolamine; limitation on acquisition; violation; penalty.

No person shall purchase, receive, or otherwise acquire, other than wholesale acquisition by a retail business in the normal course of its trade or business, any drug product containing more than three and six-tenths grams of pseudoephedrine base or three and six-tenths grams of phenylpropanolamine base

during a twenty-four-hour period unless purchased pursuant to a medical order. Any person who violates this section shall be guilty of an infraction as defined in section 29-431.

Source: Laws 2005, LB 117, § 6; Laws 2009, LB151, § 3.

ARTICLE 5

OFFENSES AGAINST PROPERTY

Section
28-502. Arson, first degree; penalty.
28-503. Arson, second degree; penalty.
28-504. Arson, third degree; penalty.
28-511.01. Theft by shoplifting; penalty; photographic evidence.
28-511.03. Possession of security device countermeasure; penalty.
28-518. Grading of theft offenses; aggregation allowed; when.
28-520. Criminal trespass, first degree; penalty.
28-521. Criminal trespass, second degree; penalty.
28-524. Graffiti; penalty.

28-502 Arson, first degree; penalty.

(1) A person commits arson in the first degree if he or she intentionally damages a building or property contained within a building by starting a fire or causing an explosion when another person is present in the building at the time and either (a) the actor knows that fact, or (b) the circumstances are such as to render the presence of a person therein a reasonable probability.

(2) A person commits arson in the first degree if a fire is started or an explosion is caused in the perpetration of any robbery, burglary, or felony criminal mischief when another person is present in the building at the time and either (a) the actor knows that fact, or (b) the circumstances are such as to render the presence of a person therein a reasonable probability.

(3) Arson in the first degree is a Class II felony.

Source: Laws 1977, LB 38, § 101; Laws 1981, LB 83, § 1; Laws 2010, LB712, § 8.
Operative date July 15, 2010.

28-503 Arson, second degree; penalty.

(1) A person commits arson in the second degree if he or she intentionally damages a building or property contained within a building by starting a fire or causing an explosion or if a fire is started or an explosion is caused in the perpetration of any robbery, burglary, or felony criminal mischief.

(2) The following affirmative defenses may be introduced into evidence upon prosecution for a violation of this section:

(a) No person other than the accused has a security or proprietary interest in the damaged building, or, if other persons have such interests, all of them consented to his or her conduct; or

(b) The accused's sole intent was to destroy or damage the building for a lawful and proper purpose.

(3) Arson in the second degree is a Class III felony.

Source: Laws 1977, LB 38, § 102; Laws 1981, LB 83, § 2; Laws 2010, LB712, § 9.
Operative date July 15, 2010.

28-504 Arson, third degree; penalty.

(1) A person commits arson in the third degree if he or she intentionally sets fire to, burns, causes to be burned, or by the use of any explosive, damages or destroys, or causes to be damaged or destroyed, any property of another person without such other person's consent. Such property shall not be contained within a building and shall not be a building or occupied structure.

(2) Arson in the third degree is a Class IV felony if the damages amount to one hundred dollars or more.

(3) Arson in the third degree is a Class I misdemeanor if the damages are less than one hundred dollars.

Source: Laws 1977, LB 38, § 103; Laws 2010, LB712, § 10.
Operative date July 15, 2010.

28-511.01 Theft by shoplifting; penalty; photographic evidence.

(1) A person commits the crime of theft by shoplifting when he or she, with the intent of appropriating goods or merchandise to his or her own use without paying for the goods or merchandise or to deprive the owner of possession of such goods or merchandise or its retail value, in whole or in part, does any of the following:

(a) Conceals or takes possession of the goods or merchandise of any store or retail establishment;

(b) Alters the price tag or other price marking on goods or merchandise of any store or retail establishment;

(c) Transfers the goods or merchandise of any store or retail establishment from one container to another;

(d) Interchanges the label or price tag from one item of a good or of merchandise with a label or price tag for another item of a good or of merchandise;

(e) Causes the cash register or other sales recording device to reflect less than the retail price of the goods or merchandise; or

(f) Alters, bypasses, disables, shields, or removes any security or alarm device attached to or housing any goods or merchandise of any store, including the use or possession of a security device countermeasure as defined in section 28-511.03, prior to purchase of the goods or merchandise.

(2) In any prosecution for theft by shoplifting, photographs of the shoplifted property may be accepted as prima facie evidence as to the identity of the property. Such photograph shall be accompanied by a written statement containing the following:

(a) A description of the property;

(b) The name of the owner or owners of the property;

(c) The time, date, and location where the shoplifting occurred;

(d) The time and date the photograph was taken;

(e) The name of the photographer; and

(f) Verification by the arresting officer.

The purpose of this subsection is to allow the owner or owners of shoplifted property the use of such property during pending criminal prosecutions.

Prior to allowing the use of the shoplifted property as provided in this section, legal counsel for the alleged shoplifter shall have a reasonable opportunity to inspect and appraise the property and may file a motion for retention of the property, which motion shall be granted if there is any reasonable basis for believing that the photographs and accompanying affidavit may be misleading.

Source: Laws 1982, LB 126, § 4; Laws 2010, LB894, § 2.
Effective date July 15, 2010.

28-511.03 Possession of security device countermeasure; penalty.

(1) It shall be unlawful for any person, other than an authorized agent of a store or retail establishment, to possess, in that store, any security device countermeasure.

(2) For purposes of this section, security device countermeasure means a device which bypasses, disables, or removes an electronic or magnetic theft alarm sensor.

(3) Any person violating this section is guilty of a Class II misdemeanor.

Source: Laws 2010, LB894, § 3.
Effective date July 15, 2010.

28-518 Grading of theft offenses; aggregation allowed; when.

(1) Theft constitutes a Class III felony when the value of the thing involved is over one thousand five hundred dollars.

(2) Theft constitutes a Class IV felony when the value of the thing involved is five hundred dollars or more, but not over one thousand five hundred dollars.

(3) Theft constitutes a Class I misdemeanor when the value of the thing involved is more than two hundred dollars, but less than five hundred dollars.

(4) Theft constitutes a Class II misdemeanor when the value of the thing involved is two hundred dollars or less.

(5) For any second or subsequent conviction under subsection (3) of this section, any person so offending shall be guilty of a Class IV felony.

(6) For any second conviction under subsection (4) of this section, any person so offending shall be guilty of a Class I misdemeanor, and for any third or subsequent conviction under subsection (4) of this section, the person so offending shall be guilty of a Class IV felony.

(7) Amounts taken pursuant to one scheme or course of conduct from one or more persons may be aggregated in the indictment or information in determining the classification of the offense, except that amounts may not be aggregated into more than one offense.

(8) In any prosecution for theft under sections 28-509 to 28-518, value shall be an essential element of the offense that must be proved beyond a reasonable doubt.

Source: Laws 1977, LB 38, § 117; Laws 1978, LB 748, § 7; Laws 1982, LB 347, § 8; Laws 1992, LB 111, § 2; Laws 2009, LB155, § 7.

28-520 Criminal trespass, first degree; penalty.

(1) A person commits first degree criminal trespass if:

(a) He or she enters or secretly remains in any building or occupied structure, or any separately secured or occupied portion thereof, knowing that he or she is not licensed or privileged to do so; or

(b) He or she enters or remains in or on a public power infrastructure facility knowing that he or she does not have the consent of a person who has the right to give consent to be in or on the facility.

(2) First degree criminal trespass is a Class I misdemeanor.

(3) For purposes of this section, public power infrastructure facility means a power plant, an electrical station or substation, or any other facility which is used by a public power supplier as defined in section 70-2103 to support the generation, transmission, or distribution of electricity and which is surrounded by a fence or is otherwise enclosed.

Source: Laws 1977, LB 38, § 119; Laws 2009, LB238, § 1.

28-521 Criminal trespass, second degree; penalty.

(1) A person commits second degree criminal trespass if, knowing that he or she is not licensed or privileged to do so, he or she enters or remains in any place as to which notice against trespass is given by:

(a) Actual communication to the actor; or

(b) Posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or

(c) Fencing or other enclosure manifestly designed to exclude intruders except as otherwise provided in section 28-520.

(2) Second degree criminal trespass is a Class III misdemeanor, except as provided for in subsection (3) of this section.

(3) Second degree criminal trespass is a Class II misdemeanor if the offender defies an order to leave personally communicated to him or her by the owner of the premises or other authorized person.

Source: Laws 1977, LB 38, § 120; Laws 2009, LB238, § 2.

28-524 Graffiti; penalty.

(1) Any person who knowingly and intentionally applies graffiti of any type on any building, public or private, or any other tangible property owned by any person, firm, or corporation or any public entity or instrumentality, without the express permission of the owner or operator of the property, commits the offense of unauthorized application of graffiti.

(2) Unauthorized application of graffiti is a Class III misdemeanor for a first offense and a Class IV felony for a second or subsequent offense.

(3) Upon conviction of an offense under this section, the court may, in addition to any other punishment imposed, order the defendant to clean up, repair, or replace the damaged property, keep the defaced property or another specified property in the community free of graffiti or other inscribed materials for up to one year, or order a combination of restitution and labor.

(4) Upon conviction of an offense under this section, the court may, in addition to any other punishment imposed, order the defendant to undergo counseling.

(5) Upon conviction of an offense under this section, the court may, in addition to any other punishment imposed, order the suspension of the defendant's motor vehicle operator's license for up to one year. A copy of an abstract of the court's conviction, including an adjudication of a juvenile, shall be transmitted to the director pursuant to sections 60-497.01 to 60-497.04.

(6) For purposes of this section, graffiti means any letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind visible to the public that is drawn, painted, chiseled, scratched, or etched on a rock, tree, wall, bridge, fence, gate, building, or other structure. Graffiti does not include advertising or any other letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind lawfully placed on property by an owner of the property, a tenant of the property, or an authorized agent for such owner or tenant.

Source: Laws 2009, LB63, § 6.

ARTICLE 6

OFFENSES INVOLVING FRAUD

Section
28-603. Forgery, second degree; penalty; aggregation allowed; when.
28-604. Criminal possession of a forged instrument; penalty; aggregation allowed; when.
28-608. Transferred to section 28-638.
28-611. Issuing or passing a bad check or similar order; penalty; collection procedures.
28-611.01. Issuing a no-account check; penalty; aggregation allowed; when.
28-631. Fraudulent insurance act; penalties.
28-636. Criminal impersonation; identity theft; identity fraud; terms, defined.
28-637. Criminal impersonation; identity theft; identity fraud; venue; victim; contact local law enforcement agency.
28-638. Criminal impersonation; penalty; restitution.
28-639. Identity theft; penalty; restitution.
28-640. Identity fraud; penalty; restitution.

28-603 Forgery, second degree; penalty; aggregation allowed; when.

(1) Whoever, with intent to deceive or harm, falsely makes, completes, endorses, alters, or utters any written instrument which is or purports to be, or which is calculated to become or to represent if completed, a written instrument which does or may evidence, create, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status, commits forgery in the second degree.

(2) Forgery in the second degree is a Class III felony when the face value, or purported face value, or the amount of any proceeds wrongfully procured or intended to be procured by the use of such instrument, is one thousand dollars or more.

(3) Forgery in the second degree is a Class IV felony when the face value, or purported face value, or the amount of any proceeds wrongfully procured or intended to be procured by the use of such instrument, exceeds three hundred dollars but is less than one thousand dollars.

(4) Forgery in the second degree is a Class I misdemeanor when the face value, or purported face value, or the amount of any proceeds wrongfully procured or intended to be procured by the use of such instrument, is three hundred dollars or less.

(5) For the purpose of determining the class of penalty for forgery in the second degree, the face values, or purported face values, or the amounts of any proceeds wrongfully procured or intended to be procured by the use of more than one such instrument, may be aggregated in the indictment or information if such instruments were part of the same scheme or course of conduct which took place within a sixty-day period and within one county. Such values or amounts shall not be aggregated into more than one offense.

Source: Laws 1977, LB 38, § 125; Laws 2003, LB 17, § 7; Laws 2009, LB155, § 13.

28-604 Criminal possession of a forged instrument; penalty; aggregation allowed; when.

(1) Whoever, with knowledge that it is forged and with intent to deceive or harm, possesses any forged instrument covered by section 28-602 or 28-603 commits criminal possession of a forged instrument.

(2) Criminal possession of a forged instrument prohibited by section 28-602 is a Class IV felony.

(3) Criminal possession of a forged instrument prohibited by section 28-603, the amount or value of which is one thousand dollars or more, is a Class IV felony.

(4) Criminal possession of a forged instrument prohibited by section 28-603, the amount or value of which is more than three hundred dollars but less than one thousand dollars, is a Class I misdemeanor.

(5) Criminal possession of a forged instrument prohibited by section 28-603, the amount or value of which is three hundred dollars or less, is a Class II misdemeanor.

(6) For the purpose of determining the class of penalty for criminal possession of a forged instrument prohibited by section 28-603, the amounts or values of more than one such forged instrument may be aggregated in the indictment or information if such forged instruments were part of the same scheme or course of conduct which took place within a sixty-day period and within one county. Such amounts or values shall not be aggregated into more than one offense.

Source: Laws 1977, LB 38, § 126; Laws 2003, LB 17, § 8; Laws 2009, LB155, § 14.

28-608 Transferred to section 28-638.

28-611 Issuing or passing a bad check or similar order; penalty; collection procedures.

(1) Whoever obtains property, services, or present value of any kind by issuing or passing a check, draft, assignment of funds, or similar signed order for the payment of money, knowing that he or she does not have sufficient funds in or credit with the drawee for the payment of the check, draft, assignment of funds, or order in full upon presentation, commits the offense of issuing a bad check. Issuing a bad check is:

(a) A Class III felony if the amount of the check, draft, assignment of funds, or order is one thousand five hundred dollars or more;

(b) A Class IV felony if the amount of the check, draft, assignment of funds, or order is five hundred dollars or more, but less than one thousand five hundred dollars;

(c) A Class I misdemeanor if the amount of the check, draft, assignment of funds, or order is two hundred dollars or more, but less than five hundred dollars; and

(d) A Class II misdemeanor if the amount of the check, draft, assignment of funds, or order is less than two hundred dollars.

(2) The aggregate amount of any series of checks, drafts, assignments, or orders issued or passed within a sixty-day period in one county may be used in determining the classification of the offense pursuant to subsection (1) of this section, except that checks, drafts, assignments, or orders may not be aggregated into more than one offense.

(3) For any second or subsequent offense under subdivision (1)(c) or (1)(d) of this section, any person so offending shall be guilty of a Class IV felony.

(4) Whoever otherwise issues or passes a check, draft, assignment of funds, or similar signed order for the payment of money, knowing that he or she does not have sufficient funds in or credit with the drawee for the payment of the check, draft, assignment of funds, or order in full upon its presentation, shall be guilty of a Class II misdemeanor.

(5) Any person in violation of this section who makes voluntary restitution to the injured party for the value of the check, draft, assignment of funds, or order shall also pay ten dollars to the injured party and any reasonable handling fee imposed on the injured party by a financial institution.

(6) In any prosecution for issuing a bad check, the person issuing the check, draft, assignment of funds, or order shall be presumed to have known that he or she did not have sufficient funds in or credit with the drawee for the payment of the check, draft, assignment of funds, or order in full upon presentation if, within thirty days after issuance of the check, draft, assignment of funds, or order, he or she was notified that the drawee refused payment for lack of funds and he or she failed within ten days after such notice to make the check, draft, assignment of funds, or order good or, in the absence of such notice, he or she failed to make the check, draft, assignment of funds, or order good within ten days after notice that such check, draft, assignment of funds, or order has been returned to the depositor was sent to him or her by the county attorney or his or her deputy, by United States mail addressed to such person at his or her last-known address. Upon request of the depositor and the payment of ten dollars for each check, draft, assignment of funds, or order, the county attorney or his or her deputy shall be required to mail notice to the person issuing the check, draft, assignment of funds, or order as provided in this subsection. The ten-dollar payment shall be payable to the county treasurer and credited to the county general fund. No such payment shall be collected from any county office to which such a check, draft, assignment of funds, or order is issued in the course of the official duties of the office.

(7) Any person convicted of violating this section may, in addition to a fine or imprisonment, be ordered to make restitution to the party injured for the value of the check, draft, assignment of funds, or order and to pay ten dollars to the injured party and any reasonable handling fee imposed on the injured party by a financial institution. If the court, in addition to sentencing any person to imprisonment under this section, also enters an order of restitution, the time

permitted to make such restitution shall not be concurrent with the sentence of imprisonment.

(8) The fact that restitution to the party injured has been made and that ten dollars and any reasonable handling fee imposed on the injured party by a financial institution have been paid to the injured party shall be a mitigating factor in the imposition of punishment for any violation of this section.

Source: Laws 1977, LB 38, § 133; Laws 1978, LB 748, § 8; Laws 1983, LB 208, § 1; Laws 1985, LB 445, § 1; Laws 1987, LB 254, § 1; Laws 1992, LB 111, § 3; Laws 2009, LB155, § 15.

28-611.01 Issuing a no-account check; penalty; aggregation allowed; when.

(1) Whoever issues or passes a check, draft, assignment of funds, or similar signed order for the payment of money, knowing that he or she has no account with the drawee at the time the check, draft, assignment of funds, or order is issued, commits the offense of issuing a no-account check. Issuing a no-account check is:

(a) A Class III felony if the amount of the check, draft, assignment of funds, or order is one thousand five hundred dollars or more;

(b) A Class IV felony if the amount of the check, draft, assignment of funds, or order is five hundred dollars or more, but less than one thousand five hundred dollars;

(c) A Class I misdemeanor if the amount of the check, draft, assignment of funds, or order is two hundred dollars or more, but less than five hundred dollars; and

(d) A Class II misdemeanor if the amount of the check, draft, assignment of funds, or order is less than two hundred dollars.

(2) The aggregate amount of any series of checks, drafts, assignments, or orders issued or passed within a sixty-day period in one county may be used in determining the classification of the offense pursuant to subsection (1) of this section, except that checks, drafts, assignments, or orders may not be aggregated into more than one offense.

(3) For any second or subsequent offense under this section, any person so offending shall be guilty of:

(a) A Class III felony if the amount of the check, draft, assignment of funds, or order is five hundred dollars or more; and

(b) A Class IV felony if the amount of the check, draft, assignment of funds, or order is less than five hundred dollars.

Source: Laws 2009, LB155, § 16.

28-631 Fraudulent insurance act; penalties.

(1) A person or entity commits a fraudulent insurance act if he or she:

(a) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, or any agent of an insurer, any statement as part of, in support of, or in denial of a claim for payment or other benefit from an insurer or pursuant to an insurance policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to a claim;

(b) Assists, abets, solicits, or conspires with another to prepare or make any statement that is intended to be presented to or by an insurer or person in connection with or in support of any claim for payment or other benefit from an insurer or pursuant to an insurance policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to the claim;

(c) Makes any false or fraudulent representations as to the death or disability of a policy or certificate holder or a covered person in any statement or certificate for the purpose of fraudulently obtaining money or benefit from an insurer;

(d) Knowingly and willfully transacts any contract, agreement, or instrument which violates this section;

(e) Receives money for the purpose of purchasing insurance and converts the money to the person's own benefit;

(f) Willfully embezzles, abstracts, purloins, misappropriates, or converts money, funds, premiums, credits, or other property of an insurer or person engaged in the business of insurance;

(g) Knowingly and with intent to defraud or deceive issues fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders;

(h) Knowingly and with intent to defraud or deceive possesses fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders;

(i) Knowingly and with intent to defraud or deceive makes any false entry of a material fact in or pertaining to any document or statement filed with or required by the Department of Insurance;

(j) Knowingly and with the intent to defraud or deceive provides false, incomplete, or misleading information to an insurer concerning the number, location, or classification of employees for the purpose of lessening or reducing the premium otherwise chargeable for workers' compensation insurance coverage;

(k) Knowingly and with intent to defraud or deceive removes, conceals, alters, diverts, or destroys assets or records of an insurer or person engaged in the business of insurance or attempts to remove, conceal, alter, divert, or destroy assets or records of an insurer or person engaged in the business of insurance;

(l) Willfully operates as or aids and abets another operating as a discount medical plan organization in violation of subsection (1) of section 44-8306; or

(m) Willfully collects fees for purported membership in a discount medical plan organization but purposefully fails to provide the promised benefits.

(2)(a) A violation of subdivisions (1)(a) through (f) of this section is a Class III felony when the amount involved is one thousand five hundred dollars or more.

(b) A violation of subdivisions (1)(a) through (f) of this section is a Class IV felony when the amount involved is five hundred dollars or more but less than one thousand five hundred dollars.

(c) A violation of subdivisions (1)(a) through (f) of this section is a Class I misdemeanor when the amount involved is two hundred dollars or more but less than five hundred dollars.

(d) A violation of subdivisions (1)(a) through (f) of this section is a Class II misdemeanor when the amount involved is less than two hundred dollars.

(e) For any second or subsequent conviction under subdivision (2)(c) of this section, the violation is a Class IV felony.

(f) A violation of subdivisions (1)(g), (i), (j), (k), (l), and (m) of this section is a Class IV felony.

(g) A violation of subdivision (1)(h) of this section is a Class I misdemeanor.

(3) Amounts taken pursuant to one scheme or course of conduct from one person, entity, or insurer may be aggregated in the indictment or information in determining the classification of the offense, except that amounts may not be aggregated into more than one offense.

(4) In any prosecution under this section, if the amounts are aggregated pursuant to subsection (3) of this section, the amount involved in the offense shall be an essential element of the offense that must be proved beyond a reasonable doubt.

(5) A prosecution under this section shall be in lieu of an action under section 44-6607.

(6) For purposes of this section:

(a) Insurer means any person or entity transacting insurance as defined in section 44-102 with or without a certificate of authority issued by the Director of Insurance. Insurer also means health maintenance organizations, legal service insurance corporations, prepaid limited health service organizations, dental and other similar health service plans, discount medical plan organizations, and entities licensed pursuant to the Intergovernmental Risk Management Act and the Comprehensive Health Insurance Pool Act. Insurer also means an employer who is approved by the Nebraska Workers' Compensation Court as a self-insurer; and

(b) Statement includes, but is not limited to, any notice, statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or medical records, X-rays, test result, or other evidence of loss, injury, or expense, whether oral, written, or computer-generated.

Source: Laws 1995, LB 385, § 10; Laws 1997, LB 272, § 1; Laws 2000, LB 930, § 1; Laws 2002, LB 547, § 1; Laws 2008, LB855, § 2; Laws 2009, LB208, § 1.

Cross References

Comprehensive Health Insurance Pool Act, see section 44-4201.
Intergovernmental Risk Management Act, see section 44-4301.

28-636 Criminal impersonation; identity theft; identity fraud; terms, defined.

For purposes of sections 28-636 to 28-640:

(1) Personal identification document means a birth certificate, motor vehicle operator's license, state identification card, public, government, or private employment identification card, social security card, visa work permit, firearm owner's identification card, certificate issued under section 69-2404, or passport or any document made or altered in a manner that it purports to have been made on behalf of or issued to another person or by the authority of a

person who did not give that authority. Personal identification document does not include a financial transaction device as defined in section 28-618;

(2) Personal identifying information means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person including a person's: (a) Name; (b) date of birth; (c) address; (d) motor vehicle operator's license number or state identification card number as assigned by the State of Nebraska or another state; (e) social security number or visa work permit number; (f) public, private, or government employer, place of employment, or employment identification number; (g) maiden name of a person's mother; (h) number assigned to a person's credit card, charge card, or debit card, whether issued by a financial institution, corporation, or other business entity; (i) number assigned to a person's depository account, savings account, or brokerage account; (j) personal identification number as defined in section 8-157.01; (k) electronic identification number, address, or routing code used to access financial information; (l) digital signature; (m) telecommunications identifying information or access device; (n) unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation; and (o) other number or information which can be used to access a person's financial resources; and

(3) Telecommunications identifying information or access device means a card, plate, code, account number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with other telecommunications identifying information or another telecommunications access device may be used to: (a) Obtain money, goods, services, or any other thing of value; or (b) initiate a transfer of funds other than a transfer originated solely by a paper instrument.

Source: Laws 2009, LB155, § 8.

28-637 Criminal impersonation; identity theft; identity fraud; venue; victim; contact local law enforcement agency.

For purposes of sections 28-636 to 28-640:

(1) Notwithstanding any other provision of law, venue for the prosecution and trial of violations of sections 28-636 to 28-640 may be commenced and maintained in any county in which an element of the offense occurred, including the county where a victim resides; and

(2) If a person or entity reasonably believes that he, she, or it has been the victim of a violation of sections 28-636 to 28-640, the victim may contact a local law enforcement agency which has jurisdiction over the victim's residence, place of business, or registered address. Notwithstanding that jurisdiction may lie elsewhere for investigation and prosecution of a crime of identity theft, the local law enforcement agency shall take the complaint and provide the complainant with a copy of the complaint and refer the complaint to a law enforcement agency in the appropriate jurisdiction.

Source: Laws 2009, LB155, § 9.

28-638 Criminal impersonation; penalty; restitution.

(1) A person commits the crime of criminal impersonation if he or she:

(a) Pretends to be a representative of some person or organization and does an act in his or her fictitious capacity with the intent to gain a pecuniary benefit for himself, herself, or another and to deceive or harm another;

(b) Carries on any profession, business, or any other occupation without a license, certificate, or other authorization required by law;

(c) Knowingly provides false personal identifying information or a false personal identification document to a court or a law enforcement officer; or

(d) Knowingly provides false personal identifying information or a false personal identification document to an employer for the purpose of obtaining employment.

(2)(a) Criminal impersonation, as described in subdivisions (1)(a) and (1)(b) of this section, is a Class III felony if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was one thousand five hundred dollars or more. Any second or subsequent conviction under this subdivision is a Class II felony.

(b) Criminal impersonation, as described in subdivisions (1)(a) and (1)(b) of this section, is a Class IV felony if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was five hundred dollars or more but less than one thousand five hundred dollars. Any second or subsequent conviction under this subdivision is a Class III felony.

(c) Criminal impersonation, as described in subdivisions (1)(a) and (1)(b) of this section, is a Class I misdemeanor if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was two hundred dollars or more but less than five hundred dollars. Any second or subsequent conviction under this subdivision is a Class IV felony.

(d) Criminal impersonation, as described in subdivisions (1)(a) and (1)(b) of this section, is a Class II misdemeanor if no credit, money, goods, services, or other thing of value was gained or was attempted to be gained, or if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was less than two hundred dollars. Any second conviction under this subdivision is a Class I misdemeanor, and any third or subsequent conviction under this subdivision is a Class IV felony.

(e) Criminal impersonation, as described in subdivision (1)(c) of this section, is a Class IV felony. Any second conviction under this subdivision is a Class III felony, and any third or subsequent conviction under this subdivision is a Class II felony.

(f) Criminal impersonation, as described in subdivision (1)(d) of this section, is a Class II misdemeanor. Any second or subsequent conviction under this subdivision is a Class I misdemeanor.

(g) A person found guilty of violating this section may, in addition to the penalties under this subsection, be ordered to make restitution pursuant to sections 29-2280 to 29-2289.

Source: Laws 1977, LB 38, § 130; Laws 2002, LB 276, § 2; R.S.1943, (2008), § 28-608; Laws 2009, LB155, § 10.

28-639 Identity theft; penalty; restitution.

(1) A person commits the crime of identity theft if he or she knowingly takes, purchases, manufactures, records, possesses, or uses any personal identifying

information or entity identifying information of another person or entity without the consent of that other person or entity or creates personal identifying information for a fictional person or entity, with the intent to obtain or use the other person's or entity's identity for any unlawful purpose or to cause loss to a person or entity whether or not the person or entity actually suffers any economic loss as a result of the offense, or with the intent to obtain or continue employment or with the intent to gain a pecuniary benefit for himself, herself, or another.

(2) Identity theft is not:

(a) The lawful obtaining of credit information in the course of a bona fide consumer or commercial transaction;

(b) The lawful, good faith exercise of a security interest or a right of setoff by a creditor or a financial institution;

(c) The lawful, good faith compliance by any person when required by any warrant, levy, garnishment, attachment, court order, or other judicial or administrative order, decree, or directive; or

(d) The investigative activities of law enforcement.

(3)(a) Identity theft is a Class III felony if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was one thousand five hundred dollars or more. Any second or subsequent conviction under this subdivision is a Class II felony.

(b) Identity theft is a Class IV felony if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was five hundred dollars or more but less than one thousand five hundred dollars. Any second or subsequent conviction under this subdivision is a Class III felony.

(c) Identity theft is a Class I misdemeanor if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was two hundred dollars or more but less than five hundred dollars. Any second or subsequent conviction under this subdivision is a Class IV felony.

(d) Identity theft is a Class II misdemeanor if no credit, money, goods, services, or other thing of value was gained or was attempted to be gained, or if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was less than two hundred dollars. Any second conviction under this subdivision is a Class I misdemeanor, and any third or subsequent conviction under this subdivision is a Class IV felony.

(e) A person found guilty of violating this section may, in addition to the penalties under this subsection, be ordered to make restitution pursuant to sections 29-2280 to 29-2289.

Source: Laws 2009, LB155, § 11.

28-640 Identity fraud; penalty; restitution.

(1) A person commits the crime of identity fraud if he or she without lawful authority:

(a) Makes, counterfeits, alters, or mutilates any personal identification document with the intent to deceive another; or

(b) Willfully and knowingly obtains, possesses, uses, sells or furnishes or attempts to obtain, possess, or furnish to another person for any purpose of deception a personal identification document.

(2)(a) Identity fraud is a Class I misdemeanor. Any second or subsequent conviction under this subdivision is a Class IV felony.

(b) A person found guilty of violating this section may, in addition to the penalties under this subsection, be ordered to make restitution pursuant to sections 29-2280 to 29-2289.

Source: Laws 2009, LB155, § 12.

ARTICLE 7

OFFENSES INVOLVING THE FAMILY RELATION

Section
28-707. Child abuse; privileges not available; penalties.
28-718. Child protection cases; central register; name-change order; treatment.
28-720. Cases; central register; classification.

28-707 Child abuse; privileges not available; penalties.

(1) A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be:

(a) Placed in a situation that endangers his or her life or physical or mental health;

(b) Cruelly confined or cruelly punished;

(c) Deprived of necessary food, clothing, shelter, or care;

(d) Placed in a situation to be sexually exploited by allowing, encouraging, or forcing such minor child to solicit for or engage in prostitution, debauchery, public indecency, or obscene or pornographic photography, films, or depictions; or

(e) Placed in a situation to be sexually abused as defined in section 28-319, 28-319.01, or 28-320.01.

(2) The statutory privilege between patient and physician, between client and professional counselor, and between husband and wife shall not be available for excluding or refusing testimony in any prosecution for a violation of this section.

(3) Child abuse is a Class I misdemeanor if the offense is committed negligently.

(4) Child abuse is a Class IIIA felony if the offense is committed knowingly and intentionally and does not result in serious bodily injury as defined in section 28-109.

(5) Child abuse is a Class II felony if the offense is committed knowingly and intentionally and results in serious bodily injury as defined in such section.

(6) Child abuse is a Class IB felony if the offense is committed knowingly and intentionally and results in the death of such child.

Source: Laws 1977, LB 38, § 146; Laws 1982, LB 347, § 10; Laws 1993, LB 130, § 3; Laws 1993, LB 430, § 3; Laws 1994, LB 908, § 1; Laws 1996, LB 645, § 15; Laws 1997, LB 364, § 9; Laws 2006, LB 1199, § 9; Laws 2010, LB507, § 3.
Operative date July 15, 2010.

Cross References

Appointment of guardian ad litem, see section 43-272.01.

28-718 Child protection cases; central register; name-change order; treatment.

(1) There shall be a central register of child protection cases maintained in the department containing records of all reports of child abuse or neglect opened for investigation as provided in section 28-713 and classified as either court substantiated or agency substantiated as provided in section 28-720. The department may change records classified as inconclusive prior to August 30, 2009, to agency substantiated. The department shall give public notice of the changes made to this section and subsection (3) of section 28-720 by Laws 2009, LB 122, within thirty days after August 30, 2009, by having such notice published in a newspaper or newspapers of general circulation within the state.

(2) The department shall determine whether a name-change order received from the clerk of a district court pursuant to section 25-21,271 is for a person on the central register of child protection cases and, if so, shall include the changed name with the former name in the register and file or cross-reference the information under both names.

Source: Laws 1979, LB 505, § 6; Laws 2005, LB 116, § 9; Laws 2009, LB122, § 1; Laws 2010, LB147, § 3.
Operative date January 1, 2012.

28-720 Cases; central register; classification.

All cases entered into the central register of child protection cases maintained pursuant to section 28-718 shall be classified as one of the following:

(1) Court substantiated, if a court of competent jurisdiction has entered a judgment of guilty against the subject of the report of child abuse or neglect upon a criminal complaint, indictment, or information or there has been an adjudication of jurisdiction of a juvenile court over the child under subdivision (3)(a) of section 43-247 which relates or pertains to the report of child abuse or neglect;

(2) Court pending, if a criminal complaint, indictment, or information or a juvenile petition under subdivision (3)(a) of section 43-247, which relates or pertains to the subject of the report of abuse or neglect, has been filed and is pending in a court of competent jurisdiction; or

(3) Agency substantiated, if the department's determination of child abuse or neglect against the subject of the report of child abuse or neglect was supported by a preponderance of the evidence and based upon an investigation pursuant to section 28-713.

Source: Laws 1979, LB 505, § 8; Laws 2005, LB 116, § 11; Laws 2009, LB122, § 2.

ARTICLE 8
OFFENSES RELATING TO MORALS

Section
28-813.01. Sexually explicit conduct; visual depiction; unlawful; penalty; affirmative defense.

28-813.01 Sexually explicit conduct; visual depiction; unlawful; penalty; affirmative defense.

(1) It shall be unlawful for a person to knowingly possess any visual depiction of sexually explicit conduct, as defined in section 28-1463.02, which has a child, as defined in such section, as one of its participants or portrayed observers.

(2)(a) Any person who is under nineteen years of age at the time he or she violates this section shall be guilty of a Class IV felony for each offense.

(b) Any person who is nineteen years of age or older at the time he or she violates this section shall be guilty of a Class III felony for each offense.

(c) Any person who violates this section and has previously been convicted of a violation of this section or section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01, 28-833, 28-1463.03, or 28-1463.05 or subsection (1) or (2) of section 28-320 shall be guilty of a Class IC felony for each offense.

(3) It shall be an affirmative defense to a charge made pursuant to this section that:

(a) The visual depiction portrays no person other than the defendant; or

(b)(i) The defendant was less than nineteen years of age; (ii) the visual depiction of sexually explicit conduct portrays a child who is fifteen years of age or older; (iii) the visual depiction was knowingly and voluntarily generated by the child depicted therein; (iv) the visual depiction was knowingly and voluntarily provided by the child depicted in the visual depiction; (v) the visual depiction contains only one child; (vi) the defendant has not provided or made available the visual depiction to another person except the child depicted who originally sent the visual depiction to the defendant; and (vii) the defendant did not coerce the child in the visual depiction to either create or send the visual depiction.

Source: Laws 1988, LB 117, § 6; Laws 2003, LB 111, § 1; Laws 2009, LB97, § 15.

ARTICLE 9
OFFENSES INVOLVING INTEGRITY AND EFFECTIVENESS OF GOVERNMENT OPERATION

Section
28-929. Assault on an officer in the first degree; penalty.
28-930. Assault on an officer in the second degree; penalty.
28-931. Assault on an officer in the third degree; penalty.
28-931.01. Assault on an officer using a motor vehicle; penalty.
28-932. Confined person; person in legal custody of Department of Correctional Services; dangerous sex offender; assault; penalty; sentence.
28-933. Confined person; person in legal custody of Department of Correctional Services; dangerous sex offender; offenses against another person; penalty; sentence.

28-929 Assault on an officer in the first degree; penalty.

(1) A person commits the offense of assault on an officer in the first degree if:

(a) He or she intentionally or knowingly causes serious bodily injury:

(i) To a peace officer, a probation officer, or an employee of the Department of Correctional Services; or

(ii) To an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act; and

(b) The offense is committed while such officer or employee is engaged in the performance of his or her official duties.

(2) Assault on an officer in the first degree shall be a Class ID felony.

Source: Laws 1982, LB 465, § 3; Laws 2005, LB 538, § 1; Laws 2009, LB63, § 7; Laws 2010, LB771, § 4.
Effective date July 15, 2010.

Cross References

Sex Offender Commitment Act, see section 71-1201.

28-930 Assault on an officer in the second degree; penalty.

(1) A person commits the offense of assault on an officer in the second degree if:

(a) He or she:

(i) Intentionally or knowingly causes bodily injury with a dangerous instrument:

(A) To a peace officer, a probation officer, or an employee of the Department of Correctional Services; or

(B) To an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act; or

(ii) Recklessly causes bodily injury with a dangerous instrument:

(A) To a peace officer, a probation officer, or an employee of the Department of Correctional Services; or

(B) To an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act; and

(b) The offense is committed while such officer or employee is engaged in the performance of his or her official duties.

(2) Assault on an officer in the second degree shall be a Class II felony.

Source: Laws 1982, LB 465, § 4; Laws 2005, LB 538, § 2; Laws 2009, LB63, § 8; Laws 2010, LB771, § 5.
Effective date July 15, 2010.

Cross References

Sex Offender Commitment Act, see section 71-1201.

28-931 Assault on an officer in the third degree; penalty.

(1) A person commits the offense of assault on an officer in the third degree if:

(a) He or she intentionally, knowingly, or recklessly causes bodily injury:

(i) To a peace officer, a probation officer, or an employee of the Department of Correctional Services; or

(ii) To an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act; and

(b) The offense is committed while such officer or employee is engaged in the performance of his or her official duties.

(2) Assault on an officer in the third degree shall be a Class IIIA felony.

Source: Laws 1982, LB 465, § 5; Laws 1997, LB 364, § 11; Laws 2005, LB 538, § 3; Laws 2010, LB771, § 6.
Effective date July 15, 2010.

Cross References

Sex Offender Commitment Act, see section 71-1201.

28-931.01 Assault on an officer using a motor vehicle; penalty.

(1) A person commits the offense of assault on an officer using a motor vehicle if:

(a) By using a motor vehicle to run over or to strike an officer or employee or by using a motor vehicle to collide with an officer's or employee's motor vehicle, he or she intentionally and knowingly causes bodily injury:

(i) To a peace officer, a probation officer, or an employee of the Department of Correctional Services; or

(ii) To an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act; and

(b) The offense is committed while such officer or employee is engaged in the performance of his or her duties.

(2) Assault on an officer using a motor vehicle shall be a Class IIIA felony.

Source: Laws 1995, LB 371, § 31; Laws 1997, LB 364, § 12; Laws 2005, LB 538, § 4; Laws 2010, LB771, § 7.
Effective date July 15, 2010.

Cross References

Sex Offender Commitment Act, see section 71-1201.

28-932 Confined person; person in legal custody of Department of Correctional Services; dangerous sex offender; assault; penalty; sentence.

(1) Any person (a)(i) who is legally confined in a jail or an adult correctional or penal institution, (ii) who is otherwise in legal custody of the Department of Correctional Services, or (iii) who is committed as a dangerous sex offender under the Sex Offender Commitment Act and (b) who intentionally, knowingly, or recklessly causes bodily injury to another person shall be guilty of a Class IIIA felony, except that if a deadly or dangerous weapon is used to commit such assault he or she shall be guilty of a Class III felony.

(2) Sentences imposed under subsection (1) of this section shall be consecutive to any sentence or sentences imposed for violations committed prior to the violation of subsection (1) of this section and shall not include any credit for time spent in custody prior to sentencing unless the time in custody is solely related to the offense for which the sentence is being imposed under this section.

Source: Laws 1982, LB 465, § 6; Laws 1997, LB 364, § 13; Laws 2010, LB771, § 8.
Effective date July 15, 2010.

Cross References

Sex Offender Commitment Act, see section 71-1201.

28-933 Confined person; person in legal custody of Department of Correctional Services; dangerous sex offender; offenses against another person; penalty; sentence.

(1) Any person (a)(i) who is legally confined in a jail or an adult correctional or penal institution, (ii) who is otherwise in legal custody of the Department of Correctional Services, or (iii) who is committed as a dangerous sex offender under the Sex Offender Commitment Act and (b) who commits (i) assault in the

first, second, or third degree as defined in sections 28-308 to 28-310, (ii) terroristic threats as defined in section 28-311.01, (iii) kidnapping as defined in section 28-313, or (iv) false imprisonment in the first or second degree as defined in sections 28-314 and 28-315, against any person for the purpose of compelling or inducing the performance of any act by such person or any other person shall be guilty of a Class II felony.

(2) Sentences imposed under subsection (1) of this section shall be served consecutive to any sentence or sentences imposed for violations committed prior to the violation of subsection (1) of this section and shall not include any credit for time spent in custody prior to sentencing unless the time in custody is solely related to the offense for which the sentence is being imposed under this section.

Source: Laws 1982, LB 465, § 7; Laws 1986, LB 956, § 13; Laws 2010, LB771, § 9.
Effective date July 15, 2010.

Cross References

Sex Offender Commitment Act, see section 71-1201.

ARTICLE 10
OFFENSES AGAINST ANIMALS

Section
28-1005.01. Ownership or possession of animal fighting paraphernalia; penalty.
28-1006. Investigation; arrest; seizure of property; reimbursement of expenses.
28-1007. Sections, how construed.
28-1008. Terms, defined.
28-1009.02. Repealed. Laws 2010, LB 865, § 17.
28-1009.03. Repealed. Laws 2010, LB 865, § 17.
28-1010. Indecency with an animal; penalty.
28-1012. Law enforcement officer; powers; immunity; seizure; court powers.
28-1013. Sections; exemptions.
28-1013.01. Repealed. Laws 2010, LB 865, § 17.
28-1013.02. Repealed. Laws 2010, LB 865, § 17.
28-1014. Local regulation; authorized.
28-1015. Ownership by child; applicability of penalties.
28-1016. Game and Parks Commission; Game Law; sections, how construed.
28-1017. Animal abandonment, cruel neglect, or cruel mistreatment; report required by certain employees; violation; penalty.
28-1018. Sale of puppy or kitten; prohibited acts; penalty.
28-1019. Conviction; order prohibiting ownership, possession, or residing with animal; duration; violation; penalty; seizure of animal.
28-1020. Animal abandonment, cruel neglect, or cruel mistreatment; report required by animal health care professional; immunity from liability.

28-1005.01 Ownership or possession of animal fighting paraphernalia; penalty.

(1) No person shall knowingly or intentionally own or possess animal fighting paraphernalia with the intent to commit a violation of section 28-1005.

(2)(a) For purposes of this section, except as provided in subdivision (b) of this subsection, animal fighting paraphernalia means equipment, products, and materials of any kind that are used, intended for use, or designed for use in the training, preparation, conditioning, or furtherance of the pitting of an animal against another as defined in section 28-1004. Animal fighting paraphernalia includes, but is not limited to, the following:

(i) A breaking stick, which means a device designed for insertion behind the molars of a dog for the purpose of breaking the dog's grip on another animal or object;

(ii) A cat mill, which means a device that rotates around a central support with one arm designed to secure a dog and one arm designed to secure a cat, rabbit, or other small animal beyond the grasp of the dog;

(iii) A treadmill, which means an exercise device consisting of an endless belt on which the animal walks or runs without changing place;

(iv) A fighting pit, which means a walled area designed to contain an animal fight;

(v) A springpole, which means a biting surface attached to a stretchable device, suspended at a height sufficient to prevent a dog from reaching the biting surface while touching the ground;

(vi) A heel, which means any edged or pointed instrument designed to be attached to the leg of a fowl;

(vii) A boxing glove or muff, which means a fitted protective covering for the spurs of a fowl; and

(viii) Any other instrument commonly used in the furtherance of pitting an animal against another.

(b) Animal fighting paraphernalia does not include equipment, products, or materials of any kind used by a veterinarian licensed to practice veterinary medicine and surgery in this state.

(3) Any person violating subsection (1) of this section is guilty of a Class I misdemeanor.

Source: Laws 2010, LB252, § 2.
Effective date July 15, 2010.

28-1006 Investigation; arrest; seizure of property; reimbursement of expenses.

(1) It shall be the duty of the sheriff, a police officer, or the Nebraska State Patrol to make prompt investigation of and arrest for any violation of section 28-1005 or 28-1005.01.

(2) Any animal, equipment, device, or other property or things involved in any violation of section 28-1005 or 28-1005.01 shall be subject to seizure, and disposition may be made in accordance with the method of disposition directed for contraband in sections 29-818 and 29-820.

(3) Any animal involved in any violation of section 28-1005 or 28-1005.01 shall be subject to seizure. Distribution or disposition shall be made as provided in section 29-818 and in such manner as the court may direct. The court may give preference to adoption alternatives through humane societies or comparable institutions and to the protection of such animal's welfare. For a humane society or comparable institution to be considered as an adoption alternative under this subsection, it must first be licensed by the Department of Agriculture as having passed the inspection requirements in the Commercial Dog and Cat Operator Inspection Act and paid the fee for inspection under the act. The court may prohibit an adopting or purchasing party from selling such animal for a period not to exceed one year.

(4) In addition to any other sentence given for a violation of section 28-1005 or 28-1005.01, the sentencing court may order the defendant to reimburse a public or private agency for expenses incurred in conjunction with the care, impoundment, or disposal, including adoption, of an animal involved in the violation of section 28-1005 or 28-1005.01. Whenever the court believes that such reimbursement may be a proper sentence or the prosecuting attorney requests, the court shall order that the presentence investigation report include documentation regarding the nature and amount of the expenses incurred. The court may order that reimbursement be made immediately, in specified installments, or within a specified period of time, not to exceed five years after the date of judgment.

Source: Laws 1988, LB 170, § 4; Laws 1997, LB 551, § 1; Laws 2002, LB 82, § 5; Laws 2010, LB252, § 3; Laws 2010, LB712, § 11.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB252, section 3, with LB712, section 11, to reflect all amendments.

Note: Changes made by LB252 became effective July 15, 2010. Changes made by LB712 became operative July 15, 2010.

Cross References

Commercial Dog and Cat Operator Inspection Act, see section 54-625.

28-1007 Sections, how construed.

Sections 28-1004 to 28-1006 shall not be construed to amend or in any manner change the authority of the Game and Parks Commission under the Game Law, to prohibit any conduct authorized or permitted in the Game Law, or to prohibit the training of animals for any purpose not prohibited by law.

Source: Laws 1988, LB 170, § 5; Laws 1998, LB 922, § 393; Laws 2010, LB252, § 4.
Effective date July 15, 2010.

28-1008 Terms, defined.

For purposes of sections 28-1008 to 28-1017, 28-1019, and 28-1020:

(1) Abandon means to leave any animal in one's care, whether as owner or custodian, for any length of time without making effective provision for its food, water, or other care as is reasonably necessary for the animal's health;

(2) Animal means any vertebrate member of the animal kingdom. Animal does not include an uncaptured wild creature or a livestock animal as defined in section 54-902;

(3) Cruelly mistreat means to knowingly and intentionally kill, maim, disfigure, torture, beat, mutilate, burn, scald, or otherwise inflict harm upon any animal;

(4) Cruelly neglect means to fail to provide any animal in one's care, whether as owner or custodian, with food, water, or other care as is reasonably necessary for the animal's health;

(5) Humane killing means the destruction of an animal by a method which causes the animal a minimum of pain and suffering;

(6) Law enforcement officer means any member of the Nebraska State Patrol, any county or deputy sheriff, any member of the police force of any city or village, or any other public official authorized by a city or village to enforce state or local animal control laws, rules, regulations, or ordinances. Law enforcement officer also includes any inspector under the Commercial Dog and

Cat Operator Inspection Act to the extent that such inspector may exercise the authority of a law enforcement officer under section 28-1012 while in the course of performing inspection activities under the Commercial Dog and Cat Operator Inspection Act;

(7) Mutilation means intentionally causing permanent injury, disfigurement, degradation of function, incapacitation, or imperfection to an animal. Mutilation does not include conduct performed by a veterinarian licensed to practice veterinary medicine and surgery in this state or conduct that conforms to accepted veterinary practices;

(8) Police animal means a horse or dog owned or controlled by the State of Nebraska for the purpose of assisting a Nebraska state trooper in the performance of his or her official enforcement duties;

(9) Repeated beating means intentional successive strikes to an animal by a person resulting in serious bodily injury or death to the animal;

(10) Serious injury or illness includes any injury or illness to any animal which creates a substantial risk of death or which causes broken bones, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ; and

(11) Torture means intentionally subjecting an animal to extreme pain, suffering, or agony. Torture does not include conduct performed by a veterinarian licensed to practice veterinary medicine and surgery in this state or conduct that conforms to accepted veterinary practices.

Source: Laws 1990, LB 50, § 1; Laws 1995, LB 283, § 2; Laws 2003, LB 273, § 4; Laws 2006, LB 856, § 11; Laws 2007, LB227, § 1; Laws 2008, LB764, § 2; Laws 2008, LB1055, § 2; Laws 2009, LB494, § 1; Laws 2010, LB865, § 13.
Effective date July 15, 2010.

Cross References

Commercial Dog and Cat Operator Inspection Act, see section 54-625.

28-1009.02 Repealed. Laws 2010, LB 865, § 17.

28-1009.03 Repealed. Laws 2010, LB 865, § 17.

28-1010 Indecency with an animal; penalty.

A person commits indecency with an animal when such person subjects an animal to sexual penetration as defined in section 28-318. Indecency with an animal is a Class III misdemeanor.

Source: Laws 1977, LB 38, § 216; Laws 1978, LB 748, § 16; R.S.1943, (1989), § 28-1003; Laws 1990, LB 50, § 3; Laws 2009, LB97, § 16.

28-1012 Law enforcement officer; powers; immunity; seizure; court powers.

(1) Any law enforcement officer who has reason to believe that an animal has been abandoned or is being cruelly neglected or cruelly mistreated may seek a warrant authorizing entry upon private property to inspect, care for, or impound the animal.

(2) Any law enforcement officer who has reason to believe that an animal has been abandoned or is being cruelly neglected or cruelly mistreated may issue a citation to the owner as prescribed in sections 29-422 to 29-429.

(3) Any animal, equipment, device, or other property or things involved in a violation of section 28-1009 or 28-1010 shall be subject to seizure and distribution or disposition shall be made under section 29-818 and in such manner as the court may direct.

(4) Any animal involved in a violation of section 28-1009 or 28-1010 shall be subject to seizure. Distribution or disposition shall be made under section 29-818 and in such manner as the court may direct. The court may consider adoption alternatives through humane societies or comparable institutions and the protection of such animal's welfare. For a humane society or comparable institution to be considered as an adoption alternative under this subsection, it must first be licensed by the Department of Agriculture as having passed the inspection requirements in the Commercial Dog and Cat Operator Inspection Act and paid the fee for inspection under the act. The court may prohibit an adopting or purchasing party from selling such animal for a period not to exceed one year.

(5) Any law enforcement officer acting under this section shall not be liable for damage to property if such damage is not the result of the officer's negligence.

Source: Laws 1990, LB 50, § 4; Laws 1997, LB 551, § 3; Laws 2002, LB 82, § 7; Laws 2010, LB712, § 12.
Operative date July 15, 2010.

Cross References

Commercial Dog and Cat Operator Inspection Act, see section 54-625.

28-1013 Sections; exemptions.

Sections 28-1008 to 28-1017 and 28-1019 shall not apply to:

(1) Care or treatment of an animal or other conduct by a veterinarian or veterinary technician licensed under the Veterinary Medicine and Surgery Practice Act that occurs within the scope of his or her employment, that occurs while acting in his or her professional capacity, or that conforms to commonly accepted veterinary practices;

(2) Commonly accepted care or treatment of a police animal by a law enforcement officer in the normal course of his or her duties;

(3) Research activity carried on by any research facility currently meeting the standards of the federal Animal Welfare Act, 7 U.S.C. 2131 et seq., as such act existed on January 1, 2010;

(4) Commonly accepted practices of hunting, fishing, or trapping;

(5) Humane killing of an animal by the owner or by his or her agent or a veterinarian upon the owner's request;

(6) Use of reasonable force against an animal, other than a police animal, which is working, including killing, capture, or restraint, if the animal is outside the owned or rented property of its owner or custodian and is injuring or posing an immediate threat to any person or other animal;

(7) Killing of house or garden pests; and

(8) Commonly accepted animal training practices.

Source: Laws 1990, LB 50, § 6; Laws 1995, LB 283, § 4; Laws 2003, LB 273, § 6; Laws 2007, LB463, § 1127; Laws 2008, LB764, § 5;

Laws 2008, LB1055, § 4; Laws 2009, LB494, § 2; Laws 2010, LB865, § 14.
Effective date July 15, 2010.

Cross References

Veterinary Medicine and Surgery Practice Act, see section 38-3301.

28-1013.01 Repealed. Laws 2010, LB 865, § 17.

28-1013.02 Repealed. Laws 2010, LB 865, § 17.

28-1014 Local regulation; authorized.

Any city, village, or county may adopt and promulgate rules, regulations, and ordinances which are not inconsistent with the provisions of sections 28-1008 to 28-1017, 28-1019, and 28-1020 for the protection of the public, public health, and animals within its jurisdiction.

Source: Laws 1990, LB 50, § 7; Laws 2003, LB 273, § 7; Laws 2008, LB764, § 8; Laws 2008, LB1055, § 5; Laws 2009, LB494, § 3.

28-1015 Ownership by child; applicability of penalties.

When an animal is owned by a minor child, the parent of such minor child with whom the child resides or legal guardian with whom the child resides shall be subject to the penalties provided under sections 28-1008 to 28-1017, 28-1019, and 28-1020 if the animal is abandoned or cruelly neglected.

Source: Laws 1990, LB 50, § 8; Laws 2003, LB 273, § 8; Laws 2008, LB764, § 9; Laws 2008, LB1055, § 6; Laws 2009, LB494, § 4.

28-1016 Game and Parks Commission; Game Law; sections, how construed.

Nothing in sections 28-1008 to 28-1017, 28-1019, and 28-1020 shall be construed as amending or changing the authority of the Game and Parks Commission as established in the Game Law or to prohibit any conduct authorized or permitted by such law.

Source: Laws 1990, LB 50, § 9; Laws 2003, LB 273, § 9; Laws 2008, LB764, § 10; Laws 2008, LB1055, § 7; Laws 2009, LB494, § 5.

Cross References

Game Law, see section 37-201.

28-1017 Animal abandonment, cruel neglect, or cruel mistreatment; report required by certain employees; violation; penalty.

(1) For purposes of this section:

(a) Reasonably suspects means a basis for reporting knowledge or a set of facts that would lead a person of ordinary care and prudence to believe and conscientiously entertain a strong suspicion that criminal activity is at hand or that a crime has been committed; and

(b) Employee means any employee of a governmental agency dealing with child or adult protective services, animal control, or animal abuse.

(2) Any employee, while acting in his or her professional capacity or within the scope of his or her employment, who observes or is involved in an incident which leads the employee to reasonably suspect that an animal has been

abandoned, cruelly neglected, or cruelly mistreated shall report such to the entity or entities that investigate such reports in that jurisdiction.

(3) The report of an employee shall be made within two working days of acquiring the information concerning the animal by facsimile transmission of a written report presented in the form described in subsection (6) of this section or by telephone. When an immediate response is necessary to protect the health and safety of the animal or others, the report of an employee shall be made by telephone as soon as possible.

(4) Nothing in this section shall be construed to impose a duty to investigate observed or reasonably suspected animal abandonment, cruel neglect, or cruel mistreatment. Any person making a report under this section is immune from liability except for false statements of fact made with malicious intent.

(5) A report made by an employee pursuant to this section shall include:

(a) The reporter's name and title, business address, and telephone number;

(b) The name, if known, of the animal owner or custodian, whether a business or individual;

(c) A description of the animal or animals involved, person or persons involved, and location of the animal or animals and the premises; and

(d) The date, time, and a description of the observation or incident which led the reporter to reasonably suspect animal abandonment, cruel neglect, or cruel mistreatment and any other information the reporter believes may be relevant.

(6) A report made by an employee pursuant to this section may be made on preprinted forms prepared by the entity or entities that investigate reports of animal abandonment, cruel neglect, or cruel mistreatment in that jurisdiction. The form shall include space for the information required under subsection (5) of this section.

(7) When two or more employees jointly have observed or reasonably suspected animal abandonment, cruel neglect, or cruel mistreatment and there is agreement between or among them, a report may be made by one person by mutual agreement. Any such reporter who has knowledge that the person designated to report has failed to do so shall thereafter make the report.

(8) Any employee failing to report under this section shall be guilty of an infraction.

Source: Laws 2003, LB 273, § 1; Laws 2009, LB494, § 6.

28-1018 Sale of puppy or kitten; prohibited acts; penalty.

(1) A person, other than an animal control facility, animal rescue, or animal shelter, who sells a puppy or kitten under eight weeks of age without its mother is guilty of a Class V misdemeanor.

(2) For purposes of this section:

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

(b) Animal rescue means a person or group of persons who hold themselves out as an animal rescue, accept or solicit for dogs or cats with the intention of finding permanent adoptive homes or providing lifelong care for such dogs or cats, or who use foster homes as defined in section 54-626 as the primary means of housing dogs or cats; and

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

Source: Laws 2003, LB 17, § 5; Laws 2006, LB 856, § 12; Laws 2010, LB910, § 1.
Effective date July 15, 2010.

28-1019 Conviction; order prohibiting ownership, possession, or residing with animal; duration; violation; penalty; seizure of animal.

(1)(a) If a person is convicted of a Class IV felony under section 28-1005 or 28-1009, the sentencing court shall order such person not to own, possess, or reside with any animal for at least five years after the date of conviction, but such time restriction shall not exceed fifteen years. Any person violating such court order shall be guilty of a Class I misdemeanor.

(b) If a person is convicted of a Class I misdemeanor under section 28-1005.01 or subdivision (2)(a) of section 28-1009 or a Class III misdemeanor under section 28-1010, the sentencing court may order such person not to own, possess, or reside with any animal after the date of conviction, but such time restriction, if any, shall not exceed five years. Any person violating such court order shall be guilty of a Class IV misdemeanor.

(c) Any animal involved in a violation of a court order under subdivision (a) or (b) of this subsection shall be subject to seizure by law enforcement. Distribution or disposition shall be made under section 29-818.

(2) This section shall not apply to any person convicted under section 28-1005, 28-1005.01, or 28-1009 if a licensed physician confirms in writing that ownership or possession of or residence with an animal is essential to the health of such person.

Source: Laws 2008, LB1055, § 3; Laws 2010, LB252, § 5; Laws 2010, LB712, § 13.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB252, section 5, with LB712, section 13, to reflect all amendments.

Note: Changes made by LB252 became effective July 15, 2010. Changes made by LB712 became operative July 15, 2010.

28-1020 Animal abandonment, cruel neglect, or cruel mistreatment; report required by animal health care professional; immunity from liability.

(1) Any animal health care professional, while acting in his or her professional capacity or within the scope of his or her employment, who observes or is involved in an incident which leads the animal health care professional to reasonably suspect that an animal has been abandoned, cruelly neglected, or cruelly mistreated, shall report such treatment to an entity that investigates such reports in the appropriate jurisdiction.

(2) Nothing in this section shall be construed to impose a duty to investigate observed or reasonably suspected abandonment, cruel neglect, or cruel mistreatment of an animal. Any person making a report under this section is immune from liability except for false statements of fact made with malicious intent.

(3) For purposes of this section, an animal health care professional means a licensed veterinarian as defined in section 38-3310 or a licensed veterinary technician as defined in section 38-3311.

Source: Laws 2009, LB494, § 7.

ARTICLE 12

OFFENSES AGAINST PUBLIC HEALTH AND SAFETY

Section
28-1201. Terms, defined.
28-1202. Carrying concealed weapon; penalty; affirmative defense.
28-1204. Unlawful possession of a handgun; exceptions; penalty.
28-1204.01. Unlawful transfer of a firearm to a juvenile; exceptions; penalty; county attorney; duty.
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28-1248. Fireworks; importation into state; duties of licensees; retention of packing list for inspection.
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28-1250. Fireworks; prohibited acts; violations; penalties; license suspension, cancellation, or revocation; appeal.
28-1252. Fireworks; State Fire Marshal; rules and regulations; enforcement of sections.

28-1201 Terms, defined.

For purposes of sections 28-1201 to 28-1212.04, unless the context otherwise requires:

(1) Firearm means any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive or frame or receiver of any such weapon;

(2) Fugitive from justice means any person who has fled or is fleeing from any peace officer to avoid prosecution or incarceration for a felony;

(3) Handgun means any firearm with a barrel less than sixteen inches in length or any firearm designed to be held and fired by the use of a single hand;

(4) Juvenile means any person under the age of eighteen years;

(5) Knife means any dagger, dirk, knife, or stiletto with a blade over three and one-half inches in length or any other dangerous instrument capable of inflicting cutting, stabbing, or tearing wounds;

(6) Knuckles and brass or iron knuckles means any instrument that consists of finger rings or guards made of a hard substance and that is designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with a fist enclosed in the knuckles;

(7) Machine gun means any firearm, whatever its size and usual designation, that shoots automatically more than one shot, without manual reloading, by a single function of the trigger;

(8) School means a public, private, denominational, or parochial elementary, vocational, or secondary school, a private postsecondary career school as defined in section 85-1603, a community college, a public or private college, a junior college, or a university;

(9) Short rifle means a rifle having a barrel less than sixteen inches long or an overall length of less than twenty-six inches; and

(10) Short shotgun means a shotgun having a barrel or barrels less than eighteen inches long or an overall length of less than twenty-six inches.

Source: Laws 1977, LB 38, § 233; Laws 1994, LB 988, § 2; Laws 2009, LB63, § 9; Laws 2009, LB430, § 6.

28-1202 Carrying concealed weapon; penalty; affirmative defense.

(1)(a) Except as otherwise provided in this section, any person who carries a weapon or weapons concealed on or about his or her person, such as a handgun, a knife, brass or iron knuckles, or any other deadly weapon, commits the offense of carrying a concealed weapon.

(b) It is an affirmative defense that the defendant was engaged in any lawful business, calling, or employment at the time he or she was carrying any weapon or weapons and the circumstances in which such person was placed at the time were such as to justify a prudent person in carrying the weapon or weapons for the defense of his or her person, property, or family.

(2) This section does not apply to a person who is the holder of a valid permit issued under the Concealed Handgun Permit Act if the concealed weapon the defendant is carrying is a handgun.

(3) Carrying a concealed weapon is a Class I misdemeanor.

(4) In the case of a second or subsequent conviction under this section, carrying a concealed weapon is a Class IV felony.

Source: Laws 1977, LB 38, § 234; Laws 1984, LB 1095, § 1; Laws 2006, LB 454, § 22; Laws 2009, LB63, § 10.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

28-1204 Unlawful possession of a handgun; exceptions; penalty.

(1) Any person under the age of eighteen years who possesses a handgun commits the offense of unlawful possession of a handgun.

(2) This section does not apply to the issuance of handguns to members of the armed forces of the United States, active or reserve, National Guard of this

state, or Reserve Officers Training Corps, when on duty or training, or to the temporary loan of handguns for instruction under the immediate supervision of a parent or guardian or adult instructor.

(3) Unlawful possession of a handgun is a Class I misdemeanor.

Source: Laws 1977, LB 38, § 236; Laws 1978, LB 748, § 18; Laws 2009, LB63, § 11.

28-1204.01 Unlawful transfer of a firearm to a juvenile; exceptions; penalty; county attorney; duty.

(1) Any person who knowingly and intentionally does or attempts to sell, provide, loan, deliver, or in any other way transfer the possession of a firearm to a juvenile commits the offense of unlawful transfer of a firearm to a juvenile. The county attorney shall have a copy of the petition served upon the owner of the firearm, if known, in person or by registered or certified mail at his or her last-known address.

(2) This section does not apply to the transfer of a firearm, other than a handgun, to a juvenile:

(a) From a person related to such juvenile within the second degree of consanguinity or affinity if the transfer of physical possession of such firearm does not occur until such time as express permission has been obtained from the juvenile's parent or guardian;

(b) For a legitimate and lawful sporting purpose; or

(c) Who is under direct adult supervision in an appropriate educational program.

(3) This section applies to the transfer of a handgun except as specifically provided in subsection (2) of section 28-1204.

(4) Unlawful transfer of a firearm to a juvenile is a Class III felony.

Source: Laws 1994, LB 988, § 4; Laws 2009, LB63, § 12.

28-1204.03 Firearms and violence; legislative findings.

The Legislature finds that:

(1) Increased violence at schools has become a national, state, and local problem;

(2) Increased violence and the threat of violence has a grave and detrimental impact on the educational process in Nebraska schools;

(3) Increased violence has caused fear and concern among not only the schools and students but the public at large;

(4) Firearms have contributed greatly to the increase of fear and concern among our citizens;

(5) Schools have a duty to protect their students and provide an environment which promotes and provides an education in a nonthreatening manner;

(6) An additional danger of firearms at schools is the risk of accidental discharge and harm to students and staff;

(7) Firearms are an immediate and inherently dangerous threat to the safety and well-being of an educational setting; and

(8) The ability to confiscate and remove firearms quickly from school grounds is a legitimate and necessary tool to protect students and the educational process.

Source: Laws 1994, LB 988, § 5; Laws 2009, LB430, § 7.

28-1204.04 Unlawful possession of a firearm at a school; penalty; exceptions; confiscation of certain firearms; disposition.

(1) Any person who possesses a firearm in a school, on school grounds, in a school-owned vehicle, or at a school-sponsored activity or athletic event is guilty of the offense of unlawful possession of a firearm at a school. Unlawful possession of a firearm at a school is a Class IV felony. This subsection shall not apply to (a) the issuance of firearms to or possession by members of the armed forces of the United States, active or reserve, National Guard of this state, or Reserve Officers Training Corps or peace officers or other duly authorized law enforcement officers when on duty or training, (b) firearms which may lawfully be possessed by the person receiving instruction, for instruction under the immediate supervision of an adult instructor, (c) firearms which may lawfully be possessed by a member of a college or university rifle team, within the scope of such person's duties as a member of the team, (d) firearms which may lawfully be possessed by a person employed by a college or university in this state as part of an agriculture or a natural resources program of such college or university, within the scope of such person's employment, (e) firearms contained within a private vehicle operated by a nonstudent adult which are not loaded and (i) are encased or (ii) are in a locked firearm rack that is on a motor vehicle, or (f) a handgun carried as a concealed handgun by a valid holder of a permit issued under the Concealed Handgun Permit Act in a vehicle or on his or her person while riding in or on a vehicle into or onto any parking area, which is open to the public and used by a school if, prior to exiting the vehicle, the handgun is locked inside the glove box, trunk, or other compartment of the vehicle, a storage box securely attached to the vehicle, or, if the vehicle is a motorcycle, a hardened compartment securely attached to the motorcycle while the vehicle is in or on such parking area, except as prohibited by federal law. For purposes of this subsection, encased means enclosed in a case that is expressly made for the purpose of containing a firearm and that is completely zipped, snapped, buckled, tied, or otherwise fastened with no part of the firearm exposed.

(2) Any firearm possessed in violation of subsection (1) of this section shall be confiscated without warrant by a peace officer or may be confiscated without warrant by school administrative or teaching personnel. Any firearm confiscated by school administrative or teaching personnel shall be delivered to a peace officer as soon as practicable.

(3) Any firearm confiscated by or given to a peace officer pursuant to subsection (2) of this section shall be declared a common nuisance and shall be held by the peace officer prior to his or her delivery of the firearm to the property division of the law enforcement agency which employs the peace officer. The property division of such law enforcement agency shall hold such firearm for as long as the firearm is needed as evidence. After the firearm is no longer needed as evidence, it shall be destroyed in such manner as the court may direct.

(4) Whenever a firearm is confiscated and held pursuant to this section or section 28-1204.02, the peace officer who received such firearm shall cause to be filed within ten days after the confiscation a petition for destruction of such firearm. The petition shall be filed in the district court of the county in which the confiscation is made. The petition shall describe the firearm held, state the name of the owner, if known, allege the essential elements of the violation which caused the confiscation, and conclude with a prayer for disposition and destruction in such manner as the court may direct. At any time after the confiscation of the firearm and prior to court disposition, the owner of the firearm seized may petition the district court of the county in which the confiscation was made for possession of the firearm. The court shall release the firearm to such owner only if the claim of ownership can reasonably be shown to be true and either (a) the owner of the firearm can show that the firearm was taken from his or her property or place of business unlawfully or without the knowledge and consent of the owner and that such property or place of business is different from that of the person from whom the firearm was confiscated or (b) the owner of the firearm is acquitted of the charge of unlawful possession of a handgun in violation of section 28-1204, unlawful transfer of a firearm to a juvenile, or unlawful possession of a firearm at a school. No firearm having significant antique value or historical significance as determined by the Nebraska State Historical Society shall be destroyed. If a firearm has significant antique value or historical significance, it shall be sold at auction and the proceeds shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1994, LB 988, § 6; Laws 2002, LB 82, § 8; Laws 2009, LB63, § 13; Laws 2009, LB430, § 8.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

28-1205 Use of a deadly weapon to commit a felony; possession of a deadly weapon during the commission of a felony; penalty; separate and distinct offense; proof of possession.

(1)(a) Any person who uses a firearm, a knife, brass or iron knuckles, or any other deadly weapon to commit any felony which may be prosecuted in a court of this state commits the offense of use of a deadly weapon to commit a felony.

(b) Use of a deadly weapon, other than a firearm, to commit a felony is a Class II felony.

(c) Use of a deadly weapon, which is a firearm, to commit a felony is a Class IC felony.

(2)(a) Any person who possesses a firearm, a knife, brass or iron knuckles, or a destructive device during the commission of any felony which may be prosecuted in a court of this state commits the offense of possession of a deadly weapon during the commission of a felony.

(b) Possession of a deadly weapon, other than a firearm, during the commission of a felony is a Class III felony.

(c) Possession of a deadly weapon, which is a firearm, during the commission of a felony is a Class II felony.

(3) The crimes defined in this section shall be treated as separate and distinct offenses from the felony being committed, and sentences imposed under this section shall be consecutive to any other sentence imposed.

(4) Possession of a deadly weapon may be proved through evidence demonstrating either actual or constructive possession of a firearm, a knife, brass or iron knuckles, or a destructive device during, immediately prior to, or immediately after the commission of a felony.

(5) For purposes of this section:

(a) Destructive device has the same meaning as in section 28-1213; and

(b) Use of a deadly weapon includes the discharge, employment, or visible display of any part of a firearm, a knife, brass or iron knuckles, any other deadly weapon, or a destructive device during, immediately prior to, or immediately after the commission of a felony or communication to another indicating the presence of a firearm, a knife, brass or iron knuckles, any other deadly weapon, or a destructive device during, immediately prior to, or immediately after the commission of a felony, regardless of whether such firearm, knife, brass or iron knuckles, deadly weapon, or destructive device was discharged, actively employed, or displayed.

Source: Laws 1977, LB 38, § 237; Laws 1995, LB 371, § 8; Laws 2009, LB63, § 14.

28-1206 Possession of a deadly weapon by a prohibited person; penalty.

(1)(a) Any person who possesses a firearm, a knife, or brass or iron knuckles and who has previously been convicted of a felony, who is a fugitive from justice, or who is the subject of a current and validly issued domestic violence protection order and is knowingly violating such order, or (b) any person who possesses a firearm or brass or iron knuckles and who has been convicted within the past seven years of a misdemeanor crime of domestic violence, commits the offense of possession of a deadly weapon by a prohibited person.

(2) The felony conviction may have been had in any court in the United States, the several states, territories, or possessions, or the District of Columbia.

(3)(a) Possession of a deadly weapon which is not a firearm by a prohibited person is a Class III felony.

(b) Possession of a deadly weapon which is a firearm by a prohibited person is a Class ID felony for a first offense and a Class IB felony for a second or subsequent offense.

(4)(a)(i) For purposes of this section, misdemeanor crime of domestic violence means:

(A)(I) A crime that is classified as a misdemeanor under the laws of the United States or the District of Columbia or the laws of any state, territory, possession, or tribe;

(II) A crime that has, as an element, the use or attempted use of physical force or the threatened use of a deadly weapon; and

(III) A crime that is committed by another against his or her spouse, his or her former spouse, a person with whom he or she has a child in common whether or not they have been married or lived together at any time, or a person with whom he or she is or was involved in a dating relationship as defined in section 28-323; or

(B)(I) Assault in the third degree under section 28-310, stalking under subsection (1) of section 28-311.04, false imprisonment in the second degree under section 28-315, or first offense domestic assault in the third degree under subsection (1) of section 28-323 or any attempt or conspiracy to commit one of these offenses; and

(II) The crime is committed by another against his or her spouse, his or her former spouse, a person with whom he or she has a child in common whether or not they have been married or lived together at any time, or a person with whom he or she is or was involved in a dating relationship as defined in section 28-323.

(ii) A person shall not be considered to have been convicted of a misdemeanor crime of domestic violence unless:

(A) The person was represented by counsel in the case or knowingly and intelligently waived the right to counsel in the case; and

(B) In the case of a prosecution for a misdemeanor crime of domestic violence for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either:

(I) The case was tried to a jury; or

(II) The person knowingly and intelligently waived the right to have the case tried to a jury.

(b) For purposes of this section, subject of a current and validly issued domestic violence protection order pertains to a current court order that was validly issued pursuant to section 28-311.09 or 42-924 or that meets or exceeds the criteria set forth in section 28-311.10 regarding protection orders issued by a court in any other state or a territory, possession, or tribe.

Source: Laws 1977, LB 38, § 238; Laws 1978, LB 748, § 19; Laws 1995, LB 371, § 9; Laws 2009, LB63, § 15; Laws 2010, LB771, § 10. Effective date July 15, 2010.

28-1207 Possession of a defaced firearm; penalty.

(1) Any person who knowingly possesses, receives, sells, or leases, other than by delivery to law enforcement officials, any firearm from which the manufacturer's identification mark or serial number has been removed, defaced, altered, or destroyed, commits the offense of possession of a defaced firearm.

(2) Possession of a defaced firearm is a Class III felony.

Source: Laws 1977, LB 38, § 239; Laws 2009, LB63, § 16.

28-1208 Defacing a firearm; penalty.

(1) Any person who intentionally removes, defaces, covers, alters, or destroys the manufacturer's identification mark or serial number or other distinguishing numbers on any firearm commits the offense of defacing a firearm.

(2) Defacing a firearm is a Class III felony.

Source: Laws 1977, LB 38, § 240; Laws 2009, LB63, § 17.

28-1212.01 Unlawful discharge of firearm; terms, defined.

For purposes of sections 28-1212.02 and 28-1212.04:

(1) Aircraft means any contrivance intended for and capable of transporting persons through the airspace;

(2) Inhabited means currently being used for dwelling purposes; and

(3) Occupied means that a person is physically present in a building, motor vehicle, or aircraft.

Source: Laws 1990, LB 1018, § 3; Laws 1995, LB 371, § 10; Laws 2010, LB771, § 11.
Effective date July 15, 2010.

28-1212.02 Unlawful discharge of firearm; penalty.

Any person who unlawfully and intentionally discharges a firearm at an inhabited dwelling house, occupied building, occupied motor vehicle, occupied aircraft, inhabited motor home as defined in section 71-4603, or inhabited camper unit as defined in section 60-1801 shall be guilty of a Class ID felony.

Source: Laws 1990, LB 1018, § 2; Laws 1995, LB 371, § 11; Laws 2009, LB63, § 18.

28-1212.03 Stolen firearm; prohibited acts; violation; penalty.

Any person who possesses, receives, retains, or disposes of a stolen firearm knowing that it has been or believing that it has been stolen shall be guilty of a Class III felony unless the firearm is possessed, received, retained, or disposed of with intent to restore it to the owner.

Source: Laws 1991, LB 477, § 1; Laws 2009, LB63, § 19.

28-1212.04 Discharge of firearm in certain cities and counties; prohibited acts; penalty.

Any person, within the territorial boundaries of any city of the first class or county containing a city of the metropolitan class or primary class, who unlawfully, knowingly, and intentionally or recklessly discharges a firearm, while in any motor vehicle or in the proximity of any motor vehicle that such person has just exited, at or in the general direction of any person, dwelling, building, structure, occupied motor vehicle, occupied aircraft, inhabited motor home as defined in section 71-4603, or inhabited camper unit as defined in section 60-1801, is guilty of a Class IC felony.

Source: Laws 2009, LB63, § 20; Laws 2010, LB771, § 12; Laws 2010, LB817, § 3.
Effective date July 15, 2010.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB771, section 12, with LB817, section 3, to reflect all amendments.

28-1213 Explosives, destructive devices, other terms; defined.

For purposes of sections 28-1213 to 28-1239, unless the context otherwise requires:

(1) Person means any individual, corporation, company, association, firm, partnership, limited liability company, society, or joint-stock company;

(2) Business enterprise means any corporation, partnership, limited liability company, company, or joint-stock company;

(3) Explosive materials means explosives, blasting agents, and detonators;

(4) Explosives means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion, including, but not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, ignited cord, igniters, display fireworks as defined in section 28-1241, and firecrackers or devices containing more than one hundred thirty milligrams of explosive composition, but does not include consumer fireworks as defined in such section, gasoline, kerosene, naphtha, turpentine, benzine, acetone, ethyl ether, benzol, fixed ammunition and primers for small arms, safety fuses, or matches;

(5) Blasting agent means any material or mixture intended for blasting which meets the requirements of 49 C.F.R. part 173, subpart C, Definitions, Classification and Packaging for Class I, as such subpart existed on January 1, 2010;

(6) Detonator means any device containing an initiating or primary explosive that is used for initiating detonation. Excluding ignition or delay charges, a detonator shall not contain more than ten grams of explosive material per unit. Detonator includes an electric detonator of instantaneous or delay type, a detonator for use with safety fuses, a detonating cord delay connector, and a nonelectric detonator of instantaneous or delay type which consists of detonating cord, shock tube, or any other replacement for electric leg wires;

(7)(a) Destructive devices means:

(i) Any explosive, incendiary, chemical or biological poison, or poison gas (A) bomb, (B) grenade, (C) rocket having a propellant charge of more than four ounces, (D) missile having an explosive or incendiary charge of more than one-quarter ounce, (E) mine, (F) booby trap, (G) Molotov cocktail, (H) bottle bomb, (I) vessel or container intentionally caused to rupture or mechanically explode by expanding pressure from any gas, acid, dry ice, or other chemical mixture, or (J) any similar device, the primary or common purpose of which is to explode and to be used as a weapon against any person or property; or

(ii) Any combination of parts either designed or intended for use in converting any device into a destructive device as defined in subdivision (7)(a)(i) of this section from which a destructive device may be readily assembled.

(b) The term destructive device does not include (i) any device which is neither designed nor redesigned for use as a weapon to be used against person or property, (ii) any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line-throwing, safety, or similar device, (iii) surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to 10 U.S.C. 4684(2), 4685, or 4686, as such sections existed on March 7, 2006, (iv) any other device which the Nebraska State Patrol finds is not likely to be used as a weapon or is an antique, or (v) any other device possessed under circumstances negating an intent that the device be used as a weapon against any person or property;

(8) Federal permittee means any lawful user of explosive materials who has obtained a federal user permit under 18 U.S.C. chapter 40, as such chapter existed on January 1, 2010;

(9) Federal licensee means any importer, manufacturer, or dealer in explosive materials who has obtained a federal importers', manufacturers', or dealers' license under 18 U.S.C. chapter 40, as such chapter existed on January 1, 2010; and

(10) Smokeless propellants means solid propellants commonly called smokeless powders in the trade and used in small arms ammunition.

Source: Laws 1977, LB 38, § 245; Laws 1988, LB 893, § 1; Laws 1989, LB 215, § 1; Laws 1993, LB 121, § 180; Laws 1993, LB 163, § 1; Laws 1999, LB 131, § 1; Laws 2002, LB 82, § 9; Laws 2006, LB 1007, § 1; Laws 2010, LB880, § 1.
Operative date October 1, 2010.

28-1239.01 Fireworks display; permit required; fee; sale of display fireworks; regulation.

(1) No person shall conduct a public exhibition or display of display fireworks without first procuring a display permit from the State Fire Marshal. If the applicant is an individual, the application for a display permit shall include the applicant's social security number. Such application for a display permit shall be accompanied by a fee of ten dollars to be deposited in the State Fire Marshal Cash Fund.

(2) No display fireworks shall be sold or delivered by a licensed distributor to any person who is not in possession of an approved display permit. Sales of display fireworks to persons without an approved display permit shall be subject to sections 28-1213 to 28-1239.

Source: Laws 1986, LB 969, § 4; Laws 1993, LB 251, § 1; Laws 1997, LB 752, § 82; Laws 2010, LB880, § 2.
Operative date October 1, 2010.

28-1241 Fireworks; definitions.

As used in sections 28-1239.01 and 28-1241 to 28-1252, unless the context otherwise requires:

(1) Distributor means any person engaged in the business of making sales of fireworks at wholesale in this state to any person engaged in the business of making sales of fireworks either as a jobber or as a retailer or both;

(2) Jobber means any person engaged in the business of making sales of fireworks at wholesale to any other person engaged in the business of making sales at retail;

(3) Retailer means any person engaged in the business of making sales of fireworks at retail to consumers or to persons other than distributors or jobbers;

(4) Sale includes barter, exchange, or gift or offer therefor and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee;

(5) Fireworks means any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation and which meets the definition of consumer or special fireworks set forth by the United States Department of Transportation in Title 49 of the Code of Federal Regulations;

(6)(a) Consumer fireworks means any of the following devices that (i) meet the requirements set forth in 16 C.F.R. parts 1500 and 1507, as such regulations existed on January 1, 2010, and (ii) are tested and approved by a nationally recognized testing facility or by the State Fire Marshal:

(A) Any small firework device designed to produce visible effects by combustion and which is required to comply with the construction, chemical composition, and labeling regulations of the United States Consumer Product Safety Commission set forth in 16 C.F.R., as such regulations existed on January 1, 2010;

(B) Any small device designed to produce audible effects such as a whistling device;

(C) Any ground device or firecracker containing fifty milligrams or less of explosive composition; or

(D) Any aerial device containing one hundred thirty milligrams or less of explosive composition.

(b) Class C explosives as classified by the United States Department of Transportation shall be considered consumer fireworks.

(c) Consumer fireworks does not include:

(i) Rockets that are mounted on a stick or wire and project into the air when ignited, with or without report;

(ii) Wire sparklers, except that silver and gold sparklers are deemed to be consumer fireworks until January 1, 2014;

(iii) Nighttime parachutes;

(iv) Fireworks that are shot into the air and after coming to the ground cause automatic ignition due to sufficient temperature;

(v) Firecrackers that contain more than fifty milligrams of explosive composition; and

(vi) Fireworks that have been tested by the State Fire Marshal as a response to complaints and have been deemed to be unsafe; and

(7) Display fireworks means those materials manufactured exclusively for use in public exhibitions or displays of fireworks designed to produce visible or audible effects by combustion, deflagration, or detonation. Display fireworks includes, but is not limited to, firecrackers containing more than one hundred thirty milligrams of explosive composition, aerial shells containing more than forty grams of explosive composition, and other display pieces which exceed the limits for classification as consumer fireworks. Class B explosives, also known as 1.3G explosives, as classified by the United States Department of Transportation in 49 C.F.R. 172.101, as such regulation existed on January 1, 2010, shall be considered display fireworks. Display fireworks shall be considered an explosive as defined in section 28-1213 and shall be subject to sections 28-1213 to 28-1239, except that display fireworks may be purchased, received, and discharged by the holder of an approved display permit issued pursuant to section 28-1239.01.

Source: Laws 1977, LB 38, § 273; Laws 1986, LB 969, § 2; Laws 1988, LB 893, § 3; Laws 2006, LB 1007, § 2; Laws 2010, LB880, § 3. Operative date October 1, 2010.

28-1243 Fireworks item deemed unsafe; quarantined; testing; test results; effect.

(1) If the State Fire Marshal deems any fireworks item to be unsafe pursuant to subdivision (6)(c)(vi) of section 28-1241, such fireworks item shall be quarantined from other fireworks. Any licensed distributor, jobber, or retailer may

request, at the distributor's, jobber's, or retailer's expense, that such fireworks item be tested by an independent, nationally recognized testing facility to determine if such fireworks item meets the requirements set forth by the United States Consumer Product Safety Commission for consumer fireworks, also known as 1.4G explosives, as classified by the United States Department of Transportation in 49 C.F.R. 172.101, as such regulation existed on January 1, 2010. A copy of the results of all testing done pursuant to this section shall be provided to the State Fire Marshal.

(2) If such fireworks item is in compliance with such requirements and otherwise permitted under section 28-1241, such fireworks item that was determined to be unsafe pursuant to subdivision (6)(c)(vi) of section 28-1241 shall be deemed a consumer firework and be permitted for retail sale or distribution.

(3) If such fireworks item is in compliance with such requirements but is otherwise not deemed consumer fireworks, such fireworks item shall not be sold at retail or distributed to retailers for sale in this state, but a distributor, jobber, or retailer may sell such fireworks item to another distributor or retailer in a state that permits the sale of such fireworks item.

(4) If such fireworks item is not in compliance with such requirements, then the distributor, jobber, or retailer shall destroy such fireworks item under the supervision of the State Fire Marshal. If such fireworks item is not destroyed under the supervision of the State Fire Marshal, notarized documentation shall be provided to the State Fire Marshal detailing and confirming the fireworks item's destruction.

Source: Laws 2010, LB880, § 4.
Operative date October 1, 2010.

28-1244 Fireworks; unlawful acts.

Except as provided in section 28-1245, it shall be unlawful for any person to possess, sell, offer for sale, bring into this state, or discharge any fireworks other than consumer fireworks.

Source: Laws 1977, LB 38, § 276; Laws 2010, LB880, § 5.
Operative date October 1, 2010.

28-1246 Fireworks; sale; license required; fees.

(1) It shall be unlawful for any person to sell, hold for sale, or offer for sale as a distributor, jobber, or retailer any fireworks in this state unless such person has first obtained a license as a distributor, jobber, or retailer. Application for each such license shall be made to the State Fire Marshal on forms prescribed by him or her. If the applicant is an individual, each application shall include the applicant's social security number. Each application shall be accompanied by the required fee, which shall be five hundred dollars for a distributor's license, two hundred dollars for a jobber's license, and twenty-five dollars for a retailer's license. Each application for a retailer's license shall be received by the State Fire Marshal at least ten business days prior to the sales period, as set forth in section 28-1249, in which the retailer wishes to sell consumer fireworks. A retailer's license shall be good only for the specific sales period listed on the application and within the calendar year in which issued. The retailer's license shall at all times be displayed at the place of business of the holder thereof.

(2) The funds received pursuant to this section shall be remitted to the State Treasurer for credit to the State Fire Marshal Cash Fund.

Source: Laws 1977, LB 38, § 278; Laws 1982, LB 928, § 22; Laws 1986, LB 853, § 1; Laws 1993, LB 251, § 3; Laws 1997, LB 752, § 83; Laws 2010, LB880, § 6.
Operative date October 1, 2010.

28-1247 Repealed. Laws 2010, LB 880, § 13.
Operative date October 1, 2010.

28-1248 Fireworks; importation into state; duties of licensees; retention of packing list for inspection.

(1) It shall be unlawful for any person not licensed as a distributor or as a jobber under sections 28-1241 to 28-1252 to bring any fireworks into this state.

(2) It shall be unlawful for any retailer or jobber in this state to sell any fireworks in this state which have not been purchased from a distributor licensed under sections 28-1241 to 28-1252.

(3) Any person licensed under sections 28-1239.01 and 28-1241 to 28-1252 shall keep, available for inspection by the State Fire Marshal or his or her agents, a copy of each packing list for fireworks purchased as long as any fireworks included on such packing list are held in his or her possession. The packing list shall show the license number of the distributor or jobber from which the purchase was made.

Source: Laws 1977, LB 38, § 280; Laws 2010, LB880, § 7.
Operative date October 1, 2010.

28-1249 Sale of consumer fireworks; limitations.

It shall be unlawful to sell any consumer fireworks at retail within this state, outside the limits of any incorporated city or village. Consumer fireworks may be sold at retail only between June 24 and July 5 and between December 28 and January 1 of each year.

Source: Laws 1977, LB 38, § 281; Laws 1999, LB 621, § 1; Laws 2004, LB 1091, § 2; Laws 2010, LB880, § 8.
Operative date October 1, 2010.

28-1250 Fireworks; prohibited acts; violations; penalties; license suspension, cancellation, or revocation; appeal.

(1) Any person who violates any of the provisions of sections 28-1244 to 28-1249 commits a Class III misdemeanor. If such person is a licensed distributor or jobber, the State Fire Marshal may suspend, cancel, or revoke the license for up to three years. The suspension, cancellation, or revocation shall become effective upon the failure to timely appeal the decision under the Administrative Procedure Act or upon an order of the Nebraska Fire Safety Appeals Board upholding the decision pursuant to a hearing under the Administrative Procedure Act.

(2) It shall be unlawful for any person, association, partnership, limited liability company, or corporation to have in his, her, or its possession any fireworks in violation of any of the provisions of sections 28-1244 to 28-1249. If

any person shall have in his, her, or its possession any fireworks in violation of such sections, a warrant may be issued for the seizure of such fireworks and when the warrant is executed by the seizure of such fireworks, such fireworks shall be safely kept by the magistrate to be used as evidence. Upon conviction of the offender, the fireworks shall be destroyed, but if the offender is discharged, the fireworks shall be returned to the person in whose possession they were found. Nothing in such sections shall apply to the transportation of fireworks by regulated carriers.

Source: Laws 1977, LB 38, § 282; Laws 1993, LB 121, § 183; Laws 2010, LB880, § 9.
Operative date October 1, 2010.

Cross References

Administrative Procedure Act, see section 84-920.

28-1252 Fireworks; State Fire Marshal; rules and regulations; enforcement of sections.

The State Fire Marshal shall adopt and promulgate reasonable rules and regulations for the enforcement of sections 28-1239.01 and 28-1241 to 28-1252 and, together with all peace officers of the state and its political subdivisions, shall be charged with the enforcement of sections 28-1239.01 and 28-1243 to 28-1252.

Source: Laws 1977, LB 38, § 284; Laws 1989, LB 215, § 17; Laws 2010, LB880, § 10.
Operative date October 1, 2010.

ARTICLE 13

MISCELLANEOUS OFFENSES

(g) LOCKS AND KEYS

Section
28-1316. Unlawful use of locks and keys; penalty; exceptions.

(n) SHOOTING FROM HIGHWAY OR BRIDGE

28-1335. Discharging any firearm or weapon from any public highway, road, or bridge; penalty; exception.

(r) UNLAWFUL MEMBERSHIP RECRUITMENT

28-1351. Unlawful membership recruitment into an organization or association; penalty.

(s) PUBLIC PROTECTION ACT

28-1352. Act, how cited.
28-1353. Act; how construed.
28-1354. Terms, defined.
28-1355. Pattern of racketeering activity or collection of an unlawful debt; prohibited acts.
28-1356. Violation; penalty.

(g) LOCKS AND KEYS

28-1316 Unlawful use of locks and keys; penalty; exceptions.

(1) A person commits the offense of unlawful use of locks and keys if he or she:

(a) Sells, offers to sell, or gives to any person other than a law enforcement agency, dealer licensed under the Motor Vehicle Industry Regulation Act,

motor vehicle manufacturer, or person regularly carrying on the profession of a locksmith any try-out key, manipulation key, wiggle key, or any other device designed to be used in place of the normal change key of any motor vehicle; or

(b) Has in his or her possession any try-out key, wiggle key, manipulation key, or any other device designed to be used in place of the normal change key of any motor vehicle unless he or she is a locksmith, locksmith manufacturer, dealer licensed under the Motor Vehicle Industry Regulation Act, motor vehicle manufacturer, or law enforcement agency; or

(c) Duplicates a master key for anyone unless written permission has been granted by the person who has legal control of the master key. All master keys shall be stamped with the words DO NOT DUPLICATE. All duplications of master keys shall also be stamped with the words DO NOT DUPLICATE.

(2) Nothing in subsection (1) of this section shall be construed to make it unlawful if:

(a) The owner of two or more vehicles possesses a change key that can be used on two or more vehicles that he or she owns; or

(b) Such owner changes the locks on such vehicle so that they are keyed alike; or

(c) Any person makes or duplicates the original change keys for such an owner; or

(d) Anyone stamps any other type of key with the words DO NOT DUPLICATE.

(3) Unlawful use of locks and keys is a Class III misdemeanor.

Source: Laws 1977, LB 38, § 300; Laws 2010, LB816, § 2.
Effective date March 4, 2010.

Cross References

Motor Vehicle Industry Regulation Act, see section 60-1401.

(n) SHOOTING FROM HIGHWAY OR BRIDGE

28-1335 Discharging any firearm or weapon from any public highway, road, or bridge; penalty; exception.

A person commits a Class III misdemeanor if such person discharges any firearm or weapon using any form of compressed gas as a propellant from any public highway, road, or bridge in this state, unless otherwise allowed by statute. Upon conviction, the mandatory minimum fine shall be one hundred dollars.

Source: Laws 1977, LB 38, § 319; Laws 2009, LB105, § 1.

(r) UNLAWFUL MEMBERSHIP RECRUITMENT

28-1351 Unlawful membership recruitment into an organization or association; penalty.

(1) A person commits the offense of unlawful membership recruitment into an organization or association when he or she knowingly and intentionally coerces, intimidates, threatens, or inflicts bodily harm upon another person in order to entice that other person to join or prevent that other person from leaving any organization, group, enterprise, or association whose members,

individually or collectively, engage in or have engaged in any of the following criminal acts for the benefit of, at the direction of, or on behalf of the organization, group, enterprise, or association or any of its members:

(a) Robbery under section 28-324;

(b) Arson in the first, second, or third degree under section 28-502, 28-503, or 28-504, respectively;

(c) Burglary under section 28-507;

(d) Murder in the first degree, murder in the second degree, or manslaughter under section 28-303, 28-304, or 28-305, respectively;

(e) Violations of the Uniform Controlled Substances Act that involve possession with intent to deliver, distribution, delivery, or manufacture of a controlled substance;

(f) Unlawful use, possession, or discharge of a firearm or other deadly weapon under sections 28-1201 to 28-1212.04;

(g) Assault in the first degree or assault in the second degree under section 28-308 or 28-309, respectively;

(h) Assault on an officer in the first, second, or third degree under section 28-929, 28-930, or 28-931, respectively, or assault on an officer using a motor vehicle under section 28-931.01;

(i) Theft by unlawful taking or disposition under section 28-511;

(j) Theft by receiving stolen property under section 28-517;

(k) Theft by deception under section 28-512;

(l) Theft by extortion under section 28-513;

(m) Kidnapping under section 28-313;

(n) Any forgery offense under sections 28-602 to 28-605;

(o) Criminal impersonation under section 28-638;

(p) Tampering with a publicly exhibited contest under section 28-614;

(q) Unauthorized use of a financial transaction device or criminal possession of a financial transaction device under section 28-620 or 28-621, respectively;

(r) Pandering under section 28-802;

(s) Bribery, bribery of a witness, or bribery of a juror under section 28-917, 28-918, or 28-920, respectively;

(t) Tampering with a witness or an informant or jury tampering under section 28-919;

(u) Unauthorized application of graffiti under section 28-524;

(v) Dogfighting, cockfighting, bearbaiting, or pitting an animal against another under section 28-1005; or

(w) Promoting gambling in the first degree under section 28-1102.

(2) Unlawful membership recruitment into an organization or association is a Class IV felony.

Source: Laws 2009, LB63, § 21.

Cross References

Uniform Controlled Substances Act, see section 28-401.01.

(s) PUBLIC PROTECTION ACT

28-1352 Act, how cited.

Sections 28-1352 to 28-1356 shall be known and may be cited as the Public Protection Act.

Source: Laws 2009, LB155, § 2.

28-1353 Act; how construed.

(1) The provisions of the Public Protection Act shall be liberally construed to effectuate its remedial purposes.

(2) Nothing in the act shall supersede any provision of federal, state, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in the act.

Source: Laws 2009, LB155, § 3.

28-1354 Terms, defined.

For purposes of the Public Protection Act:

(1) Enterprise means any individual, sole proprietorship, partnership, corporation, trust, association, or any legal entity, union, or group of individuals associated in fact although not a legal entity, and shall include illicit as well as licit enterprises as well as other entities;

(2) Pattern of racketeering activity means a cumulative loss for one or more victims or gains for the enterprise of not less than one thousand five hundred dollars resulting from at least two acts of racketeering activity, one of which occurred after August 30, 2009, and the last of which occurred within ten years, excluding any period of imprisonment, after the commission of a prior act of racketeering activity;

(3) Person means any individual or entity, as defined in section 21-2014, holding or capable of holding a legal, equitable, or beneficial interest in property;

(4) Prosecutor includes the Attorney General of the State of Nebraska, the deputy attorney general, assistant attorneys general, a county attorney, a deputy county attorney, or any person so designated by the Attorney General, a county attorney, or a court of the state to carry out the powers conferred by the act;

(5) Racketeering activity includes the commission of, criminal attempt to commit, conspiracy to commit, aiding and abetting in the commission of, aiding in the consummation of, acting as an accessory to the commission of, or the solicitation, coercion, or intimidation of another to commit or aid in the commission of any of the following:

(a) Offenses against the person which include: Murder in the first degree under section 28-303; murder in the second degree under section 28-304; manslaughter under section 28-305; assault in the first degree under section 28-308; assault in the second degree under section 28-309; assault in the third degree under section 28-310; terroristic threats under section 28-311.01; kidnapping under section 28-313; false imprisonment in the first degree under section 28-314; false imprisonment in the second degree under section 28-315; sexual assault in the first degree under section 28-319; and robbery under section 28-324;

(b) Offenses relating to controlled substances which include: To unlawfully manufacture, distribute, deliver, dispense, or possess with intent to manufacture, distribute, deliver, or dispense a controlled substance under subsection (1) of section 28-416; possession of marijuana weighing more than one pound under subsection (12) of section 28-416; possession of money used or intended to be used to facilitate a violation of subsection (1) of section 28-416 prohibited under subsection (17) of section 28-416; any violation of section 28-418; to unlawfully manufacture, distribute, deliver, or possess with intent to distribute or deliver an imitation controlled substance under section 28-445; possession of anhydrous ammonia with the intent to manufacture methamphetamine under section 28-451; and possession of ephedrine, pseudoephedrine, or phenylpropanolamine with the intent to manufacture methamphetamine under section 28-452;

(c) Offenses against property which include: Arson in the first degree under section 28-502; arson in the second degree under section 28-503; arson in the third degree under section 28-504; burglary under section 28-507; theft by unlawful taking or disposition under section 28-511; theft by shoplifting under section 28-511.01; theft by deception under section 28-512; theft by extortion under section 28-513; theft of services under section 28-515; theft by receiving stolen property under section 28-517; criminal mischief under section 28-519; and unlawfully depriving or obtaining property or services using a computer under section 28-1344;

(d) Offenses involving fraud which include: Burning to defraud an insurer under section 28-505; forgery in the first degree under section 28-602; forgery in the second degree under section 28-603; criminal possession of a forged instrument under section 28-604; criminal possession of forgery devices under section 28-605; criminal impersonation under section 28-638; identity theft under section 28-639; identity fraud under section 28-640; false statement or book entry under section 28-612; tampering with a publicly exhibited contest under section 28-614; issuing a false financial statement for purposes of obtaining a financial transaction device under section 28-619; unauthorized use of a financial transaction device under section 28-620; criminal possession of a financial transaction device under section 28-621; unlawful circulation of a financial transaction device in the first degree under section 28-622; unlawful circulation of a financial transaction device in the second degree under section 28-623; criminal possession of a blank financial transaction device under section 28-624; criminal sale of a blank financial transaction device under section 28-625; criminal possession of a forgery device under section 28-626; unlawful manufacture of a financial transaction device under section 28-627; laundering of sales forms under section 28-628; unlawful acquisition of sales form processing services under section 28-629; unlawful factoring of a financial transaction device under section 28-630; and fraudulent insurance acts under section 28-631;

(e) Offenses involving governmental operations which include: Abuse of public records under section 28-911; perjury or subornation of perjury under section 28-915; bribery under section 28-917; bribery of a witness under section 28-918; tampering with a witness or informant or jury tampering under section 28-919; bribery of a juror under section 28-920; assault on an officer in the first degree under section 28-929; assault on an officer in the second degree under section 28-930; assault on an officer in the third degree under section 28-931; and assault on an officer using a motor vehicle under section 28-931.01;

(f) Offenses involving gambling which include: Promoting gambling in the first degree under section 28-1102; possession of gambling records under section 28-1105; gambling debt collection under section 28-1105.01; and possession of a gambling device under section 28-1107;

(g) Offenses relating to firearms, weapons, and explosives which include: Carrying a concealed weapon under section 28-1202; transportation or possession of machine guns, short rifles, or short shotguns under section 28-1203; unlawful possession of a handgun under section 28-1204; unlawful transfer of a firearm to a juvenile under section 28-1204.01; using a deadly weapon to commit a felony or possession of a deadly weapon during the commission of a felony under section 28-1205; possession of a deadly weapon by a prohibited person under section 28-1206; possession of a defaced firearm under section 28-1207; defacing a firearm under section 28-1208; unlawful discharge of a firearm under section 28-1212.02; possession, receipt, retention, or disposition of a stolen firearm under section 28-1212.03; unlawful possession of explosive materials in the first degree under section 28-1215; unlawful possession of explosive materials in the second degree under section 28-1216; unlawful sale of explosives under section 28-1217; use of explosives without a permit under section 28-1218; obtaining an explosives permit through false representations under section 28-1219; possession of a destructive device under section 28-1220; threatening the use of explosives or placing a false bomb under section 28-1221; using explosives to commit a felony under section 28-1222; using explosives to damage or destroy property under section 28-1223; and using explosives to kill or injure any person under section 28-1224;

(h) Any violation of the Securities Act of Nebraska pursuant to section 8-1117;

(i) Any violation of the Nebraska Revenue Act of 1967 pursuant to section 77-2713;

(j) Offenses relating to public health and morals which include: Prostitution under section 28-801; pandering under section 28-802; keeping a place of prostitution under section 28-804; human trafficking or forced labor or services under section 28-831; a violation of section 28-1005; and any act relating to the visual depiction of sexually explicit conduct prohibited in the Child Pornography Prevention Act; and

(k) A violation of the Computer Crimes Act;

(6) State means the State of Nebraska or any political subdivision or any department, agency, or instrumentality thereof; and

(7) Unlawful debt means a debt of at least one thousand five hundred dollars:

(a) Incurred or contracted in gambling activity which was in violation of federal law or the law of the state or which is unenforceable under state or federal law in whole or in part as to principal or interest because of the laws relating to usury; or

(b) Which was incurred in connection with the business of gambling in violation of federal law or the law of the state or the business of lending money or a thing of value at a rate usurious under state law if the usurious rate is at least twice the enforceable rate.

Source: Laws 2009, LB155, § 4; Laws 2010, LB771, § 13.
Effective date July 15, 2010.

Cross References

Child Pornography Prevention Act, see section 28-1463.01.
Computer Crimes Act, see section 28-1341.
Nebraska Revenue Act of 1967, see section 77-2701.
Securities Act of Nebraska, see section 8-1123.

28-1355 Pattern of racketeering activity or collection of an unlawful debt; prohibited acts.

(1) It shall be unlawful for any person who has received any proceeds that such person knew were derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any right, interest, or equity in real property or in the establishment or operation of any enterprise. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his or her immediate family, and his or her or their accomplices in any pattern of racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(2) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.

(3) It shall be unlawful for any person employed by or associated with any enterprise to conduct or participate in, directly or indirectly, the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(4) It shall be unlawful for any person to conspire or attempt to violate any of the provisions of subsection (1), (2), or (3) of this section.

Source: Laws 2009, LB155, § 5.

28-1356 Violation; penalty.

(1) A person who violates section 28-1355 shall be guilty of a Class III felony; however, such person shall be guilty of a Class IB felony if the violation is based upon racketeering activity which is punishable as a Class I, IA, or IB felony.

(2) In lieu of the fine authorized by section 28-105, any person convicted of engaging in conduct in violation of section 28-1355, through which pecuniary value was derived, or by which personal injury or property damage or other loss was caused, may be sentenced to pay a fine that does not exceed three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution reasonably incurred. Any fine collected under this subsection shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2009, LB155, § 6.

ARTICLE 14
NONCODE PROVISIONS

(k) CHILD PORNOGRAPHY PREVENTION ACT

Section
28-1463.02. Terms, defined.
28-1463.03. Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense.
28-1463.04. Violation; penalty.
28-1463.05. Visual depiction of sexually explicit acts related to possession; violation; penalty.

(k) CHILD PORNOGRAPHY PREVENTION ACT

28-1463.02 Terms, defined.

As used in the Child Pornography Prevention Act, unless the context otherwise requires:

(1) Child, in the case of a participant, means any person under the age of eighteen years and, in the case of a portrayed observer, means any person under the age of sixteen years;

(2) Erotic fondling means touching a person's clothed or unclothed genitals or pubic area, breasts if the person is a female, or developing breast area if the person is a female child, for the purpose of real or simulated overt sexual gratification or sexual stimulation of one or more persons involved. Erotic fondling shall not be construed to include physical contact, even if affectionate, which is not for the purpose of real or simulated overt sexual gratification or sexual stimulation of one or more of the persons involved;

(3) Erotic nudity means the display of the human male or female genitals or pubic area, the human female breasts, or the developing breast area of the human female child, for the purpose of real or simulated overt sexual gratification or sexual stimulation of one or more of the persons involved;

(4) Sadomasochistic abuse means flagellation or torture by or upon a nude person or a person clad in undergarments, a mask, or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained when performed to predominantly appeal to the morbid interest;

(5) Sexually explicit conduct means: (a) Real or simulated intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal between persons of the same or opposite sex or between a human and an animal or with an artificial genital; (b) real or simulated masturbation; (c) real or simulated sadomasochistic abuse; (d) erotic fondling; (e) erotic nudity; or (f) real or simulated defecation or urination for the purpose of sexual gratification or sexual stimulation of one or more of the persons involved; and

(6) Visual depiction means live performance or photographic representation and includes any undeveloped film or videotape or data stored on a computer disk or by other electronic means which is capable of conversion into a visual image and also includes any photograph, film, video, picture, digital image, or computer-displayed image, video, or picture, whether made or produced by electronic, mechanical, computer, digital, or other means.

Source: Laws 1985, LB 668, § 2; Laws 1986, LB 788, § 1; Laws 2009, LB97, § 17.

28-1463.03 Visual depiction of sexually explicit conduct; prohibited acts; affirmative defense.

(1) It shall be unlawful for a person to knowingly make, publish, direct, create, provide, or in any manner generate any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(2) It shall be unlawful for a person knowingly to purchase, rent, sell, deliver, distribute, display for sale, advertise, trade, or provide to any person any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(3) It shall be unlawful for a person to knowingly employ, force, authorize, induce, or otherwise cause a child to engage in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(4) It shall be unlawful for a parent, stepparent, legal guardian, or any person with custody and control of a child, knowing the content thereof, to consent to such child engaging in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(5) It shall be an affirmative defense to a charge brought pursuant to subsection (1) of this section if the defendant was less than eighteen years of age at the time the visual depiction was created and the visual depiction of sexually explicit conduct includes no person other than the defendant.

(6) It shall be an affirmative defense to a charge brought pursuant to subsection (2) of this section if (a) the defendant was less than eighteen years of age, (b) the visual depiction of sexually explicit conduct includes no person other than the defendant, (c) the defendant had a reasonable belief at the time the visual depiction was sent to another that it was being sent to a willing recipient, and (d) the recipient was at least fifteen years of age at the time the visual depiction was sent.

Source: Laws 1978, LB 829, § 1; R.S.1943, (1979), § 28-1463; Laws 1985, LB 668, § 3; Laws 2009, LB97, § 18.

Cross References

Registration of sex offenders, see sections 29-4001 to 29-4014.

28-1463.04 Violation; penalty.

(1) Any person who is under nineteen years of age at the time he or she violates section 28-1463.03 shall be guilty of a Class III felony for each offense.

(2) Any person who is nineteen years of age or older at the time he or she violates section 28-1463.03 shall be guilty of a Class ID felony for each offense.

(3) Any person who violates section 28-1463.03 and has previously been convicted of a violation of section 28-1463.03 or section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01, 28-813, 28-833, or 28-1463.05 or subsection (1) or (2) of section 28-320 shall be guilty of a Class IC felony for each offense.

Source: Laws 1978, LB 829, § 2; R.S.1943, (1979), § 28-1464; Laws 1985, LB 668, § 5; Laws 2009, LB97, § 19.

28-1463.05 Visual depiction of sexually explicit acts related to possession; violation; penalty.

(1) It shall be unlawful for a person to knowingly possess with intent to rent, sell, deliver, distribute, trade, or provide to any person any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(2)(a) Any person who is under nineteen years of age at the time he or she violates this section shall be guilty of a Class IIIA felony for each offense.

(b) Any person who is nineteen years of age or older at the time he or she violates this section shall be guilty of a Class III felony for each offense.

(c) Any person who violates this section and has previously been convicted of a violation of this section or section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01, 28-813, 28-833, or 28-1463.03 or subsection (1) or (2) of section 28-320 shall be guilty of a Class IC felony for each offense.

Source: Laws 1985, LB 668, § 4; Laws 1986, LB 788, § 2; Laws 2004, LB 943, § 7; Laws 2009, LB97, § 20.

Cross References

Registration of sex offenders, see sections 29-4001 to 29-4014.

CHAPTER 29
CRIMINAL PROCEDURE

Article.
1. Definitions and General Rules of Procedure. 29-110 to 29-121.
4. Warrant and Arrest of Accused. 29-401, 29-431.
8. Search and Seizure.
   (b) Disposition of Seized Property. 29-818.
9. Bail. 29-901, 29-901.01.
12. Discharge from Custody or Recognizance. 29-1207, 29-1208.
14. Grand Jury. 29-1401.
18. Motions and Issues on Indictment. 29-1816.
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   (c) Discovery. 29-1912 to 29-1929.
22. Judgment on Conviction.
   (a) Judgment on Conviction. 29-2207.
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23. Review of Judgments in Criminal Cases. 29-2320 to 29-2327.
24. Execution of Sentences. 29-2412.
25. Special Procedure in Cases of Homicide. 29-2532 to 29-2546.
35. Criminal History Information. 29-3506.
39. Public Defenders and Appointed Counsel.
   (c) County Revenue Assistance Act. 29-3921 to 29-3932.
40. Sex Offenders.
   (a) Sex Offender Registration Act. 29-4001 to 29-4013.
   (b) Sexual Predator Residency Restriction Act. 29-4016.
41. DNA Testing.
   (a) DNA Identification Information Act. 29-4101 to 29-4115.01.
42. Audiovisual Court Appearances. 29-4203, 29-4204.
46. Nebraska Claims for Wrongful Conviction and Imprisonment Act. 29-4601 to 29-4608.

ARTICLE 1
DEFINITIONS AND GENERAL RULES OF PROCEDURE

Section
29-110. Prosecutions; complaint, indictment, or information; filing; time limitations; exceptions.
29-119. Plea agreement; terms, defined.
29-121. Leaving child at a hospital; no prosecution for crime; hospital; duty.

29-110 Prosecutions; complaint, indictment, or information; filing; time limitations; exceptions.

(1) Except as otherwise provided by law, no person shall be prosecuted for any felony unless the indictment is found by a grand jury within three years next after the offense has been done or committed or unless a complaint for the same is filed before the magistrate within three years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(2) Except as otherwise provided by law, no person shall be prosecuted, tried, or punished for any misdemeanor or other indictable offense below the grade of felony or for any fine or forfeiture under any penal statute unless the suit,

information, or indictment for such offense is instituted or found within one year and six months from the time of committing the offense or incurring the fine or forfeiture or within one year for any offense the punishment of which is restricted by a fine not exceeding one hundred dollars and to imprisonment not exceeding three months.

(3) Except as otherwise provided by law, no person shall be prosecuted for kidnapping under section 28-313, false imprisonment under section 28-314 or 28-315, child abuse under section 28-707, pandering under section 28-802, debauching a minor under section 28-805, or an offense under section 28-813, 28-813.01, or 28-1463.03 when the victim is under sixteen years of age at the time of the offense (a) unless the indictment for such offense is found by a grand jury within seven years next after the offense has been committed or within seven years next after the victim's sixteenth birthday, whichever is later, or (b) unless a complaint for such offense is filed before the magistrate within seven years next after the offense has been committed or within seven years next after the victim's sixteenth birthday, whichever is later, and a warrant for the arrest of the defendant has been issued.

(4) No person shall be prosecuted for a violation of the Securities Act of Nebraska under section 8-1117 unless the indictment for such offense is found by a grand jury within five years next after the offense has been done or committed or unless a complaint for such offense is filed before the magistrate within five years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(5) No person shall be prosecuted for criminal impersonation under section 28-638, identity theft under section 28-639, or identity fraud under section 28-640 unless the indictment for such offense is found by a grand jury within five years next after the offense has been done or committed or unless a complaint for such offense is filed before the magistrate within five years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(6) No person shall be prosecuted for a violation of section 68-1017 if the aggregate value of all funds and other benefits obtained or attempted to be obtained is five hundred dollars or more unless the indictment for such offense is found by a grand jury within five years next after the offense has been done or committed or unless a complaint for such offense is filed before the magistrate within five years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(7) There shall not be any time limitations for prosecution or punishment for treason, murder, arson, forgery, sexual assault in the first or second degree under section 28-319 or 28-320, sexual assault of a child in the second or third degree under section 28-320.01, incest under section 28-703, or sexual assault of a child in the first degree under section 28-319.01; nor shall there be any time limitations for prosecution or punishment for sexual assault in the third degree under section 28-320 when the victim is under sixteen years of age at the time of the offense.

(8) The time limitations prescribed in this section shall include all inchoate offenses pursuant to the Nebraska Criminal Code and compounding a felony pursuant to section 28-301.

(9) The time limitations prescribed in this section shall not extend to any person fleeing from justice.

(10) When any suit, information, or indictment for any crime or misdemeanor is limited by any statute to be brought or exhibited within any other time than is limited by this section, then the suit, information, or indictment shall be brought or exhibited within the time limited by such statute.

(11) If any suit, information, or indictment is quashed or the proceedings set aside or reversed on writ of error, the time during the pendency of such suit, information, or indictment so quashed, set aside, or reversed shall not be reckoned within this statute so as to bar any new suit, information, or indictment for the same offense.

(12) The changes made to this section by Laws 2004, LB 943, shall apply to offenses committed prior to April 16, 2004, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

(13) The changes made to this section by Laws 2005, LB 713, shall apply to offenses committed prior to September 4, 2005, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

(14) The changes made to this section by Laws 2009, LB 97, and Laws 2006, LB 1199, shall apply to offenses committed prior to May 21, 2009, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

(15) The changes made to this section by Laws 2010, LB809, shall apply to offenses committed prior to July 15, 2010, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

Source: G.S.1873, c. 58, § 256, p. 783; R.S.1913, § 8910; C.S.1922, § 9931; C.S.1929, § 29-110; R.S.1943, § 29-110; Laws 1965, c. 147, § 1, p. 489; Laws 1989, LB 211, § 1; Laws 1990, LB 1246, § 10; Laws 1993, LB 216, § 10; Laws 2004, LB 943, § 8; Laws 2005, LB 713, § 2; Laws 2006, LB 1199, § 10; Laws 2009, LB97, § 21; Laws 2009, LB155, § 17; Laws 2010, LB809, § 1.
Effective date July 15, 2010.

Cross References

Nebraska Criminal Code, see section 28-101.
Securities Act of Nebraska, see section 8-1123.

29-119 Plea agreement; terms, defined.

For purposes of this section and sections 23-1201, 29-120, and 29-2261, unless the context otherwise requires:

(1) A plea agreement means that as a result of a discussion between the defense counsel and the prosecuting attorney:

(a) A charge is to be dismissed or reduced; or

(b) A defendant, if he or she pleads guilty to a charge, may receive less than the maximum penalty permitted by law; and

(2)(a) Victim means a person who, as a result of a homicide under sections 28-302 to 28-306, a first degree sexual assault under section 28-319, a first degree assault under section 28-308, a sexual assault of a child in the second or third degree under section 28-320.01, a sexual assault of a child in the first degree under section 28-319.01, a second degree assault under section 28-309, a first degree false imprisonment under section 28-314, a second degree sexual assault under section 28-320, or a robbery under section 28-324, has had a

personal confrontation with the offender and also includes a person who has suffered serious bodily injury as defined in section 28-109 as a result of a motor vehicle accident when the driver was charged with a violation of section 60-6,196 or 60-6,197 or with a violation of a city or village ordinance enacted in conformance with either section.

(b) In the case of a homicide, victim means the nearest surviving relative under the law as provided by section 30-2303 but does not include the alleged perpetrator of the homicide.

(c) In the case of a violation of section 28-813.01, 28-1463.03, 28-1463.04, or 28-1463.05, victim means a person who was a child as defined in section 28-1463.02 and a participant or portrayed observer in the visual depiction of sexually explicit conduct which is the subject of the violation and who has been identified and can be reasonably notified.

(d) In the case of a sexual assault of a child, a possession offense of a visual depiction of sexually explicit conduct, or a distribution offense of a visual depiction of sexually explicit conduct, victim means the child victim and the parents, guardians, or duly appointed legal representative of the child victim but does not include the alleged perpetrator of the crime.

Source: Laws 1983, LB 78, § 1; Laws 1990, LB 87, § 2; Laws 1993, LB 370, § 10; Laws 1998, LB 309, § 2; Laws 2004, LB 270, § 3; Laws 2006, LB 1199, § 11; Laws 2010, LB728, § 8.
Effective date July 15, 2010.

29-121 Leaving child at a hospital; no prosecution for crime; hospital; duty.

No person shall be prosecuted for any crime based solely upon the act of leaving a child thirty days old or younger in the custody of an employee on duty at a hospital licensed by the State of Nebraska. The hospital shall promptly contact appropriate authorities to take custody of the child.

Source: Laws 2008, LB157, § 1; Laws 2008, First Spec. Sess., LB1, § 1.

ARTICLE 4

WARRANT AND ARREST OF ACCUSED

Section
29-401. Law violators; arrest by sheriff or other peace officer; juvenile under eighteen years; requirements.
29-431. Infraction, defined.

29-401 Law violators; arrest by sheriff or other peace officer; juvenile under eighteen years; requirements.

Every sheriff, deputy sheriff, marshal, deputy marshal, security guard, police officer, or peace officer as defined in subdivision (15) of section 49-801 shall arrest and detain any person found violating any law of this state or any legal ordinance of any city or incorporated village until a legal warrant can be obtained, except that (1) any such law enforcement officer taking a juvenile under the age of eighteen years into his or her custody for any violation herein defined shall proceed as set forth in sections 43-248, 43-248.01, 43-250, 43-251, 43-251.01, and 43-253 and (2) the court in which the juvenile is to appear shall not accept a plea from the juvenile until finding that the parents of the juvenile

have been notified or that reasonable efforts to notify such parents have been made as provided in section 43-250.

Source: G.S.1873, c. 58, § 283, p. 789; R.S.1913, § 8937; C.S.1922, § 9961; C.S.1929, § 29-401; R.S.1943, § 29-401; Laws 1967, c. 175, § 1, p. 490; Laws 1972, LB 1403, § 1; Laws 1981, LB 346, § 86; Laws 1988, LB 1030, § 23; Laws 1994, LB 451, § 1; Laws 2009, LB63, § 22; Laws 2010, LB771, § 14.
Effective date July 15, 2010.

29-431 Infraction, defined.

As used in sections 28-416, 29-422, 29-424, 29-425, 29-431 to 29-434, and 48-1231, unless the context otherwise requires, infraction means the violation of any law, ordinance, order, rule, or regulation, not including those related to traffic, which is not otherwise declared to be a misdemeanor or a felony. Infraction includes violations of section 60-6,267.

Source: Laws 1978, LB 808, § 1; Laws 1979, LB 534, § 1; Laws 1983, LB 306, § 1; Laws 1993, LB 370, § 14; Laws 2010, LB884, § 1.
Effective date July 15, 2010.

Cross References

Child passenger restraint system, violation, see sections 60-6,267 and 60-6,268.

ARTICLE 8

SEARCH AND SEIZURE

(b) DISPOSITION OF SEIZED PROPERTY

Section
29-818. Seized property; custody; pet animal or equine; additional procedures; hearing; order to pay expenses; delinquent payments; hearing; notice; appeal.

(b) DISPOSITION OF SEIZED PROPERTY

29-818 Seized property; custody; pet animal or equine; additional procedures; hearing; order to pay expenses; delinquent payments; hearing; notice; appeal.

(1) Except for pet animals or equines as provided in subsection (2) of this section, property seized under a search warrant or validly seized without a warrant shall be safely kept by the officer seizing the same unless otherwise directed by the judge or magistrate, and shall be so kept so long as necessary for the purpose of being produced as evidence on any trial. Property seized may not be taken from the officer having it in custody by replevin or other writ so long as it is or may be required as evidence in any trial, nor may it be so taken in any event where a complaint has been filed in connection with which the property was or may be used as evidence, and the court in which such complaint was filed shall have exclusive jurisdiction for disposition of the property or funds and to determine rights therein, including questions respecting the title, possession, control, and disposition thereof.

(2)(a) Any pet animal or equine seized under a search warrant or validly seized without a warrant may be kept by the officer seizing the same on the property of the person who owns, keeps, harbors, maintains, or controls such pet animal or equine.

(b) When any pet animal or equine is seized or held the court shall provide the person who owns, keeps, harbors, maintains, or controls such pet animal or equine with notice that a hearing will be had and specify the date, time, and place of such hearing. Such notice shall be served by personal or residential service or by certified mail. If such notice cannot be served by such methods, service may be made by publication in the county where such pet animal or equine was seized. Such publication shall be made after application and order of the court. Unless otherwise determined and ordered by the court, the date of such hearing shall be no later than ten days after the seizure.

(c) At the hearing, the court shall determine the disposition of the pet animal or equine, and if the court determines that any pet animal or equine shall not be returned, the court shall order the person from whom the pet animal or equine was seized to pay all expenses for the support and maintenance of the pet animal or equine, including expenses for shelter, food, veterinary care, and board, necessitated by the possession of the pet animal or equine. At the hearing, the court shall also consider the person's ability to pay for the expenses of the pet animal or equine and the amount of such payments. Payments shall be for a succeeding thirty-day period with the first payment due on or before the tenth day following the hearing. Payments for each subsequent succeeding thirty-day period, if any, shall be due on or before the tenth day of such period.

(d) If a person becomes delinquent in his or her payments for the expenses of the pet animal or equine, the court shall hold a hearing to determine the disposition of the seized pet animal or equine. Notice of such hearing shall be given to the person who owns, keeps, harbors, maintains, or controls such pet animal or equine and to any lienholder or security interest holder of record as provided in subdivision (b) of this subsection.

(e) An appeal may be entered within ten days after a hearing under subdivision (c) or (d) of this subsection. Any person filing an appeal shall post a bond sufficient to pay all costs of care of the pet animal or equine for thirty days. Such payment will be required for each succeeding thirty-day period until the appeal is final.

(f) Should the person be found not guilty, all funds paid for the expenses of the pet animal or equine shall be returned to the person.

(g) For purposes of this subsection:

(i) Pet animal means any domestic dog, domestic cat, mini pig, domestic rabbit, domestic ferret, domestic rodent, bird except a bird raised as an agricultural animal and specifically excluding any bird possessed under a license issued by the State of Nebraska or the United States Fish and Wildlife Service, nonlethal aquarium fish, nonlethal invertebrate, amphibian, turtle, nonvenomous snake that will not grow to more than eight feet in length at maturity, or such other animal as may be specified and for which a permit shall be issued by an animal control authority after inspection and approval, except that any animal forbidden to be sold, owned, or possessed by federal or state law is not a pet animal; and

(ii) Equine means a horse, pony, donkey, mule, hinny, or llama.

(h) This section shall not preempt, and shall not be construed to preempt, any ordinance of a city of the metropolitan class.

Source: Laws 1963, c. 161, § 7, p. 573; Laws 2010, LB712, § 14.
Operative date July 15, 2010.

Cross References

Seizure of vehicle and component parts, see section 60-2608.

ARTICLE 9
BAIL

Section
29-901. Bail; personal recognizance; conditions.
29-901.01. Conditions of release; how determined.

29-901 Bail; personal recognizance; conditions.

Any bailable defendant shall be ordered released from custody pending judgment on his or her personal recognizance unless the judge determines in the exercise of his or her discretion that such a release will not reasonably assure the appearance of the defendant as required or that such a release could jeopardize the safety and maintenance of evidence or the safety of victims, witnesses, or other persons in the community. When such determination is made, the judge shall either in lieu of or in addition to such a release impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or, if no single condition gives that assurance, any combination of the following conditions:

(1) Place the defendant in the custody of a designated person or organization agreeing to supervise the defendant;

(2) Place restrictions on the travel, association, or place of abode of the defendant during the period of such release;

(3) Require, at the option of any bailable defendant, either of the following:

(a) The execution of an appearance bond in a specified amount and the deposit with the clerk of the court in cash of a sum not to exceed ten percent of the amount of the bond, ninety percent of such deposit to be returned to the defendant upon the performance of the appearance or appearances and ten percent to be retained by the clerk as appearance bond costs, except that when no charge is subsequently filed against the defendant or if the charge or charges which are filed are dropped before the appearance of the defendant which the bond was to assure, the entire deposit shall be returned to the defendant. If the bond is subsequently reduced by the court after the original bond has been posted, no additional appearance bond costs shall be retained by the clerk. The difference in the appearance bond costs between the original bond and the reduced bond shall be returned to the defendant. In no event shall the deposit be less than twenty-five dollars. Whenever jurisdiction is transferred from a court requiring an appearance bond under this subdivision to another state court, the transferring court shall transfer the ninety percent of the deposit remaining after the appearance bond costs have been retained. No further costs shall be levied or collected by the court acquiring jurisdiction; or

(b) The execution of a bail bond with such surety or sureties as shall seem proper to the judge or, in lieu of such surety or sureties, at the option of such person, a cash deposit of such sum so fixed, conditioned for his or her appearance before the proper court, to answer the offense with which he or she may be charged and to appear at such times thereafter as may be ordered by the proper court. The cash deposit shall be returned to the defendant upon the performance of all appearances.

If the amount of bail is deemed insufficient by the court before which the offense is pending, the court may order an increase of such bail and the defendant shall provide the additional undertaking, written or cash, to secure his or her release. All recognizances in criminal cases shall be in writing and be continuous from term to term until final judgment of the court in such cases and shall also extend, when the court has suspended execution of sentence for a limited time, as provided in section 29-2202, or, when the court has suspended execution of sentence to enable the defendant to apply for a writ of error to the Supreme Court or Court of Appeals, as provided in section 29-2301, until the period of suspension has expired. When two or more indictments or informations are returned against the same person at the same term of court, the recognizance given may be made to include all offenses charged therein. Each surety on such recognizance shall be required to justify under oath in a sum twice the amount of such recognizance and give the description of real estate owned by him or her of a value above encumbrance equal to the amount of such justification and shall name all other cases pending in which he or she is a surety. No one shall be accepted as surety on recognizance aggregating a sum in excess of his or her equity in the real estate, but such recognizance shall not constitute a lien on the real estate described therein until judgment is entered thereon against such surety; or

(4) Impose any other condition deemed reasonably necessary to assure appearances as required, including a condition requiring that the defendant return to custody after specified hours.

Source: G.S.1873, c. 58, §§ 346 to 348, p. 802; R.S.1913, § 9003; Laws 1921, c. 203, § 1, p. 733; C.S.1922, § 10027; C.S.1929, § 29-901; R.S.1943, § 29-901; Laws 1951, c. 87, § 1, p. 250; Laws 1953, c. 90, § 1, p. 261; Laws 1961, c. 132, § 1, p. 384; Laws 1972, LB 1032, § 174; Laws 1974, LB 828, § 1; Laws 1975, LB 284, § 2; Laws 1984, LB 773, § 1; Laws 1991, LB 732, § 74; Laws 1999, LB 51, § 1; Laws 2009, LB63, § 23; Laws 2010, LB771, § 15. Effective date July 15, 2010.

Cross References

Appeals, suspension of sentence, see section 29-2301.
Forfeiture of recognizance, see sections 29-1105 to 29-1110.
Suspension of sentence, see section 29-2202.

29-901.01 Conditions of release; how determined.

In determining which condition or conditions of release shall reasonably assure appearance and deter possible threats to the safety and maintenance of evidence or the safety of victims, witnesses, or other persons in the community, the judge shall, on the basis of available information, take into account the nature and circumstances of the offense charged, including any information to indicate that the defendant might engage in additional criminal activity or pose a threat to himself or herself, yet to be collected evidence, alleged victims, potential witnesses, or members of the general public, the defendant's family ties, employment, financial resources, character and mental condition, the length of the defendant's residence in the community, the defendant's record of convictions, and the defendant's record of appearances at court proceedings or of flight to avoid prosecution or of failure to appear at court proceedings.

Source: Laws 1974, LB 828, § 2; Laws 2009, LB63, § 24; Laws 2010, LB771, § 16.
Effective date July 15, 2010.

ARTICLE 12
DISCHARGE FROM CUSTODY OR RECOGNIZANCE

Section
29-1207. Trial within six months; time; how computed.
29-1208. Discharge from offense charged; when.

29-1207 Trial within six months; time; how computed.

(1) Every person indicted or informed against for any offense shall be brought to trial within six months, and such time shall be computed as provided in this section.

(2) Such six-month period shall commence to run from the date the indictment is returned or the information filed, unless the offense is a misdemeanor offense involving intimate partners, as that term is defined in section 28-323, in which case the six-month period shall commence from the date the defendant is arrested on a complaint filed as part of a warrant for arrest.

(3) If a defendant is to be tried again following a mistrial, an order for a new trial, or an appeal or collateral attack, such period shall commence to run from the date of the mistrial, order granting a new trial, or the mandate on remand.

(4) The following periods shall be excluded in computing the time for trial:

(a) The period of delay resulting from other proceedings concerning the defendant, including, but not limited to, an examination and hearing on competency and the period during which he or she is incompetent to stand trial; the time from filing until final disposition of pretrial motions of the defendant, including motions to suppress evidence, motions to quash the indictment or information, demurrers and pleas in abatement, and motions for a change of venue; and the time consumed in the trial of other charges against the defendant;

(b) The period of delay resulting from a continuance granted at the request or with the consent of the defendant or his or her counsel. A defendant without counsel shall not be deemed to have consented to a continuance unless he or she has been advised by the court of his or her right to a speedy trial and the effect of his or her consent. A defendant who has sought and obtained a continuance which is indefinite has an affirmative duty to end the continuance by giving notice of request for trial or the court can end the continuance by setting a trial date. When the court ends an indefinite continuance by setting a trial date, the excludable period resulting from the indefinite continuance ends on the date for which trial commences. A defendant is deemed to have waived his or her right to speedy trial when the period of delay resulting from a continuance granted at the request of the defendant or his or her counsel extends the trial date beyond the statutory six-month period;

(c) The period of delay resulting from a continuance granted at the request of the prosecuting attorney, if:

(i) The continuance is granted because of the unavailability of evidence material to the state's case, when the prosecuting attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will be available at the later date; or

(ii) The continuance is granted to allow the prosecuting attorney additional time to prepare the state's case and additional time is justified because of the exceptional circumstances of the case;

(d) The period of delay resulting from the absence or unavailability of the defendant;

(e) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not granting a severance. In all other cases, the defendant shall be granted a severance so that he or she may be tried within the time limits applicable to him or her; and

(f) Other periods of delay not specifically enumerated in this section, but only if the court finds that they are for good cause.

Source: Laws 1971, LB 436, § 3; Laws 2008, LB623, § 1; Laws 2010, LB712, § 15.
Operative date July 15, 2010.

Cross References

Juvenile in custody, adjudication hearing, see sections 43-271 and 43-277.
Rights of accused, see Article I, section 11, Constitution of Nebraska.

29-1208 Discharge from offense charged; when.

If a defendant is not brought to trial before the running of the time for trial as provided for in section 29-1207, as extended by excluded periods, he or she shall be entitled to his or her absolute discharge from the offense charged and for any other offense required by law to be joined with that offense.

Source: Laws 1971, LB 436, § 4; Laws 2010, LB712, § 16.
Operative date July 15, 2010.

ARTICLE 14

GRAND JURY

Section
29-1401. Grand jury; when called; death while being apprehended or in custody; procedures.

29-1401 Grand jury; when called; death while being apprehended or in custody; procedures.

(1) The district courts are hereby vested with power to call grand juries.

(2) A grand jury may be called and summoned in the manner provided by law on such day of a regular term of the district court in each year in each county of the state as the district court may direct and at such other times and upon such notice as the district court may deem necessary.

(3) District courts shall call a grand jury in each case that a petition meets the requirements of section 32-628, includes a recital as to the reason for requesting the convening of the grand jury and a specific reference to the statute or statutes which are alleged to have been violated, and is signed not more than ninety days prior to the date of filing under section 29-1401.02 by not less than ten percent of the registered voters of the county who cast votes for the office of Governor in such county at the most recent general election held for such office.

(4) District courts shall call a grand jury in each case upon certification by the county coroner or coroner's physician that a person has died while being apprehended by or while in the custody of a law enforcement officer or detention personnel. In each case subject to this subsection:

(a) Law enforcement personnel from the jurisdiction in which the death occurred shall immediately secure the scene, preserve all evidence, and investigate the matter as in any other homicide; and

(b) A grand jury shall be impaneled within thirty days after the certification by the county coroner or coroner's physician, unless the court extends such time period upon the showing of a compelling reason.

Source: Laws 1909, c. 171, § 1, p. 591; R.S.1913, § 9031; Laws 1917, c. 148, § 1, p. 333; C.S.1922, § 10055; C.S.1929, § 29-1401; Laws 1939, c. 18, § 19, p. 111; C.S.Supp.,1941, § 29-1401; R.S.1943, § 29-1401; Laws 1959, c. 118, § 1, p. 449; Laws 1969, c. 237, § 1, p. 874; Laws 1988, LB 676, § 4; Laws 1999, LB 72, § 2; Laws 2002, LB 935, § 2; Laws 2010, LB842, § 1.
Effective date July 15, 2010.

ARTICLE 18

MOTIONS AND ISSUES ON INDICTMENT

Section
29-1816. Arraignment of accused; when considered waived; child less than eighteen years of age; move court to waive jurisdiction to juvenile court; findings for decision; transfer to juvenile court; effect.

29-1816 Arraignment of accused; when considered waived; child less than eighteen years of age; move court to waive jurisdiction to juvenile court; findings for decision; transfer to juvenile court; effect.

(1) The accused shall be arraigned by reading to him or her the indictment or information, unless the reading is waived by the accused when the nature of the charge is made known to him or her. The accused shall then be asked whether he or she is guilty or not guilty of the offense charged. If the accused appears in person and by counsel and goes to trial before a jury regularly impaneled and sworn, he or she shall be deemed to have waived arraignment and a plea of not guilty shall be deemed to have been made.

(2)(a) At the time of the arraignment the court shall advise the accused, if he or she was less than eighteen years of age at the time of the commitment of the alleged crime, that he or she may move the county or district court at any time not later than thirty days after arraignment, unless otherwise permitted by the court for good cause shown, to waive jurisdiction in such case to the juvenile court for further proceedings under the Nebraska Juvenile Code. The court shall schedule a hearing on such motion within fifteen days. The customary rules of evidence shall not be followed at such hearing. The county attorney or city attorney shall present the evidence and reasons why such case should be retained, the accused shall present the evidence and reasons why the case should be transferred, and both sides shall consider the criteria set forth in section 43-276. After considering all the evidence and reasons presented by both parties, pursuant to section 43-276, the case shall be transferred unless a sound basis exists for retaining the case.

(b) In deciding such motion the court shall consider, among other matters, the matters set forth in section 43-276 for consideration by the county attorney or city attorney when determining the type of case to file.

(c) The court shall set forth findings for the reason for its decision, which shall not be a final order for the purpose of enabling an appeal. If the court

determines that the accused should be transferred to the juvenile court, the complete file in the county or district court shall be transferred to the juvenile court and the complaint, indictment, or information may be used in place of a petition therein. The court making a transfer shall order the accused to be taken forthwith to the juvenile court and designate where he or she shall be kept pending determination by the juvenile court. The juvenile court shall then proceed as provided in the Nebraska Juvenile Code.

Source: G.S.1873, c. 58, § 448, p. 822; R.S.1913, § 9092; C.S.1922, § 10117; Laws 1925, c. 105, § 1, p. 294; C.S.1929, § 29-1815; R.S.1943, § 29-1816; Laws 1947, c. 103, § 1(1), p. 291; Laws 1974, LB 620, § 6; Laws 1975, LB 288, § 2; Laws 1987, LB 34, § 1; Laws 2008, LB1014, § 16; Laws 2010, LB800, § 5.
Effective date July 15, 2010.

Cross References

Nebraska Juvenile Code, see section 43-2,129.

ARTICLE 19
PREPARATION FOR TRIAL

(c) DISCOVERY

Section
29-1912. Request by defendant to inspect and make copies of evidence; granted; when; findings; possibility of harm; effect.
29-1928. Repealed. Laws 2009, LB 63, § 50.
29-1929. Repealed. Laws 2009, LB 63, § 50.

(c) DISCOVERY

29-1912 Request by defendant to inspect and make copies of evidence; granted; when; findings; possibility of harm; effect.

(1) When a defendant is charged with a felony or when a defendant is charged with a misdemeanor or a violation of a city or village ordinance for which imprisonment is a possible penalty, he or she may request the court where the case is to be tried, at any time after the filing of the indictment, information, or complaint, to order the prosecuting attorney to permit the defendant to inspect and copy or photograph:

(a) The defendant's statement, if any. For purposes of this subdivision, statement means a written statement made by the defendant and signed or otherwise adopted or approved by him or her, or a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by the defendant to an agent of the prosecution, state, or political subdivision thereof, and recorded contemporaneously with the making of such oral statement;

(b) The defendant's prior criminal record, if any;

(c) The defendant's recorded testimony before a grand jury;

(d) The names and addresses of witnesses on whose evidence the charge is based;

(e) The results and reports of physical or mental examinations, and of scientific tests, or experiments made in connection with the particular case, or copies thereof;

(f) Documents, papers, books, accounts, letters, photographs, objects, or other tangible things of whatsoever kind or nature which could be used as evidence by the prosecuting authority;

(g) The known criminal history of a jailhouse witness;

(h) Any deal, promise, inducement, or benefit that the prosecuting attorney or any person acting on behalf of the prosecuting attorney has knowingly made or may make in the future to the jailhouse witness;

(i) The specific statements allegedly made by the defendant against whom the jailhouse witness will testify and the time, place, and manner of the defendant's disclosures;

(j) The case name and jurisdiction of any criminal cases known to the prosecuting attorney in which a jailhouse witness testified about statements made by another criminal defendant that were disclosed to the jailhouse witness while he or she was a jailhouse witness and whether the jailhouse witness received any deal, promise, inducement, or benefit in exchange for or subsequent to such testimony; and

(k) Any occasion known to the prosecuting attorney in which the jailhouse witness recanted testimony about statements made by another criminal defendant that were disclosed to the jailhouse witness while he or she was a jailhouse witness and, if any are known, a transcript or copy of such recantation.

(2) The court may issue such an order pursuant to the provisions of this section. In the exercise of its judicial discretion, the court shall consider among other things whether:

(a) The request is material to the preparation of the defense;

(b) The request is not made primarily for the purpose of harassing the prosecution or its witnesses;

(c) The request, if granted, would not unreasonably delay the trial of the offense and an earlier request by the defendant could not have reasonably been made;

(d) There is no substantial likelihood that the request, if granted, would preclude a just determination of the issues at the trial of the offense; or

(e) The request, if granted, would not result in the possibility of bodily harm to, or coercion of, witnesses.

(3) Whenever the court refuses to grant an order pursuant to the provisions of this section, it shall render its findings in writing together with the facts upon which the findings are based.

(4) Whenever the prosecuting attorney believes that the granting of an order under the provisions of this section will result in the possibility of bodily harm to witnesses or that witnesses will be coerced, the court may permit him or her to make such a showing in the form of a written statement to be inspected by the court alone. The statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal by the defendant.

(5) For purposes of subdivisions (1)(g) through (k) of this section, jailhouse witness means a person in the physical custody of any jail or correctional institution as (a) an accused defendant, (b) a convicted defendant awaiting

sentencing, or (c) a convicted defendant serving a sentence of incarceration, at the time the statements the jailhouse witness will testify about were disclosed.

Source: Laws 1969, c. 235, § 1, p. 867; Laws 1983, LB 110, § 1; Laws 2009, LB63, § 25; Laws 2010, LB771, § 17.
Effective date July 15, 2010.

29-1928 Repealed. Laws 2009, LB 63, § 50.

29-1929 Repealed. Laws 2009, LB 63, § 50.

ARTICLE 22
JUDGMENT ON CONVICTION

(a) JUDGMENT ON CONVICTION

Section
29-2207. Judgment for costs upon conviction; requirement.

(c) PROBATION

29-2258. District probation officer; duties; powers.
29-2259.01. Probation Cash Fund; created; use; investment.
29-2259.02. State Probation Contractual Services Cash Fund; created; use; investment.
29-2262. Probation; conditions.
29-2262.01. Repealed. Laws 2009, LB 63, § 50.
29-2262.07. Probation Program Cash Fund; created; use; investment.
29-2262.08. Juveniles; substance abuse or noncriminal violations of probation; administrative sanctions; probation officer; duties; powers; county attorney; file action to revoke probation; when.
29-2264. Probation; completion; conviction may be set aside; conditions; retroactive effect.
29-2269. Act, how cited.

(a) JUDGMENT ON CONVICTION

29-2207 Judgment for costs upon conviction; requirement.

In every case of conviction of any person for any felony or misdemeanor, it shall be the duty of the court or magistrate to render judgment for the costs of prosecution against the person convicted and remit the assessment as provided in section 33-157.

Source: G.S.1873, c. 58, § 501, p. 833; R.S.1913, § 9143; C.S.1922, § 10168; C.S.1929, § 29-2208; R.S.1943, § 29-2207; Laws 2010, LB510, § 2.
Effective date July 15, 2010.

(c) PROBATION

29-2258 District probation officer; duties; powers.

A district probation officer shall:

(1) Conduct juvenile intake interviews and investigations in accordance with section 43-253 utilizing a standardized juvenile detention screening instrument described in section 43-260.01;

(2) Make presentence and other investigations, as may be required by law or directed by a court in which he or she is serving;

(3) Supervise probationers in accordance with the rules and regulations of the office and the directions of the sentencing court;

(4) Advise the sentencing court, in accordance with the Nebraska Probation Administration Act and such rules and regulations of the office, of violations of the conditions of probation by individual probationers;

(5) Advise the sentencing court, in accordance with the rules and regulations of the office and the direction of the court, when the situation of a probationer may require a modification of the conditions of probation or when a probationer's adjustment is such as to warrant termination of probation;

(6) Provide each probationer with a statement of the period and conditions of his or her probation;

(7) Whenever necessary, exercise the power of arrest or temporary custody as provided in section 29-2262.08 or 29-2266;

(8) Establish procedures for the direction and guidance of deputy probation officers under his or her jurisdiction and advise such officers in regard to the most effective performance of their duties;

(9) Supervise and evaluate deputy probation officers under his or her jurisdiction;

(10) Delegate such duties and responsibilities to a deputy probation officer as he or she deems appropriate;

(11) Make such reports as required by the administrator, the judges of the probation district in which he or she serves, or the Supreme Court;

(12) Keep accurate and complete accounts of all money or property collected or received from probationers and give receipts therefor;

(13) Cooperate fully with and render all reasonable assistance to other probation officers;

(14) In counties with a population of less than twenty-five thousand people, participate in pretrial diversion programs established pursuant to sections 29-3601 to 29-3604 and juvenile pretrial diversion programs established pursuant to sections 43-260.02 to 43-260.07 as requested by judges of the probation district in which he or she serves, except that participation in such programs shall not require appointment of additional personnel and shall be consistent with the probation officer's current caseload;

(15) Participate, at the direction of the probation administrator pursuant to an interlocal agreement which meets the requirements of section 29-2255, in non-probation-based programs and services;

(16) Perform such other duties not inconsistent with the Nebraska Probation Administration Act or the rules and regulations of the office as a court may from time to time direct; and

(17) Exercise all powers and perform all duties necessary and proper to carry out his or her responsibilities.

Source: Laws 1971, LB 680, § 13; Laws 1979, LB 536, § 8; Laws 1986, LB 529, § 40; Laws 2001, LB 451, § 4; Laws 2003, LB 43, § 10; Laws 2005, LB 538, § 9; Laws 2010, LB800, § 6.
Effective date July 15, 2010.

29-2259.01 Probation Cash Fund; created; use; investment.

(1) There is hereby created the Probation Cash Fund. All money collected pursuant to subdivisions (2)(m) and (2)(o) of section 29-2262 and subdivisions

(4)(a) and (4)(b) of section 60-4,115 shall be remitted to the State Treasurer for credit to the fund.

(2) Expenditures from the money in the fund collected pursuant to subdivisions (2)(m) and (2)(o) of section 29-2262 shall include, but not be limited to, supplementing any state funds necessary to support the costs of the services for which the money was collected.

(3)(a) The Office of Probation Administration shall use no more than five percent of the money in the fund collected in each fiscal year pursuant to subdivisions (4)(a) and (4)(b) of section 60-4,115 for administrative costs of the office.

(b) Expenditures from the money in the fund collected pursuant to subdivisions (4)(a) and (4)(b) of section 60-4,115 shall also be used to provide for the cost of installing, removing, and maintaining an ignition interlock device in accordance with subsection (9) of section 60-6,211.05. The office shall not be required to pay costs authorized under this subdivision that exceed the amount of funds available for this purpose.

(4) Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(5) The State Treasurer shall transfer any money in the Ignition Interlock Device Fund on May 14, 2009, to the Probation Cash Fund.

Source: Laws 1990, LB 220, § 6; Laws 1992, LB 1059, § 25; Laws 1994, LB 1066, § 20; Laws 2001, Spec. Sess., LB 3, § 2; Laws 2003, LB 46, § 7; Laws 2009, LB497, § 1.

Cross References

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

29-2259.02 State Probation Contractual Services Cash Fund; created; use; investment.

The State Probation Contractual Services Cash Fund is created. The fund shall consist only of payments received by the state pursuant to contractual agreements with local political subdivisions for probation services provided by the Office of Probation Administration. Except as otherwise directed by the Supreme Court during the period from November 21, 2009, until June 30, 2011, the fund shall only be used to pay for probation services provided by the Office of Probation Administration to local political subdivisions which enter into contractual agreements with the Office of Probation Administration. The fund shall be administered by the probation administrator. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2000, LB 1216, § 29; Laws 2009, First Spec. Sess., LB3, § 14.
Effective date November 21, 2009.

Cross References

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

29-2262 Probation; conditions.

(1) When a court sentences an offender to probation, it shall attach such reasonable conditions as it deems necessary or likely to insure that the offender will lead a law-abiding life. No offender shall be sentenced to probation if he or she is deemed to be a habitual criminal pursuant to section 29-2221.

(2) The court may, as a condition of a sentence of probation, require the offender:

(a) To refrain from unlawful conduct;

(b) To be confined periodically in the county jail or to return to custody after specified hours but not to exceed (i) for misdemeanors, the lesser of ninety days or the maximum jail term provided by law for the offense and (ii) for felonies, one hundred eighty days;

(c) To meet his or her family responsibilities;

(d) To devote himself or herself to a specific employment or occupation;

(e) To undergo medical or psychiatric treatment and to enter and remain in a specified institution for such purpose;

(f) To pursue a prescribed secular course of study or vocational training;

(g) To attend or reside in a facility established for the instruction, recreation, or residence of persons on probation;

(h) To refrain from frequenting unlawful or disreputable places or consorting with disreputable persons;

(i) To possess no firearm or other dangerous weapon if convicted of a felony, or if convicted of any other offense, to possess no firearm or other dangerous weapon unless granted written permission by the court;

(j) To remain within the jurisdiction of the court and to notify the court or the probation officer of any change in his or her address or his or her employment and to agree to waive extradition if found in another jurisdiction;

(k) To report as directed to the court or a probation officer and to permit the officer to visit his or her home;

(l) To pay a fine in one or more payments as ordered;

(m) To pay for tests to determine the presence of drugs or alcohol, psychological evaluations, offender assessment screens, and rehabilitative services required in the identification, evaluation, and treatment of offenders if such offender has the financial ability to pay for such services;

(n) To perform community service as outlined in sections 29-2277 to 29-2279 under the direction of his or her probation officer;

(o) To be monitored by an electronic surveillance device or system and to pay the cost of such device or system if the offender has the financial ability;

(p) To participate in a community correctional facility or program as provided in the Community Corrections Act;

(q) To successfully complete an incarceration work camp program as determined by the Department of Correctional Services;

(r) To satisfy any other conditions reasonably related to the rehabilitation of the offender;

(s) To make restitution as described in sections 29-2280 and 29-2281; or

(t) To pay for all costs imposed by the court, including court costs and the fees imposed pursuant to section 29-2262.06.

(3) In all cases in which the offender is guilty of violating section 28-416, a condition of probation shall be mandatory treatment and counseling as provided by such section.

(4) In all cases in which the offender is guilty of a crime covered by the DNA Identification Information Act, a condition of probation shall be the collecting of a DNA sample pursuant to the act and the paying of all costs associated with the collection of the DNA sample prior to release from probation.

Source: Laws 1971, LB 680, § 17; Laws 1975, LB 289, § 1; Laws 1978, LB 623, § 29; Laws 1979, LB 292, § 1; Laws 1986, LB 504, § 2; Laws 1986, LB 528, § 4; Laws 1986, LB 956, § 14; Laws 1989, LB 592, § 3; Laws 1989, LB 669, § 1; Laws 1990, LB 220, § 8; Laws 1991, LB 742, § 2; Laws 1993, LB 627, § 2; Laws 1995, LB 371, § 15; Laws 1997, LB 882, § 1; Laws 1998, LB 218, § 16; Laws 2003, LB 46, § 9; Laws 2006, LB 385, § 1; Laws 2010, LB190, § 1.
Effective date July 15, 2010.

Cross References

Community Corrections Act, see section 47-619.
DNA Identification Information Act, see section 29-4101.

29-2262.01 Repealed. Laws 2009, LB 63, § 50.

29-2262.07 Probation Program Cash Fund; created; use; investment.

The Probation Program Cash Fund is created. All funds collected pursuant to section 29-2262.06 shall be remitted to the State Treasurer for credit to the fund. Except as otherwise directed by the Supreme Court during the period from November 21, 2009, until June 30, 2011, the fund shall be utilized by the administrator, in consultation with the Community Corrections Council, for the purposes stated in subdivision (14) of section 29-2252, except that the State Treasurer shall, on or before June 30, 2011, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services, transfer the amount set forth in Laws 2009, LB1, One Hundred First Legislature, First Special Session. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

On July 15, 2010, the State Treasurer shall transfer three hundred fifty thousand dollars from the Probation Program Cash Fund to the Violence Prevention Cash Fund. The Office of Violence Prevention shall distribute such funds as soon as practicable after July 15, 2010, to organizations or governmental entities that have submitted violence prevention plans and that best meet the intent of reducing street and gang violence and reducing homicides and injuries caused by firearms.

Source: Laws 2003, LB 46, § 13; Laws 2009, First Spec. Sess., LB3, § 15; Laws 2010, LB800, § 8.
Effective date July 15, 2010.

Cross References

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

29-2262.08 Juveniles; substance abuse or noncriminal violations of probation; administrative sanctions; probation officer; duties; powers; county attorney; file action to revoke probation; when.

(1) For purposes of this section:

(a) Administrative sanction means additional probation requirements imposed upon a juvenile subject to the supervision of a probation officer by his or her probation officer, with the full knowledge and consent of such juvenile and such juvenile's parents or guardian, designed to hold such juvenile accountable for substance abuse or noncriminal violations of conditions of probation, including, but not limited to:

(i) Counseling or reprimand by his or her probation officer;

(ii) Increased supervision contact requirements;

(iii) Increased substance abuse testing;

(iv) Referral for substance abuse or mental health evaluation or other specialized assessment, counseling, or treatment;

(v) Modification of a designated curfew for a period not to exceed thirty days;

(vi) Community service for a specified number of hours pursuant to sections 29-2277 to 29-2279;

(vii) Travel restrictions to stay within his or her residence or county of residence or employment unless otherwise permitted by the supervising probation officer;

(viii) Restructuring court-imposed financial obligations to mitigate their effect on the juvenile subject to the supervision of a probation officer; and

(ix) Implementation of educational or cognitive behavioral programming;

(b) Noncriminal violation means activities or behaviors of a juvenile subject to the supervision of a probation officer which create the opportunity for reoffending or which diminish the effectiveness of probation supervision resulting in a violation of an original condition of probation, including, but not limited to:

(i) Moving traffic violations;

(ii) Failure to report to his or her probation officer;

(iii) Leaving the juvenile's residence, jurisdiction of the court, or the state without the permission of the court or his or her probation officer;

(iv) Failure to regularly attend school, vocational training, other training, counseling, treatment, programming, or employment;

(v) Noncompliance with school rules;

(vi) Continued violations of home rules;

(vii) Failure to notify his or her probation officer of change of address, school, or employment;

(viii) Frequenting places where controlled substances are illegally sold, used, distributed, or administered and association with persons engaged in illegal activity;

(ix) Failure to perform community service as directed; and

(x) Curfew or electronic monitoring violations; and

(c) Substance abuse violation means activities or behaviors of a juvenile subject to the supervision of a probation officer associated with the use of

chemical substances or related treatment services resulting in a violation of an original condition of probation, including, but not limited to:

(i) Positive breath test for the consumption of alcohol;

(ii) Positive urinalysis for the illegal use of drugs;

(iii) Failure to report for alcohol testing or drug testing;

(iv) Failure to appear for or complete substance abuse or mental health treatment evaluations or inpatient or outpatient treatment; and

(v) Tampering with alcohol or drug testing.

(2) Whenever a probation officer has reasonable cause to believe that a juvenile subject to the supervision of a probation officer has committed or is about to commit a substance abuse violation or noncriminal violation while on probation, but that such juvenile will not attempt to leave the jurisdiction and will not place lives or property in danger, the probation officer shall either:

(a) Impose one or more administrative sanctions with the approval of his or her chief probation officer or such chief's designee. The decision to impose administrative sanctions in lieu of formal revocation proceedings rests with the probation officer and his or her chief probation officer or such chief's designee and shall be based upon such juvenile's risk level, the severity of the violation, and the juvenile's response to the violation. If administrative sanctions are to be imposed, such juvenile shall acknowledge in writing the nature of the violation and agree upon the administrative sanction with approval of such juvenile's parents or guardian. Such juvenile has the right to decline to acknowledge the violation, and if he or she declines to acknowledge the violation, the probation officer shall submit a written report pursuant to subdivision (2)(b) of this section. A copy of the report shall be submitted to the county attorney of the county where probation was imposed; or

(b) Submit a written report to the adjudicating court with a copy to the county attorney of the county where probation was imposed, outlining the nature of the probation violation and request that formal revocation proceedings be instituted against the juvenile subject to the supervision of a probation officer.

(3) Whenever a probation officer has reasonable cause to believe that a juvenile subject to the supervision of a probation officer has violated or is about to violate a condition of probation other than a substance abuse violation or noncriminal violation and that such juvenile will not attempt to leave the jurisdiction and will not place lives or property in danger, the probation officer shall submit a written report to the adjudicating court, with a copy to the county attorney of the county where probation was imposed, outlining the nature of the probation violation.

(4) Whenever a probation officer has reasonable cause to believe that a juvenile subject to the supervision of a probation officer has violated or is about to violate a condition of his or her probation and that such juvenile will attempt to leave the jurisdiction or will place lives or property in danger, the probation officer shall take such juvenile into temporary custody without a warrant and may call on any peace officer for assistance as provided in section 43-248.

(5) Immediately after detention pursuant to subsection (4) of this section, the probation officer shall notify the county attorney of the county where probation was imposed and submit a written report of the reason for such detention and

of any violation of probation. After prompt consideration of the written report, the county attorney shall:

(a) Order the release of the juvenile from confinement subject to the supervision of a probation officer; or

(b) File with the adjudicating court a motion or information to revoke the probation.

(6) Whenever a county attorney receives a report from a probation officer that a juvenile subject to the supervision of a probation officer has violated a condition of probation, the county attorney may file a motion or information to revoke probation.

(7) The probation administrator shall adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2010, LB800, § 7.
Effective date July 15, 2010.

29-2264 Probation; completion; conviction may be set aside; conditions; retroactive effect.

(1) Whenever any person is placed on probation by a court and satisfactorily completes the conditions of his or her probation for the entire period or is discharged from probation prior to the termination of the period of probation, the sentencing court shall issue an order releasing the offender from probation. Such order in all felony cases shall provide notice that the person's voting rights are restored two years after completion of probation. The order shall include information on restoring other civil rights through the pardon process, including application to and hearing by the Board of Pardons.

(2) Whenever any person is convicted of a misdemeanor or felony and is placed on probation by the court or is sentenced to a fine only, he or she may, after satisfactory fulfillment of the conditions of probation for the entire period or after discharge from probation prior to the termination of the period of probation and after payment of any fine, petition the sentencing court to set aside the conviction.

(3) In determining whether to set aside the conviction, the court shall consider:

(a) The behavior of the offender after sentencing;

(b) The likelihood that the offender will not engage in further criminal activity; and

(c) Any other information the court considers relevant.

(4) The court may grant the offender's petition and issue an order setting aside the conviction when in the opinion of the court the order will be in the best interest of the offender and consistent with the public welfare. The order shall:

(a) Nullify the conviction; and

(b) Remove all civil disabilities and disqualifications imposed as a result of the conviction.

(5) The setting aside of a conviction in accordance with the Nebraska Probation Administration Act shall not:

(a) Require the reinstatement of any office, employment, or position which was previously held and lost or forfeited as a result of the conviction;

(b) Preclude proof of a plea of guilty whenever such plea is relevant to the determination of an issue involving the rights or liabilities of someone other than the offender;

(c) Preclude proof of the conviction as evidence of the commission of the misdemeanor or felony whenever the fact of its commission is relevant for the purpose of impeaching the offender as a witness, except that the order setting aside the conviction may be introduced in evidence;

(d) Preclude use of the conviction for the purpose of determining sentence on any subsequent conviction of a criminal offense;

(e) Preclude the proof of the conviction as evidence of the commission of the misdemeanor or felony in the event an offender is charged with a subsequent offense and the penalty provided by law is increased if the prior conviction is proved;

(f) Preclude the proof of the conviction to determine whether an offender is eligible to have a subsequent conviction set aside in accordance with the Nebraska Probation Administration Act;

(g) Preclude use of the conviction as evidence of commission of the misdemeanor or felony for purposes of determining whether an application filed or a license issued under sections 71-1901 to 71-1906.01 or the Child Care Licensing Act or a certificate issued under sections 79-806 to 79-815 should be denied, suspended, or revoked;

(h) Preclude proof of the conviction as evidence whenever the fact of the conviction is relevant to a determination of the registration period under section 29-4005; or

(i) Relieve a person who is convicted of an offense for which registration is required under the Sex Offender Registration Act of the duty to register and to comply with the terms of the act.

(6) Except as otherwise provided for the notice in subsection (1) of this section, changes made to this section by Laws 2005, LB 713, shall be retroactive in application and shall apply to all persons, otherwise eligible in accordance with the provisions of this section, whether convicted prior to, on, or subsequent to September 4, 2005.

Source: Laws 1971, LB 680, § 19; Laws 1993, LB 564, § 1; Laws 1994, LB 677, § 1; Laws 1995, LB 401, § 1; Laws 1997, LB 310, § 1; Laws 1998, Spec. Sess., LB 1, § 3; Laws 2002, LB 1054, § 6; Laws 2003, LB 685, § 2; Laws 2004, LB 1005, § 3; Laws 2005, LB 53, § 3; Laws 2005, LB 713, § 3; Laws 2009, LB285, § 2.

Cross References

Child Care Licensing Act, see section 71-1908.
Sex Offender Registration Act, see section 29-4001.

29-2269 Act, how cited.

Sections 29-2246 to 29-2269 shall be known and may be cited as the Nebraska Probation Administration Act.

Source: Laws 1971, LB 680, § 31; Laws 1990, LB 220, § 9; Laws 2003, LB 46, § 14; Laws 2005, LB 538, § 11; Laws 2010, LB800, § 9. Effective date July 15, 2010.

ARTICLE 23

REVIEW OF JUDGMENTS IN CRIMINAL CASES

Section
29-2320. Appeal of sentence by prosecuting attorney or Attorney General; when authorized.
29-2321. Appeal of sentence by prosecuting attorney or Attorney General; procedure.
29-2327. District court; Court of Appeals; Supreme Court; remit assessment.

29-2320 Appeal of sentence by prosecuting attorney or Attorney General; when authorized.

Whenever a defendant is found guilty of a felony following a trial or the entry of a plea of guilty or tendering a plea of nolo contendere, the prosecuting attorney charged with the prosecution of such defendant or the Attorney General may appeal the sentence imposed if there is a reasonable belief, based on all of the facts and circumstances of the particular case, that the sentence is excessively lenient.

Source: Laws 1982, LB 402, § 1; Laws 1991, LB 732, § 82; Laws 2003, LB 17, § 15; Laws 2009, LB63, § 26.

29-2321 Appeal of sentence by prosecuting attorney or Attorney General; procedure.

(1) Appeals under sections 29-2320 to 29-2325 shall be taken, by either the Attorney General or the prosecuting attorney, as follows:

(a) If the appeal is filed by the Attorney General, a notice of appeal shall be filed in the district court within twenty days after imposition of the sentence. A copy of the notice of appeal shall be sent to either the defendant or counsel for the defendant; or

(b) If the prosecuting attorney wishes to file the appeal, he or she, within ten days after imposition of the sentence, shall request approval from the Attorney General to proceed with the appeal. A copy of the request for approval shall be sent to the defendant or counsel for the defendant.

(2) If the Attorney General approves the request described in subdivision (1)(b) of this section, the prosecuting attorney shall file a notice of appeal indicating such approval in the district court. Such notice of appeal must be filed within twenty days of the imposition of sentence. A copy of the notice of appeal shall be sent to the defendant or counsel for the defendant.

(3) If the Attorney General does not approve the request described in subdivision (1)(b) of this section, an appeal under sections 29-2320 to 29-2325 shall not be permitted.

(4) In addition to such notice of appeal, the docket fee required by section 33-103 shall be deposited with the clerk of the district court.

(5) Upon compliance with the requirements of this section, the appeal shall proceed as provided by law for appeals to the Court of Appeals.

Source: Laws 1982, LB 402, § 2; Laws 1991, LB 732, § 83; Laws 2003, LB 17, § 16; Laws 2009, LB63, § 27.

29-2327 District court; Court of Appeals; Supreme Court; remit assessment.

In every case of appeal of a conviction of any person for any felony or misdemeanor to the district court, Court of Appeals, or Supreme Court that is affirmed, the court shall remit the assessment as provided in section 33-157.

Source: Laws 2010, LB510, § 3.
Effective date July 15, 2010.

ARTICLE 24

EXECUTION OF SENTENCES

Section
29-2412. Fine and costs; nonpayment; commutation upon confinement; credit; amount.

29-2412 Fine and costs; nonpayment; commutation upon confinement; credit; amount.

(1) Whenever it is made satisfactorily to appear to the district court, or to the county judge of the proper county, after all legal means have been exhausted, that any person who is subject to being or is confined in jail for any fine or costs of prosecution for any criminal offense has no estate with which to pay such fine or costs, it shall be the duty of such court or judge, on his or her own motion or upon the motion of the person so confined, to discharge such person from further imprisonment for such fine or costs, which discharge shall operate as a complete release of such fine or costs.

(2) Nothing in this section shall authorize any person to be discharged from imprisonment before the expiration of the time for which he or she may be sentenced to be imprisoned, as part of his or her punishment, or when such person shall default on a payment due pursuant to an installment agreement arranged by the court.

(3) Any person held in custody for nonpayment of a fine or costs or for default on an installment shall be entitled to a credit on the fine, costs, or installment of ninety dollars for each day so held. In no case shall a person held in custody for nonpayment of a fine or costs be held in such custody for more days than the maximum number to which he or she could have been sentenced if the penalty set by law includes the possibility of confinement.

Source: G.S.1873, c. 58, § 528, p. 838; R.S.1913, § 9199; C.S.1922, § 10206; C.S.1929, § 29-2412; R.S.1943, § 29-2412; Laws 1959, c. 122, § 2, p. 455; Laws 1979, LB 111, § 2; Laws 1986, LB 528, § 5; Laws 1988, LB 370, § 7; Laws 2010, LB712, § 17.
Operative date July 15, 2010.

ARTICLE 25

SPECIAL PROCEDURE IN CASES OF HOMICIDE

Section
29-2532. Transferred to section 83-964.
29-2533. Transferred to section 83-969.
29-2534. Transferred to section 83-970.
29-2535. Transferred to section 83-971.
29-2536. Transferred to section 83-972.
29-2537. Convicted person; appears to be incompetent; notice to judge; suspend sentence; commission appointed; findings; suspension of execution; when; annual review.
29-2538. Suspension of execution pending investigation; convict found competent; Supreme Court; appoint a day of execution.

Section
29-2539. Commission members; mileage; payment.
29-2540. Female convicted person; pregnant; notice to judge; procedures.
29-2541. Female convicted person; finding convicted person is pregnant; judge; duties; costs.
29-2542. Escaped convict; return; notify Supreme Court; fix date of execution.
29-2543. Person convicted of crime sentenced to death; Supreme Court; warrant.
29-2544. Repealed. Laws 2009, LB 36, § 21.
29-2545. Repealed. Laws 2009, LB 36, § 21.
29-2546. Reversal of judgment of conviction; delivery of convicted person to custody of sheriff; await further judgment and order of court.

29-2532 Transferred to section 83-964.

29-2533 Transferred to section 83-969.

29-2534 Transferred to section 83-970.

29-2535 Transferred to section 83-971.

29-2536 Transferred to section 83-972.

29-2537 Convicted person; appears to be incompetent; notice to judge; suspend sentence; commission appointed; findings; suspension of execution; when; annual review.

(1) If any convicted person under sentence of death shall appear to be incompetent, the Director of Correctional Services shall forthwith give notice thereof to a judge of the district court of the judicial district in which the convicted person was tried and sentenced and such judge shall at once make such investigation as shall satisfy him or her as to whether a commission ought to be named to examine such convicted person.

(2) If the court determines that there is not sufficient reason for the appointment of a commission, the court shall so find and refuse to suspend the execution of the convicted person. If the court determines that a commission ought to be appointed to examine such convicted person, the court shall make a finding to that effect and cause it to be entered upon the records of the district court in the county in which such convicted person was sentenced, and, if necessary, the court shall suspend the execution and appoint three licensed mental health professionals employed by the state as a commission to examine such convicted person. The commission shall examine the convicted person to determine whether he or she is competent or incompetent and shall report its findings in writing to the court within ten days after its appointment. If two members of the commission find the convicted person incompetent, the court shall suspend the convicted person's execution until further order. Thereafter, the court shall appoint a commission annually to review the convicted person's competency. The results of such review shall be provided to the court. If the convicted person is subsequently found to be competent by two members of the commission, the court shall certify that finding to the Supreme Court which shall then establish a date for the enforcement of the convicted person's sentence.

(3) The standard for the determination of competency under this section shall be the same as the standard for determining competency to stand trial.

Source: Laws 1973, LB 268, § 22; Laws 1986, LB 1177, § 8; Laws 2009, LB36, § 1.

29-2538 Suspension of execution pending investigation; convict found competent; Supreme Court; appoint a day of execution.

If a court has suspended the execution of the convicted person pending an investigation as to his or her competency, the date for the enforcement of the convicted person's sentence has passed, and the convicted person is found to be competent, the court shall certify that finding to the Supreme Court which shall appoint a day for the enforcement of the convicted person's sentence.

Source: Laws 1973, LB 268, § 23; Laws 2009, LB36, § 2.

29-2539 Commission members; mileage; payment.

The members of the commission appointed pursuant to section 29-2537 shall each receive mileage at the rate authorized in section 81-1176 for state employees for each mile actually and necessarily traveled in reaching and returning from the place where the convicted person is confined and examined, and it is hereby made the duty of the commission to act in this capacity without compensation other than that already provided for them by law. All of the findings and orders aforesaid shall be entered in the district court records of the county wherein the convicted person was originally tried and sentenced, and the costs therefor, including those providing for the mileage of the members of the commission, shall be allowed and paid in the usual manner by the county in which the convicted person was tried and sentenced to death.

Source: Laws 1973, LB 268, § 24; Laws 1981, LB 204, § 44; Laws 2009, LB36, § 3.

29-2540 Female convicted person; pregnant; notice to judge; procedures.

If a female convicted person under sentence of death shall appear to be pregnant, the Director of Correctional Services shall in like manner notify the judge of the district court of the county in which she was sentenced, who shall in all things proceed as in the case of an incompetent convicted person.

Source: Laws 1973, LB 268, § 25; Laws 1986, LB 1177, § 9; Laws 2009, LB36, § 4.

Cross References

Mentally incompetent convicts, see sections 29-2537 to 29-2539.

29-2541 Female convicted person; finding convicted person is pregnant; judge; duties; costs.

If the commission appointed pursuant to section 29-2537 finds that the female convicted person is pregnant, the court shall suspend the execution of her sentence. At such time as it shall be determined that such woman is no longer pregnant, the judge shall appoint a date for her execution and issue a warrant directing the enforcement of the sentence of death which shall be delivered to the Director of Correctional Services. The costs and expenses thereof shall be the same as those provided for in the case of an incompetent convicted person and shall be paid in the same manner.

Source: Laws 1973, LB 268, § 26; Laws 1986, LB 1177, § 10; Laws 2009, LB36, § 5.

29-2542 Escaped convict; return; notify Supreme Court; fix date of execution.

If any person who has been convicted of a crime punishable by death, and sentenced to death, shall escape, and shall not be retaken before the time fixed for his or her execution, it shall be lawful for the Director of Correctional Services, or any sheriff or other officer or person, to rearrest such person and return him or her to the custody of the director, who shall thereupon notify the Supreme Court that such person has been returned to custody. Upon receipt of that notice, the Supreme Court shall then issue a warrant, fixing a date for the enforcement of the sentence which shall be delivered to the director. The date of execution shall be set no later than sixty days following the issuance of the warrant.

Source: Laws 1973, LB 268, § 27; Laws 2009, LB36, § 6.

29-2543 Person convicted of crime sentenced to death; Supreme Court; warrant.

(1) Whenever any person has been tried and convicted before any district court in this state, has been sentenced to death, and has had his or her sentence of death affirmed by the Supreme Court on mandatory direct review, it shall be the duty of the Supreme Court to issue a warrant, under the seal of the court, reciting therein the conviction and sentence and establishing a date for the enforcement of the sentence directed to the Director of Correctional Services, commanding him or her to proceed at the time named in the warrant. The date of execution shall be set no later than sixty days following the issuance of the warrant.

(2) Thereafter, if the initial execution date has been stayed and the original execution date has expired, the Supreme Court shall establish a new date for enforcement of the sentence upon receipt of notice from the Attorney General that the stay of execution is no longer in effect and issue its warrant to the director. The date of execution shall be set no later than sixty days following the issuance of the warrant.

Source: Laws 1973, LB 268, § 28; Laws 1993, LB 31, § 12; Laws 2009, LB36, § 7.

29-2544 Repealed. Laws 2009, LB 36, § 21.

29-2545 Repealed. Laws 2009, LB 36, § 21.

29-2546 Reversal of judgment of conviction; delivery of convicted person to custody of sheriff; await further judgment and order of court.

Whenever the Supreme Court reverses the judgment of conviction in accordance with which any convicted person has been sentenced to death and is confined in a Department of Correctional Services adult correctional facility as herein provided, it shall be the duty of the Director of Correctional Services, upon receipt of a copy of such judgment of reversal, duly certified by the clerk of the court and under the seal thereof, to forthwith deliver such convicted person into the custody of the sheriff of the county in which the conviction was had to be held in the jail of the county awaiting the further judgment and order of the court in the case.

Source: Laws 1973, LB 268, § 31; Laws 1993, LB 31, § 13; Laws 2009, LB36, § 8.

ARTICLE 35
CRIMINAL HISTORY INFORMATION

Section
29-3506. Criminal history record information, defined.

29-3506 Criminal history record information, defined.

Criminal history record information shall mean information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of issuance of arrest warrants, arrests, detentions, indictments, charges by information, and other formal criminal charges, and any disposition arising from such arrests, charges, sentencing, correctional supervision, and release. Criminal history record information shall include any judgment against or settlement with the state as a result of a wrongful conviction pursuant to the Nebraska Claims for Wrongful Conviction and Imprisonment Act. Criminal history record information shall not include intelligence or investigative information.

Source: Laws 1978, LB 713, § 6; Laws 2009, LB260, § 9.

Cross References

Nebraska Claims for Wrongful Conviction and Imprisonment Act, see section 29-4601.

ARTICLE 39
PUBLIC DEFENDERS AND APPOINTED COUNSEL

(c) COUNTY REVENUE ASSISTANCE ACT

Section
29-3921. Commission on Public Advocacy Operations Cash Fund; created; use; investment; study of juvenile legal defense and guardian ad litem systems.
29-3922. Terms, defined.
29-3927. Commission; duties.
29-3932. Repealed. Laws 2009, LB 154, § 27.

(c) COUNTY REVENUE ASSISTANCE ACT

29-3921 Commission on Public Advocacy Operations Cash Fund; created; use; investment; study of juvenile legal defense and guardian ad litem systems.

The Commission on Public Advocacy Operations Cash Fund is created. The fund shall be used for the operations of the commission, except that transfers may be made from the fund to the General Fund at the direction of the Legislature through June 30, 2011. The Commission on Public Advocacy Operations Cash Fund shall consist of money remitted pursuant to section 33-156. It is the intent of the Legislature that the commission shall be funded solely from the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

The State Treasurer shall transfer two hundred fifty thousand dollars from the Commission on Public Advocacy Operations Cash Fund to the University Cash Fund within fifteen days after May 1, 2008. Such funds shall be used for a study of the juvenile legal defense and guardian ad litem systems utilizing the University of Nebraska Public Policy Center to create, administer, and review a Request for Proposals to select from a national search a research consultant

that is qualified to provide a methodologically sound and objective assessment of Nebraska's juvenile justice system. The assessment shall include: (1) Gathering of general data and information about the structure and funding mechanisms for juvenile legal defense and guardian ad litem representation; (2) a review of caseloads; (3) examining issues related to the timing of appointment of counsel and guardians ad litem; (4) supervision of attorneys; (5) charging and trying juveniles as adults; (6) frequency with which juveniles waive their right to counsel and under what conditions they do so; (7) allocation of resources; (8) adequacy of juvenile court facilities; (9) compensation of attorneys; (10) supervising and training of attorneys; (11) access to investigators, experts, social workers, and support staff; (12) access to educational officers, teachers, educational staff, and truancy officers; (13) the relationship between a guardian ad litem, a juvenile's legal counsel, and the judicial system with identified educational staff regarding a juvenile's educational status; (14) examining issues related to truancy and the relationship between the school districts and the juvenile court system; (15) recidivism; (16) time to permanency and time in court, especially when a guardian ad litem is appointed; and (17) coordination of representation for those juveniles that may have been appointed an attorney in a juvenile delinquency matter and a guardian ad litem because of abuse or neglect. The assessment shall also highlight promising approaches and innovative practices within the state and offer recommendations to improve weak areas.

Source: Laws 1995, LB 646, § 3; Laws 1997, LB 108, § 1; Laws 2001, LB 659, § 14; Laws 2002, LB 876, § 65; Laws 2003, LB 760, § 10; Laws 2008, LB961, § 2; Laws 2009, First Spec. Sess., LB3, § 16. Effective date November 21, 2009.

Cross References

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

29-3922 Terms, defined.

For purposes of the County Revenue Assistance Act:

(1) Chief counsel means an attorney appointed to be the primary administrative officer of the commission pursuant to section 29-3928;

(2) Commission means the Commission on Public Advocacy;

(3) Commission staff means attorneys, investigators, and support staff who are performing work for the capital litigation division, appellate division, DNA testing division, and major case resource center;

(4) Contracting attorney means an attorney contracting to act as a public defender pursuant to sections 23-3404 to 23-3408;

(5) Court-appointed attorney means an attorney other than a contracting attorney or a public defender appointed by the court to represent an indigent person;

(6) Indigent defense services means legal services provided to indigent persons by an indigent defense system in capital cases, felony cases, misdemeanor cases, juvenile cases, mental health commitment cases, child support enforcement cases, and paternity establishment cases;

(7) Indigent defense system means a system of providing services, including any services necessary for litigating a case, by a contracting attorney, court-appointed attorney, or public defender;

(8) Indigent person means a person who is indigent and unable to obtain legal counsel as determined pursuant to subdivision (3) of section 29-3901; and

(9) Public defender means an attorney appointed or elected pursuant to sections 23-3401 to 23-3403.

Source: Laws 1995, LB 646, § 4; Laws 2001, LB 335, § 3; Laws 2001, LB 659, § 15; Laws 2009, LB154, § 2.

29-3927 Commission; duties.

(1) With respect to its duties under section 29-3923, the commission shall:

(a) Adopt and promulgate rules and regulations for its organization and internal management and rules and regulations governing the exercise of its powers and the fulfillment of its purpose;

(b) Appoint and abolish such advisory committees as may be necessary for the performance of its functions and delegate appropriate powers and duties to them;

(c) Accept and administer loans, grants, and donations from the United States and its agencies, the State of Nebraska and its agencies, and other sources, public and private, for carrying out the functions of the commission;

(d) Enter into contracts, leases, and agreements necessary, convenient, or desirable for carrying out its purposes and the powers granted under this section with agencies of state or local government, corporations, or persons;

(e) Acquire, hold, and dispose of personal property in the exercise of its powers;

(f) Provide legal services to indigent persons through the divisions in section 29-3930; and

(g) Adopt guidelines and standards for county indigent defense systems, including, but not limited to, standards relating to the following: The use and expenditure of funds appropriated by the Legislature to reimburse counties which qualify for reimbursement; attorney eligibility and qualifications for court appointments; compensation rates for salaried public defenders, contracting attorneys, and court-appointed attorneys and overall funding of the indigent defense system; maximum caseloads for all types of systems; systems administration, including rules for appointing counsel, awarding defense contracts, and reimbursing defense expenses; conflicts of interest; continuing legal education and training; and availability of supportive services and expert witnesses.

(2) The standards adopted by the commission under subdivision (1)(g) of this section are intended to be used as a guide for the proper methods of establishing and operating indigent defense systems. The standards are not intended to be used as criteria for the judicial evaluation of alleged misconduct of defense counsel to determine the validity of a conviction. They may or may not be relevant in such judicial evaluation, depending upon all the circumstances.

(3) With respect to its duties related to the provision of civil legal services to eligible low-income persons, the commission shall have such powers and duties as described in sections 25-3001 to 25-3004.

(4) The commission may adopt and promulgate rules and regulations governing the Legal Education for Public Service Loan Repayment Act which are recommended by the Legal Education for Public Service Loan Repayment Board pursuant to the act. The commission shall have the powers and duties provided in the act.

Source: Laws 1995, LB 646, § 9; Laws 1997, LB 729, § 8; Laws 2001, LB 335, § 4; Laws 2002, LB 876, § 66; Laws 2008, LB1014, § 28; Laws 2009, LB154, § 3.

Cross References

Legal Education for Public Service Loan Repayment Act, see section 7-201.

29-3932 Repealed. Laws 2009, LB 154, § 27.

ARTICLE 40

SEX OFFENDERS

(a) SEX OFFENDER REGISTRATION ACT

Section
29-4001. Act, how cited.
29-4001.01. Terms, defined.
29-4003. Applicability of act.
29-4004. Registration; location; sheriff; duties; Nebraska State Patrol; duties; name-change order; treatment.
29-4005. Registration duration; reduction in time; request; proof.
29-4006. Registration format; contents; consent form; verification; name change; duties; information provided to sheriff; violation; warrant.
29-4007. Sentencing court; duties; Department of Correctional Services or local facility; Department of Motor Vehicles; notification requirements; Attorney General; approve form.
29-4008. False or misleading information prohibited; updates required.
29-4009. Information not confidential; limit on disclosure.
29-4010. Repealed. Laws 2009, LB 285, § 17.
29-4011. Violations; penalties; investigation and enforcement.
29-4013. Rules and regulations; release of information; duties; access to public notification information; access to documents.

(b) SEXUAL PREDATOR RESIDENCY RESTRICTION ACT

29-4016. Terms, defined.

(a) SEX OFFENDER REGISTRATION ACT

29-4001 Act, how cited.

Sections 29-4001 to 29-4014 shall be known and may be cited as the Sex Offender Registration Act.

Source: Laws 1996, LB 645, § 1; Laws 2006, LB 1199, § 17; Laws 2009, LB97, § 23.

29-4001.01 Terms, defined.

For purposes of the Sex Offender Registration Act:

(1) Aggravated offense means any registrable offense under section 29-4003 which involves the penetration of, direct genital touching of, oral to anal contact with, or oral to genital contact with (a) a victim age thirteen years or older without the consent of the victim, (b) a victim under the age of thirteen years, or (c) a victim who the sex offender knew or should have known was

mentally or physically incapable of resisting or appraising the nature of his or her conduct;

(2) Blog means a web site contained on the Internet that is created, maintained, and updated in a log, journal, diary, or newsletter format by an individual, group of individuals, or corporate entity for the purpose of conveying information or opinions to Internet users who visit their web site;

(3) Chat room means a web site or server space on the Internet or communication network primarily designated for the virtually instantaneous exchange of text or voice transmissions or computer file attachments amongst two or more computers or electronic communication device users;

(4) Chat room identifiers means the username, password, symbol, image, or series of symbols, letters, numbers, or text characters used by a chat room participant to identify himself or herself in a chat room or to identify the source of any content transmitted from a computer or electronic communication device to the web site or server space upon which the chat room is dedicated;

(5) DNA sample has the same meaning as in section 29-4103;

(6) Domain name means a series of text-based symbols, letters, numbers, or text characters used to provide recognizable names to numerically addressed Internet resources that are registered by the Internet Corporation for Assigned Names and Numbers;

(7) Email means the exchange of electronic text messages and computer file attachments between computers or other electronic communication devices over a communications network, such as a local area computer network or the Internet;

(8) Email address means the string of letters, numbers, and symbols used to specify the source or destination of an email message that is transmitted over a communication network;

(9) Habitual living location means any place that an offender may stay for a period of more than three days even though the sex offender maintains a separate permanent address or temporary domicile;

(10) Instant messaging means a direct, dedicated, and private communication service, accessed with a computer or electronic communication device, that enables a user of the service to send and receive virtually instantaneous text transmissions or computer file attachments to other selected users of the service through the Internet or a computer communications network;

(11) Instant messaging identifiers means the username, password, symbol, image, or series of symbols, letters, numbers, images, or text characters used by an instant messaging user to identify their presence to other instant messaging users or the source of any content sent from their computer or electronic communication device to another instant messaging user;

(12) Minor means a person under eighteen years of age;

(13) Social networking web site means a web page or collection of web sites contained on the Internet (a) that enables users or subscribers to create, display, and maintain a profile or Internet domain containing biographical data, personal information, photos, or other types of media, (b) that can be searched, viewed, or accessed by other users or visitors to the web site, with or without the creator's permission, consent, invitation, or authorization, and (c) that may permit some form of communication, such as direct comment on the

profile page, instant messaging, or email, between the creator of the profile and users who have viewed or accessed the creator's profile;

(14) State DNA Data Base means the data base established pursuant to section 29-4104; and

(15) Temporary domicile means any place at which the person actually lives or stays for a period of at least three working days.

Source: Laws 2009, LB97, § 24; Laws 2009, LB285, § 3.

29-4003 Applicability of act.

(1)(a) The Sex Offender Registration Act applies to any person who on or after January 1, 1997:

(i) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any of the following:

(A) Kidnapping of a minor pursuant to section 28-313, except when the person is the parent of the minor and was not convicted of any other offense in this section;

(B) False imprisonment of a minor pursuant to section 28-314 or 28-315;

(C) Sexual assault pursuant to section 28-319 or 28-320;

(D) Sexual assault of a child in the second or third degree pursuant to section 28-320.01;

(E) Sexual assault of a child in the first degree pursuant to section 28-319.01;

(F) Sexual abuse of a vulnerable adult pursuant to subdivision (1)(c) of section 28-386;

(G) Incest of a minor pursuant to section 28-703;

(H) Pandering of a minor pursuant to section 28-802;

(I) Visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03 or 28-1463.05;

(J) Knowingly possessing any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers pursuant to section 28-813.01;

(K) Criminal child enticement pursuant to section 28-311;

(L) Child enticement by means of an electronic communication device pursuant to section 28-320.02;

(M) Debauching a minor pursuant to section 28-805; or

(N) Attempt, solicitation, aiding or abetting, being an accessory, or conspiracy to commit an offense listed in subdivisions (1)(a)(i)(A) through (1)(a)(i)(M) of this section;

(ii) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any offense that is substantially equivalent to a registrable offense under subdivision (1)(a)(i) of this section by any village, town, city, state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, by court-martial or other military tribunal, or by a foreign jurisdiction, notwithstanding a procedure comparable in effect to that described under section 29-2264 or any other procedure to nullify a conviction other than by pardon;

(iii) Is incarcerated in a jail, a penal or correctional facility, or any other public or private institution or is under probation or parole as a result of pleading guilty to or being found guilty of a registrable offense under subdivision (1)(a)(i) or (ii) of this section prior to January 1, 1997; or

(iv) Enters the state and is required to register as a sex offender under the laws of another village, town, city, state, territory, commonwealth, or other jurisdiction of the United States.

(b) In addition to the registrable offenses under subdivision (1)(a) of this section, the Sex Offender Registration Act applies to any person who on or after January 1, 2010:

(i)(A) Except as provided in subdivision (1)(b)(i)(B) of this section, has ever pled guilty to, pled nolo contendere to, or been found guilty of any of the following:

(I) Murder in the first degree pursuant to section 28-303;

(II) Murder in the second degree pursuant to section 28-304;

(III) Manslaughter pursuant to section 28-305;

(IV) Assault in the first degree pursuant to section 28-308;

(V) Assault in the second degree pursuant to section 28-309;

(VI) Assault in the third degree pursuant to section 28-310;

(VII) Stalking pursuant to section 28-311.03;

(VIII) Unlawful intrusion on a minor pursuant to section 28-311.08;

(IX) Kidnapping pursuant to section 28-313;

(X) False imprisonment pursuant to section 28-314 or 28-315;

(XI) Sexual abuse of an inmate or parolee in the first degree pursuant to section 28-322.02;

(XII) Sexual abuse of an inmate or parolee in the second degree pursuant to section 28-322.03;

(XIII) Sexual abuse of a protected individual pursuant to section 28-322.04;

(XIV) Incest pursuant to section 28-703;

(XV) Child abuse pursuant to subdivision (1)(d) or (e) of section 28-707;

(XVI) Enticement by electronic communication device pursuant to section 28-833; or

(XVII) Attempt, solicitation, aiding or abetting, being an accessory, or conspiracy to commit an offense listed in subdivisions (1)(b)(i)(A)(I) through (1)(b)(i)(A)(XVI) of this section.

(B) In order for the Sex Offender Registration Act to apply to the offenses listed in subdivisions (1)(b)(i)(A)(I), (II), (III), (IV), (V), (VI), (VII), (IX), and (X) of this section, a court shall have found that evidence of sexual penetration or sexual contact, as those terms are defined in section 28-318, was present in the record, which shall include consideration of the factual basis for a plea-based conviction and information contained in the presentence report;

(ii) Has ever pled guilty to, pled nolo contendere to, or been found guilty of any offense that is substantially equivalent to a registrable offense under subdivision (1)(b)(i) of this section by any village, town, city, state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, by court-martial or other military tribunal, or by a foreign

jurisdiction, notwithstanding a procedure comparable in effect to that described under section 29-2264 or any other procedure to nullify a conviction other than by pardon; or

(iii) Enters the state and is required to register as a sex offender under the laws of another village, town, city, state, territory, commonwealth, or other jurisdiction of the United States.

(2) A person appealing a conviction of a registrable offense under this section shall be required to comply with the act during the appeals process.

Source: Laws 1996, LB 645, § 3; Laws 2002, LB 564, § 3; Laws 2004, LB 943, § 9; Laws 2005, LB 713, § 4; Laws 2006, LB 1199, § 18; Laws 2009, LB97, § 25; Laws 2009, LB285, § 4.

29-4004 Registration; location; sheriff; duties; Nebraska State Patrol; duties; name-change order; treatment.

(1) Any person subject to the Sex Offender Registration Act shall register within three working days after becoming subject to the act at a location designated by the Nebraska State Patrol for purposes of accepting such registration.

(2) Any person required to register under the act shall inform the sheriff of the county in which he or she resides, in person, and complete a form as prescribed by the Nebraska State Patrol for such purpose, if he or she has a new address, temporary domicile, or habitual living location, within three working days before the change. The sheriff shall submit such information to the sex offender registration and community notification division of the Nebraska State Patrol on the day it is received and in a manner prescribed by the Nebraska State Patrol for such purpose.

(3) Any person required to register under the act shall inform the sheriff of the county in which he or she resides, in person, and complete a form as prescribed by the Nebraska State Patrol for such purpose, if he or she has a new address, temporary domicile, or habitual living location in a different county in this state, within three working days before the address change. The sheriff shall submit such information to the sex offender registration and community notification division of the Nebraska State Patrol on the day it is received and in a manner as prescribed by the Nebraska State Patrol for such purpose. If the change in address, temporary domicile, or habitual living location is to a location within the State of Nebraska, the division shall notify the sheriff of each affected county of the new address, temporary domicile, or habitual living location, within three working days. The person shall report to the county sheriff of his or her new county of residence and register with such county sheriff within three working days after the address change.

(4) Any person required to register under the act shall inform the sheriff of the county in which he or she resides, in person, and complete a form as prescribed by the Nebraska State Patrol for such purpose, if he or she moves to a new out-of-state address, within three working days before the address change. The sheriff shall submit such information to the sex offender registration and community notification division of the Nebraska State Patrol on the day it is received and in a manner as prescribed by the Nebraska State Patrol for such purpose. If the change in address, temporary domicile, or habitual living location is to a location outside of the State of Nebraska, the division shall notify the sheriff of each affected county in Nebraska and the other state's,

country's, or territory's central repository for sex offender registration of the new out-of-state address, temporary domicile, or habitual living location, within three working days.

(5) Any person required to register under the act who is employed, carries on a vocation, or attends school shall inform, in person, the sheriff of the county in which he or she is employed, carries on a vocation, or attends school and complete a form as prescribed by the Nebraska State Patrol for such purpose, within three working days after becoming employed, carrying on a vocation, or attending school. The person shall also notify the sheriff, in person, of any changes in employment, vocation, or school of attendance, and complete a form as prescribed by the Nebraska State Patrol for such purpose, within three working days after the change. The sheriff shall submit such information to the sex offender registration and community notification division of the Nebraska State Patrol on the day it is received and in a manner as prescribed by the Nebraska State Patrol for such purpose.

(6) Any person required to register under the act who is residing, has a temporary domicile, or is habitually living in another state, and is employed, carries on a vocation, or attends school in this state, shall report and register, in person, with the sheriff of the county in which he or she is employed, carries on a vocation, or attends school in this state and complete a form as prescribed by the Nebraska State Patrol for such purpose, within three working days after becoming employed, carrying on a vocation, or attending school. The person shall also notify the sheriff of any changes in employment, vocation, or school of attendance, in person, and complete a form as prescribed by the Nebraska State Patrol for such purpose, within three working days after the change. The sheriff shall submit such information to the sex offender registration and community notification division of the Nebraska State Patrol on the day it is received and in a manner as prescribed by the Nebraska State Patrol for such purpose. For purposes of this subsection:

(a) Attends school means enrollment in any educational institution in this state on a full-time or part-time basis; and

(b) Is employed or carries on a vocation means any full-time or part-time employment, with or without compensation, which lasts for a duration of more than fourteen days or for an aggregate period exceeding thirty days in a calendar year.

(7) Any person incarcerated for a registrable offense under section 29-4003 in a jail, penal or correctional facility, or other public or private institution shall be registered by the jail, penal or correctional facility, or public or private institution prior to his or her discharge, parole, furlough, work release, or release. The person shall be informed and information shall be obtained as required in section 29-4006.

(8) Any person required to register or who is registered under the act, but is incarcerated for more than three working days, shall inform the sheriff of the county in which he or she is incarcerated, in writing, within three working days after incarceration, of his or her incarceration and his or her expected release date, if any such date is available. The sheriff shall forward the information regarding incarceration to the sex offender registration and community notification division of the Nebraska State Patrol immediately on the day on which it was received and in a manner prescribed by the Nebraska State Patrol for such purpose.

(9) Any person required to register or who is registered under the act who no longer has a residence, temporary domicile, or habitual living location shall report such change in person to the sheriff of the county in which he or she is located, within three working days after such change in residence, temporary domicile, or habitual living location. Such person shall update his or her registration, in person, to the sheriff of the county in which he or she is located, on a form approved by the sex offender registration and community notification division of the Nebraska State Patrol at least once every thirty calendar days during the time he or she remains without residence, temporary domicile, or habitual living location.

(10) Each registering entity shall forward all written information, photographs, and fingerprints obtained pursuant to the act to the sex offender registration and community notification division of the Nebraska State Patrol on the day it is received and in a manner prescribed by the Nebraska State Patrol for such purpose. The information shall be forwarded on forms furnished by the division. The division shall maintain a central registry of sex offenders required to register under the act. Any collected DNA samples shall be forwarded to the State DNA Data Base.

(11) The sex offender registration and community notification division of the Nebraska State Patrol shall determine whether a name-change order received from the clerk of a district court pursuant to section 25-21,271 is for a person in the central registry of sex offenders and, if so, shall include the changed name with the former name in the registry, file or cross-reference the information under both names, and notify the sheriff of the county in which such person then resides.

Source: Laws 1996, LB 645, § 4; Laws 2002, LB 564, § 4; Laws 2005, LB 713, § 5; Laws 2006, LB 1199, § 19; Laws 2009, LB285, § 5; Laws 2010, LB147, § 4.
Operative date January 1, 2012.

29-4005 Registration duration; reduction in time; request; proof.

(1)(a) Except as provided in subsection (2) of this section, any person to whom the Sex Offender Registration Act applies shall be required to register during any period of supervised release, probation, or parole and shall continue to comply with the act for the period of time after the date of discharge from probation, parole, or supervised release or release from incarceration, whichever date is most recent, as set forth in subdivision (b) of this subsection. A sex offender shall keep the registration current for the full registration period but shall not be subject to verification procedures during any time the sex offender is in custody or under an inpatient civil commitment, unless the sex offender is allowed a reduction in his or her registration period under subsection (2) of this section.

(b) The full registration period is as follows:

(i) Fifteen years, if the sex offender was convicted of a registrable offense under section 29-4003 not punishable by imprisonment for more than one year;

(ii) Twenty-five years, if the sex offender was convicted of a registrable offense under section 29-4003 punishable by imprisonment for more than one year; or

(iii) Life, if the sex offender was convicted of a registrable offense under section 29-4003 punishable by imprisonment for more than one year and was convicted of an aggravated offense or had a prior sex offense conviction or has been determined to be a lifetime registrant in another state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, by court-martial or other military tribunal, or by a foreign jurisdiction.

(2) A sex offender who is required to register for fifteen years may request a reduction in the registration period to ten years upon completion of ten years of the registration period after the date of discharge from probation, parole, supervised release, or incarceration, whichever date is most recent. The sex offender shall make the request to the Nebraska State Patrol. The sex offender shall provide proof that, during such registration period, he or she:

(a) Was not convicted of any offense for which imprisonment for more than one year could have been imposed;

(b) Was not convicted of any sex offense;

(c) Successfully completed any period of probation, parole, supervised release, or incarceration; and

(d) Successfully completed an appropriate sex offender treatment program.

(3) Any time period when any person who is required to register under the act knowingly or willfully fails to comply with such registration requirement shall not be counted as completed registration time and shall be used to recalculate the registration period. The recalculation shall be completed by the sex offender registration and community notification division of the Nebraska State Patrol.

Source: Laws 1996, LB 645, § 5; Laws 2002, LB 564, § 5; Laws 2006, LB 1199, § 20; Laws 2009, LB285, § 6.

29-4006 Registration format; contents; consent form; verification; name change; duties; information provided to sheriff; violation; warrant.

(1) Registration information required by the Sex Offender Registration Act shall be entered into a data base in a format approved by the sex offender registration and community notification division of the Nebraska State Patrol and shall include, but not be limited to, the following information:

(a) The legal name and all aliases which the person has used or under which the person has been known;

(b) The person's date of birth and any alias dates of birth;

(c) The person's social security number;

(d) The address of each residence at which the person resides, has a temporary domicile, has a habitual living location, or will reside;

(e) The name and address of any place where the person is an employee or will be an employee, including work locations without a single worksite;

(f) The name and address of any place where the person is a student or will be a student;

(g) The license plate number and a description of any vehicle owned or operated by the person and its regular storage location;

(h) The person's motor vehicle operator's license number, including the person's valid motor vehicle operator's license or state identification card submitted for photocopying;

(i) The person's original travel and immigration documents submitted for photocopying;

(j) The person's original professional licenses or certificates submitted for photocopying;

(k) The person's remote communication device identifiers and addresses, including, but not limited to, all global unique identifiers, serial numbers, Internet protocol addresses, telephone numbers, and account numbers specific to the device;

(l) The person's telephone numbers;

(m) A physical description of the person;

(n) A digital link to the text of the provision of law defining the criminal offense or offenses for which the person is registered under the act;

(o) Access to the criminal history of the person, including the date of all arrests and convictions, the status of parole, probation, or supervised release, registration status, and the existence of any outstanding arrest warrants for the person;

(p) A current photograph of the person;

(q) A set of fingerprints and palm prints of the person;

(r) A DNA sample of the person; and

(s) All email addresses, instant messaging identifiers, chat room identifiers, global unique identifiers, and other Internet communication identifiers that the person uses or plans to use, all domain names registered by the registrant, and all blogs and Internet sites maintained by the person or to which the person has uploaded any content or posted any messages or information.

(2) When the person provides any information under subdivision (1)(k) or (s) of this section, the registrant shall sign a consent form, provided by the law enforcement agency receiving this information, authorizing the:

(a) Search of all the computers or electronic communication devices possessed by the person; and

(b) Installation of hardware or software to monitor the person's Internet usage on all the computers or electronic communication devices possessed by the person.

(3) Except as provided in section 29-4005, the registration information shall be verified as provided in subsections (4), (5), and (6) of this section for the duration of the registration period. The person shall appear in person for such verification at the office of the sheriff of the county in which he or she resides, has a temporary domicile, or is habitually living for purposes of accepting verifications and shall have his or her photograph and fingerprints taken upon request of verification personnel.

(4) A person required to register under the act for fifteen years shall report every twelve months in the month of his or her birth, in person, to the office of the sheriff of the county in which he or she resides for purposes of accepting verifications, regardless of the original registration month. The sheriff shall submit such verification information to the sex offender registration and community notification division of the Nebraska State Patrol on the day it is

received and in a manner prescribed by the Nebraska State Patrol for such purpose.

(5) A person required to register under the act for twenty-five years shall report, in person, every six months to the office of the sheriff of the county in which he or she resides for purposes of accepting verification. The person shall report, in person, in the month of his or her birth and in the sixth month following the month of his or her birth, regardless of the original registration month. The sheriff shall submit such verification information to the sex offender registration and community notification division of the Nebraska State Patrol on the day it is received and in a manner prescribed by the Nebraska State Patrol for such purpose.

(6) A person required to register under the act for life shall report, in person, every three months to the office of the sheriff of the county in which he or she resides for purposes of accepting verification. The person shall report, in person, in the month of his or her birth and every three months following the month of his or her birth, regardless of the original registration month. The sheriff shall submit such verification information to the sex offender registration and community notification division of the Nebraska State Patrol on the day it is received and in a manner prescribed by the Nebraska State Patrol for such purpose.

(7) The verification form shall be signed by the person required to register under the act and state whether the address last reported to the division is still correct.

(8) Upon receipt of registration and confirmation of the registry requirement, the sex offender registration and community notification division of the Nebraska State Patrol shall notify the person by certified mail of his or her registry duration and verification schedule.

(9) If the person required to register under the act fails to report in person as required in subsection (4), (5), or (6) of this section, the person shall be in violation of this section.

(10) If the person required to register under the act falsifies the registration or verification information or form or fails to provide or timely update law enforcement of any of the information required to be provided by the Sex Offender Registration Act, the person shall be in violation of this section.

(11) The verification requirements of a person required to register under the act shall not apply during periods of such person's incarceration or inpatient civil commitment. Verification shall be resumed as soon as such person is placed on any type of supervised release, parole, or probation or outpatient civil commitment or is released from incarceration or civil commitment. Prior to any type of release from incarceration or inpatient civil commitment, the person shall report a change of address, in writing, to the sheriff of the county in which he or she is incarcerated and the sheriff of the county in which he or she resides, has a temporary domicile, or has a habitual living location. The sheriff shall submit the change of address to the sex offender registration and community notification division of the Nebraska State Patrol on the day it is received and in a manner prescribed by the Nebraska State Patrol for such purpose.

(12) Any person required to register under the act shall, in person, inform the sheriff of any legal change in name within three working days after such change and provide a copy of the legal documentation supporting the change in

name. The sheriff shall submit the information to the sex offender registration and community notification division of the Nebraska State Patrol, in writing, immediately after receipt of the information and in a manner prescribed by the Nebraska State Patrol for such purpose.

(13) Any person required to register under the Sex Offender Registration Act shall inform the sheriff with whom he or she is required to register of any changes in or additions to such person's list of email addresses, instant messaging identifiers, chat room identifiers, global unique identifiers, and other Internet communication identifiers that the registrant uses or plans to use, all domain names registered by the person, and all blogs and Internet web sites maintained by the person or to which the person has uploaded any content or posted any messages or information, in writing, by the next working day. The sheriff receiving this updated information shall submit the information to the sex offender registration and community notification division of the Nebraska State Patrol, in writing, by the next working day after receipt of the information.

(14) At any time that a person required to register under the act violates the registry requirements and cannot be located, the registry information shall reflect that the person has absconded, a warrant shall be sought for the person's arrest, and the United States Marshals Service shall be notified.

Source: Laws 1996, LB 645, § 6; Laws 2002, LB 564, § 6; Laws 2006, LB 1199, § 21; Laws 2009, LB97, § 26; Laws 2009, LB285, § 7.

29-4007 Sentencing court; duties; Department of Correctional Services or local facility; Department of Motor Vehicles; notification requirements; Attorney General; approve form.

(1) When sentencing a person convicted of a registrable offense under section 29-4003, the court shall:

(a) Provide written notification of the duty to register under the Sex Offender Registration Act at the time of sentencing to any defendant who has pled guilty or has been found guilty of a registrable offense under section 29-4003. The written notification shall:

(i) Inform the defendant of whether or not he or she is subject to the act, the duration of time he or she will be subject to the act, and that he or she shall report to a location designated by the Nebraska State Patrol for purposes of accepting such registration within three working days after the date of the written notification to register;

(ii) Inform the defendant that if he or she moves to another address within the same county, he or she must report to the county sheriff of the county in which he or she is residing within three working days before his or her move;

(iii) Inform the defendant that if he or she no longer has a residence, temporary domicile, or habitual living location, he or she shall report such change in person to the sheriff of the county in which he or she is located within three working days after such change in residence, temporary domicile, or habitual living location;

(iv) Inform the defendant that if he or she moves to another county in the State of Nebraska, he or she must notify, in person, the county sheriff of the county in which he or she had been last residing, had a temporary domicile, or had a habitual living location and the county sheriff of the county in which he

or she is residing, has a temporary domicile, or is habitually living of his or her current address. The notice must be given within three working days before his or her move;

(v) Inform the defendant that if he or she moves to another state, he or she must report, in person, the change of address to the county sheriff of the county in which he or she has been residing, has had a temporary domicile, or has had a habitual living location and must comply with the registration requirements of the state to which he or she is moving. The notice must be given within three working days before his or her move;

(vi) Inform the defendant that he or she shall (A) inform the sheriff of the county in which he or she resides, has a temporary domicile, or is habitually living, in person, of each educational institution at which he or she is employed, carries on a vocation, or attends school, within three working days after such employment or attendance, and (B) notify the sheriff of any change in such employment or attendance status of such person at such educational institution, within three working days;

(vii) Inform the defendant that he or she shall (A) inform the sheriff of the county in which the employment site is located, in person, of the name and address of any place where he or she is or will be an employee, within three working days after such employment, and (B) inform the sheriff of the county in which the employment site is located, in person, of any change in his or her employment;

(viii) Inform the defendant that if he or she goes to another state to work or goes to another state as a student and still resides, has a temporary domicile, or has a habitual living location in this state, he or she must comply with the registration requirements of both states;

(ix) Inform the defendant that fingerprints, palm prints, a DNA sample if not previously collected, and a photograph will be obtained by any registering entity in order to comply with the registration requirements;

(x) Inform the defendant of registry and verification locations;

(xi) Inform the defendant of the reduction request requirements, if eligible, under section 29-4005;

(xii) Inform the defendant that he or she must provide a list to all sheriffs with whom he or she must register of all email addresses, instant messaging identifiers, chat room identifiers, global unique identifiers, and other Internet communication identifiers that the defendant uses or plans to use, all domain names registered by the defendant, and all blogs and Internet web sites maintained by the defendant or to which the defendant has uploaded any content or posted any messages or information;

(xiii) Inform the defendant that he or she is required to inform the sheriff with whom he or she is required to register of any changes in or additions to his or her list of email addresses, instant messaging identifiers, chat room identifiers, global unique identifiers, and other Internet communication identifiers that the defendant uses or plans to use, all domain names registered by the defendant, and all blogs and Internet web sites maintained by the defendant or to which the defendant has uploaded any content or posted any messages or information, in writing, by the next working day after such change or addition; and

(xiv) Inform the defendant that throughout the applicable registration period, if applicable, he or she is prohibited from accessing or using any Internet social networking web site or any instant messaging or chat room service that has the likelihood of allowing the defendant to have contact with any child who is under the age of eighteen years if the defendant has been convicted and is currently being sentenced for:

(A) Kidnapping of a minor pursuant to section 28-313;

(B) False imprisonment of a minor pursuant to section 28-314 or 28-315;

(C) Sexual assault in the first degree pursuant to subdivision (1)(c) of section 28-319 or sexual assault of a child in the first degree pursuant to section 28-319.01;

(D) Sexual assault of a child in the second or third degree pursuant to section 28-320.01;

(E) Incest of a minor pursuant to section 28-703;

(F) Visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03 or 28-1463.05;

(G) Knowingly possessing any visual depiction of sexually explicit conduct pursuant to section 28-813.01;

(H) Criminal child enticement pursuant to section 28-311;

(I) Child enticement by means of an electronic communication device pursuant to section 28-320.02;

(J) Enticement by electronic communication device pursuant to section 28-833; or

(K) Any attempt or conspiracy to commit an offense listed in subdivisions (1)(a)(xiv)(A) through (1)(a)(xiv)(J) of this section;

(b) Require the defendant to read and sign a form stating that the duty of the defendant to register under the Sex Offender Registration Act has been explained;

(c) Retain a copy of the written notification signed by the defendant; and

(d) Provide a copy of the signed, written notification, the judgment and sentence, the information or amended information, and the journal entry of the court to the county attorney, the defendant, the sex offender registration and community notification division of the Nebraska State Patrol, and the county sheriff of the county in which the defendant resides, has a temporary domicile, or has a habitual living location.

(2) When a person is convicted of a registrable offense under section 29-4003 and is not subject to immediate incarceration upon sentencing, prior to being released by the court, the sentencing court shall ensure that the defendant is registered by a Nebraska State Patrol office or other location designated by the patrol for purposes of accepting registrations.

(3)(a) The Department of Correctional Services or a city or county correctional or jail facility shall provide written notification of the duty to register pursuant to the Sex Offender Registration Act to any person committed to its custody for a registrable offense under section 29-4003 prior to the person's release from incarceration. The written notification shall:

(i) Inform the person of whether or not he or she is subject to the act, the duration of time he or she will be subject to the act, and that he or she shall

report to a location designated by the Nebraska State Patrol for purposes of accepting such registration within three working days after the date of the written notification to register;

(ii) Inform the person that if he or she moves to another address within the same county, he or she must report all address changes, in person, to the county sheriff of the county in which he or she has been residing within three working days before his or her move;

(iii) Inform the defendant that if he or she no longer has a residence, temporary domicile, or habitual living location, he or she shall report such change in person to the sheriff of the county in which he or she is located within three working days after such change in residence, temporary domicile, or habitual living location;

(iv) Inform the person that if he or she moves to another county in the State of Nebraska, he or she must notify, in person, the county sheriff of the county in which he or she had been last residing, had a temporary domicile, or had a habitual living location and the county sheriff of the county in which he or she is residing, has a temporary domicile, or is habitually living of his or her current address. The notice must be given within three working days before his or her move;

(v) Inform the person that if he or she moves to another state, he or she must report, in person, the change of address to the county sheriff of the county in which he or she has been residing, has had a temporary domicile, or has been habitually living and must comply with the registration requirements of the state to which he or she is moving. The report must be given within three working days before his or her move;

(vi) Inform the person that he or she shall (A) inform the sheriff of the county in which he or she resides, has a temporary domicile, or is habitually living, in person, of each educational institution at which he or she is employed, carries on a vocation, or attends school, within three working days after such employment or attendance, and (B) notify the sheriff of any change in such employment or attendance status of such person at such educational institution, within three working days after such change;

(vii) Inform the person that he or she shall (A) inform the sheriff of the county in which the employment site is located, in person, of the name and address of any place where he or she is or will be an employee, within three working days after such employment, and (B) inform the sheriff of the county in which the employment site is located, in person, of any change in his or her employment;

(viii) Inform the person that if he or she goes to another state to work or goes to another state as a student and still resides, has a temporary domicile, or has a habitual living location in this state, he or she must comply with the registration requirements of both states;

(ix) Inform the defendant that fingerprints, palm prints, a DNA sample if not previously collected, and a photograph will be obtained by any registering entity in order to comply with the registration requirements;

(x) Inform the defendant of registry and verification locations;

(xi) Inform the defendant of the reduction request requirements, if eligible, under section 29-4005;

(xii) Inform the defendant that he or she must provide a list to all sheriffs with whom he or she must register of all email addresses, instant messaging

identifiers, chat room identifiers, global unique identifiers, and other Internet communication identifiers that the defendant uses or plans to use, all domain names registered by the defendant, and all blogs and Internet web sites maintained by the defendant or to which the defendant has uploaded any content or posted any messages or information;

(xiii) Inform the defendant that he or she is required to inform the sheriff with whom he or she is required to register of any changes in or additions to his or her list of email addresses, instant messaging identifiers, chat room identifiers, global unique identifiers, and other Internet communication identifiers that the defendant uses or plans to use, all domain names registered by the defendant, and all blogs and Internet web sites maintained by the defendant or to which the defendant has uploaded any content or posted any messages or information, in writing, by the next working day after such change or addition; and

(xiv) Inform the defendant that throughout the applicable registration period, if applicable, he or she is prohibited from accessing or using any Internet social networking web site or any instant messaging or chat room service that has the likelihood of allowing the defendant to have contact with any child who is under the age of eighteen years if the defendant has been convicted and is currently being sentenced for:

(A) Kidnapping of a minor pursuant to section 28-313;

(B) False imprisonment of a minor pursuant to section 28-314 or 28-315;

(C) Sexual assault in the first degree pursuant to subdivision (1)(c) of section 28-319 or sexual assault of a child in the first degree pursuant to section 28-319.01;

(D) Sexual assault of a child in the second or third degree pursuant to section 28-320.01;

(E) Incest of a minor pursuant to section 28-703;

(F) Visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03 or 28-1463.05;

(G) Knowingly possessing any visual depiction of sexually explicit conduct pursuant to section 28-813.01;

(H) Criminal child enticement pursuant to section 28-311;

(I) Child enticement by means of an electronic communication device pursuant to section 28-320.02;

(J) Enticement by electronic communication device pursuant to section 28-833; or

(K) Any attempt or conspiracy to commit an offense listed in subdivisions (3)(a)(xiv)(A) through (3)(a)(xiv)(J) of this section.

(b) The Department of Correctional Services or a city or county correctional or jail facility shall:

(i) Require the person to read and sign the notification form stating that the duty to register under the Sex Offender Registration Act has been explained;

(ii) Retain a signed copy of the written notification to register; and

(iii) Provide a copy of the signed, written notification to register to the person and to the sex offender registration and community notification division of the Nebraska State Patrol.

(4) If a person is convicted of a registrable offense under section 29-4003 and is immediately incarcerated, he or she shall be registered as required under the act prior to discharge, parole, or work release.

(5) The Department of Motor Vehicles shall cause written notification of the duty to register to be provided on the applications for a motor vehicle operator's license and for a commercial driver's license.

(6) All written notification as provided in this section shall be on a form approved by the Attorney General.

Source: Laws 1996, LB 645, § 7; Laws 1998, LB 204, § 1; Laws 2002, LB 564, § 7; Laws 2006, LB 1199, § 22; Laws 2009, LB97, § 27; Laws 2009, LB285, § 8.

29-4008 False or misleading information prohibited; updates required.

No person subject to the Sex Offender Registration Act shall knowingly and willfully furnish any false or misleading information in the registration or fail to provide or timely update law enforcement of any of the information required to be provided by the act.

Source: Laws 1996, LB 645, § 8; Laws 2009, LB97, § 28.

29-4009 Information not confidential; limit on disclosure.

(1) Information obtained under the Sex Offender Registration Act shall not be confidential, except that the following information shall only be disclosed to law enforcement agencies, including federal or state probation or parole agencies, if appropriate:

(a) A sex offender's social security number;

(b) Any references to arrests of a sex offender that did not result in conviction;

(c) A sex offender's travel or immigration document information;

(d) A sex offender's remote communication device identifiers and addresses;

(e) A sex offender's email addresses, instant messaging identifiers, chat room identifiers, global unique identifiers, and other Internet communication identifiers;

(f) A sex offender's telephone numbers;

(g) A sex offender's motor vehicle operator's license information or state identification card number; and

(h) The name of any employer of a sex offender.

(2) The identity of any victim of a sex offense shall not be released.

(3) The release of information authorized by this section shall conform with the rules and regulations adopted and promulgated by the Nebraska State Patrol pursuant to section 29-4013.

Source: Laws 1996, LB 645, § 9; Laws 1998, LB 204, § 2; Laws 2002, LB 564, § 8; Laws 2005, LB 713, § 6; Laws 2006, LB 1199, § 23; Laws 2009, LB285, § 9.

29-4010 Repealed. Laws 2009, LB 285, § 17.

29-4011 Violations; penalties; investigation and enforcement.

(1) Any person required to register under the Sex Offender Registration Act who violates the act is guilty of a Class IV felony.

(2) Any person required to register under the act who violates the act and who has previously been convicted of a violation of the act is guilty of a Class III felony and shall be sentenced to a mandatory minimum term of at least one year in prison unless the violation which caused the person to be placed on the registry was a misdemeanor, in which case the violation of the act shall be a Class IV felony.

(3) Any law enforcement agency with jurisdiction in the area in which a person required to register under the act resides, has a temporary domicile, maintains a habitual living location, is employed, carries on a vocation, or attends school shall investigate and enforce violations of the act.

Source: Laws 1996, LB 645, § 11; Laws 2006, LB 1199, § 24; Laws 2009, LB285, § 10.

29-4013 Rules and regulations; release of information; duties; access to public notification information; access to documents.

(1) The Nebraska State Patrol shall adopt and promulgate rules and regulations to carry out the registration provisions of the Sex Offender Registration Act.

(2)(a) The Nebraska State Patrol shall adopt and promulgate rules and regulations for the release of information pursuant to section 29-4009.

(b) The procedures for release of information established by the Nebraska State Patrol shall provide for law enforcement and public notification using electronic systems.

(3) Information concerning the address or whereabouts of a sex offender may be disclosed to his or her victim or victims.

(4) The following shall have access to public notification information: Any agency responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993, 42 U.S.C. 5119a; any social service entity responsible for protecting minors in the child welfare system; any volunteer organization in which contact with minors or other vulnerable individuals might occur; any public housing agency in each area in which a registered sex offender resides or is an employee or a student; any governmental agency conducting confidential background checks for employment, volunteer, licensure, or certification purposes; and any health care provider who serves children or vulnerable adults for the purpose of conducting confidential background checks for employment. If any means of notification proposes a fee for usage, then nonprofit organizations holding a certificate of exemption under section 501(c) of the Internal Revenue Code shall not be charged.

(5) Personnel for the sex offender registration and community notification division of the Nebraska State Patrol shall have access to all documents that are generated by any governmental agency that may have bearing on sex offender registration and community notification. This may include, but is not limited to, law enforcement reports, presentence reports, criminal histories, birth certificates, or death certificates. The division shall not be charged for access to documents under this subsection. Access to such documents will ensure that a

fair determination of what is an appropriate registration period is completed using the totality of all information available.

(6) Nothing in subsection (2) of this section shall be construed to prevent law enforcement officers from providing community notification concerning any person who poses a danger under circumstances that are not provided for in the Sex Offender Registration Act.

Source: Laws 1996, LB 645, § 13; Laws 1998, LB 204, § 3; Laws 2002, LB 564, § 10; Laws 2005, LB 713, § 7; Laws 2006, LB 1199, § 25; Laws 2007, LB463, § 1130; Laws 2009, LB285, § 11.

(b) SEXUAL PREDATOR RESIDENCY RESTRICTION ACT

29-4016 Terms, defined.

For purposes of the Sexual Predator Residency Restriction Act:

(1) Child care facility means a facility licensed pursuant to the Child Care Licensing Act;

(2) Political subdivision means a village, a city, a county, a school district, a public power district, or any other unit of local government;

(3) School means a public, private, denominational, or parochial school which meets the requirements for accreditation or approval prescribed in Chapter 79;

(4) Sex offender means an individual who has been convicted of a crime listed in section 29-4003 and who is required to register as a sex offender pursuant to the Sex Offender Registration Act; and

(5) Sexual predator means an individual who is required to register under the Sex Offender Registration Act, who has committed an aggravated offense as defined in section 29-4001.01, and who has victimized a person eighteen years of age or younger.

Source: Laws 2006, LB 1199, § 28; Laws 2009, LB285, § 12.

Cross References

Child Care Licensing Act, see section 71-1908.
Sex Offender Registration Act, see section 29-4001.

ARTICLE 41
DNA TESTING

(a) DNA IDENTIFICATION INFORMATION ACT

Section
29-4101. Act, how cited.
29-4102. Legislative findings.
29-4103. Terms, defined.
29-4106. Person subject to DNA sample; payment of costs.
29-4115.01. State DNA Sample and Data Base Fund; created; use; investment.

(a) DNA IDENTIFICATION INFORMATION ACT

29-4101 Act, how cited.

Sections 29-4101 to 29-4115.01 shall be known and may be cited as the DNA Identification Information Act.

Source: Laws 1997, LB 278, § 1; Laws 2006, LB 385, § 2; Laws 2006, LB 1113, § 28; Laws 2010, LB190, § 2.
Effective date July 15, 2010.

29-4102 Legislative findings.

The Legislature finds that DNA data banks are an important tool in criminal investigations, in the exclusion of individuals who are the subject of criminal investigations or prosecutions, in deterring and detecting recidivist acts, and in locating and identifying missing persons and human remains. Several states have enacted laws requiring persons convicted of certain crimes to provide genetic samples for DNA typing tests. Moreover, it is the policy of this state to assist federal, state, and local criminal justice and law enforcement agencies in the identification and detection of individuals in criminal investigations and in locating and identifying missing persons and human remains. It is in the best interest of this state to establish a State DNA Data Base for DNA records and a State DNA Sample Bank as a repository for DNA samples from individuals convicted of felony offenses and other specified offenses and from individuals for purposes of assisting in locating and identifying missing persons and human remains.

Source: Laws 1997, LB 278, § 2; Laws 2006, LB 385, § 3; Laws 2006, LB 1113, § 29; Laws 2010, LB190, § 3.
Effective date July 15, 2010.

29-4103 Terms, defined.

For purposes of the DNA Identification Information Act:

(1) Combined DNA Index System means the Federal Bureau of Investigation's national DNA identification index system that allows the storage and exchange of DNA records submitted by state and local forensic DNA laboratories;

(2) DNA means deoxyribonucleic acid which is located in the cells and provides an individual's personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification;

(3) DNA record means the DNA identification information stored in the State DNA Data Base or the Combined DNA Index System which is derived from DNA typing test results;

(4) DNA sample means a blood, tissue, or bodily fluid sample provided by any person covered by the DNA Identification Information Act for analysis or storage, or both;

(5) DNA typing tests means the laboratory procedures which evaluate the characteristics of a DNA sample which are of value in establishing the identity of an individual;

(6) Law enforcement agency includes a police department, a town marshal, a county sheriff, and the Nebraska State Patrol;

(7) Other specified offense means misdemeanor stalking pursuant to sections 28-311.02 to 28-311.05 or false imprisonment in the second degree pursuant to section 28-315 or an attempt, conspiracy, or solicitation to commit stalking pursuant to sections 28-311.02 to 28-311.05, false imprisonment in the first degree pursuant to section 28-314, false imprisonment in the second degree pursuant to section 28-315, knowing and intentional sexual abuse of a vulnerable adult pursuant to subdivision (1)(c) of section 28-386, or a violation of the Sex Offender Registration Act pursuant to section 29-4011; and

(8) Released means any release, parole, furlough, work release, prerelease, or release in any other manner from a prison, a jail, or any other detention facility or institution.

Source: Laws 1997, LB 278, § 3; Laws 2006, LB 385, § 4; Laws 2006, LB 1199, § 30; Laws 2010, LB190, § 4.
Effective date July 15, 2010.

Cross References

Sex Offender Registration Act, see section 29-4001.

29-4106 Person subject to DNA sample; payment of costs.

(1) A person who is convicted of a felony offense or other specified offense on or after July 15, 2010, who does not have a DNA sample available for use in the State DNA Sample Bank, shall, at his or her own expense, have a DNA sample collected:

(a) Upon intake to a prison, jail, or other detention facility or institution to which such person is sentenced. If the person is already confined at the time of sentencing, the person shall have a DNA sample collected immediately after the sentencing. Such DNA samples shall be collected at the place of incarceration or confinement. Such person shall not be released unless and until a DNA sample has been collected; or

(b) As a condition for any sentence which will not involve an intake into a prison, jail, or other detention facility or institution. Such DNA samples shall be collected at a detention facility or institution as specified by the court. Such person shall not be released unless and until a DNA sample has been collected.

(2) A person who has been convicted of a felony offense or other specified offense before July 15, 2010, who does not have a DNA sample available for use in the State DNA Sample Bank, and who is still serving a term of confinement or probation for such felony offense or other specified offense on July 15, 2010, shall not be released prior to the expiration of his or her maximum term of confinement or revocation or discharge from his or her probation unless and until a DNA sample has been collected.

(3) A person who is serving a term of probation and has a DNA sample collected pursuant to this section shall pay all costs associated with the collection of the DNA sample.

Source: Laws 1997, LB 278, § 6; Laws 2006, LB 385, § 7; Laws 2006, LB 1113, § 32; Laws 2010, LB190, § 5.
Effective date July 15, 2010.

29-4115.01 State DNA Sample and Data Base Fund; created; use; investment.

The State DNA Sample and Data Base Fund is created. The fund shall be maintained by the Department of Justice and administered by the Attorney General. The fund shall consist of any funds transferred to the fund by the Legislature or made available by any department or agency of the United States Government if so directed by such department or agency. The fund shall be used to pay the expenses of the Department of Correctional Services and the Nebraska State Patrol as needed to collect DNA samples as provided in section 29-4106. Any money in the fund available for investment shall be invested by

the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2010, LB190, § 6.
Effective date July 15, 2010.

Cross References

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

ARTICLE 42

AUDIOVISUAL COURT APPEARANCES

Section
29-4203. Repealed. Laws 2009, LB 90, § 3.
29-4204. Audiovisual communication system and facilities; requirements.

29-4203 Repealed. Laws 2009, LB 90, § 3.

29-4204 Audiovisual communication system and facilities; requirements.

The audiovisual communication system and the facilities for an audiovisual court appearance shall:

(1) Operate so that the detainee or prisoner and the judge or magistrate can see each other simultaneously and converse with each other verbally and documents can be transmitted between the judge or magistrate and the detainee or prisoner;

(2) Operate so that the detainee or prisoner and his or her counsel, if any, are both physically in the same location during the audiovisual court appearance; or if the detainee or prisoner and his or her counsel are in different locations, operate so that the detainee or prisoner and counsel can communicate privately and confidentially and be allowed to confidentially transmit papers back and forth; and

(3) Be at locations conducive to judicial proceedings. Audiovisual court proceedings may be conducted in the courtroom, the judge's or magistrate's chambers, or any other location suitable for audiovisual communications. The locations shall be sufficiently lighted for use of the audiovisual equipment. The location provided for the judge or magistrate to preside shall be accessible to the public and shall be operated so that interested persons have an opportunity to observe the proceeding.

Source: Laws 1999, LB 623, § 4; Laws 2006, LB 1115, § 23; Laws 2009, LB90, § 1.

ARTICLE 46

NEBRASKA CLAIMS FOR WRONGFUL CONVICTION AND IMPRISONMENT ACT

Section
29-4601. Act, how cited.
29-4602. Legislative findings.
29-4603. Recovery; claimant; proof required.
29-4604. Recovery of damages; determination of amount; restrictions.
29-4605. Extinguishment of lien for costs of defense services.
29-4606. Provision of services to claimant; how treated.

Section
29-4607. Filing of claim.
29-4608. Claimant; rights; recovery under act; effect.

29-4601 Act, how cited.

Sections 29-4601 to 29-4608 shall be known and may be cited as the Nebraska Claims for Wrongful Conviction and Imprisonment Act.

Source: Laws 2009, LB260, § 1.

29-4602 Legislative findings.

The Legislature finds that innocent persons who have been wrongly convicted of crimes and subsequently imprisoned have been uniquely victimized, have distinct problems reentering society, and have difficulty achieving legal redress due to a variety of substantive and technical obstacles in the law. The Legislature also finds that such persons should have an available avenue of redress. In light of the particular and substantial horror of being imprisoned for a crime one did not commit, the Legislature intends by enactment of the Nebraska Claims for Wrongful Conviction and Imprisonment Act that persons who can demonstrate that they were wrongfully convicted shall have a claim against the state as provided in the act.

Source: Laws 2009, LB260, § 2.

29-4603 Recovery; claimant; proof required.

In order to recover under the Nebraska Claims for Wrongful Conviction and Imprisonment Act, the claimant shall prove each of the following by clear and convincing evidence:

(1) That he or she was convicted of one or more felony crimes and subsequently sentenced to a term of imprisonment for such felony crime or crimes and has served all or any part of the sentence;

(2) With respect to the crime or crimes under subdivision (1) of this section, that the Board of Pardons has pardoned the claimant, that a court has vacated the conviction of the claimant, or that the conviction was reversed and remanded for a new trial and no subsequent conviction was obtained;

(3) That he or she was innocent of the crime or crimes under subdivision (1) of this section; and

(4) That he or she did not commit or suborn perjury, fabricate evidence, or otherwise make a false statement to cause or bring about such conviction or the conviction of another, with respect to the crime or crimes under subdivision (1) of this section, except that a guilty plea, a confession, or an admission, coerced by law enforcement and later found to be false, does not constitute bringing about his or her own conviction of such crime or crimes.

Source: Laws 2009, LB260, § 3.

29-4604 Recovery of damages; determination of amount; restrictions.

(1) A claimant under the Nebraska Claims for Wrongful Conviction and Imprisonment Act shall recover damages found to proximately result from the wrongful conviction and that have been proved based upon a preponderance of the evidence.

(2) The following costs shall not offset damages:

(a) Costs of imprisonment; and

(b) Value of any care or education provided to the claimant while he or she was imprisoned.

(3) No damages shall be payable to the claimant for any period of time during which he or she was concurrently imprisoned for any unrelated criminal offense.

(4) In no case shall damages awarded under the act exceed five hundred thousand dollars per claimant per occurrence.

(5) A claimant's cause of action under the act shall not be assignable and shall not survive the claimant's death.

Source: Laws 2009, LB260, § 4.

29-4605 Extinguishment of lien for costs of defense services.

If the court finds that any property of the claimant was subjected to a lien to recover costs of defense services rendered by the state to defend the claimant in connection with the criminal case that resulted in his or her wrongful conviction, the court shall extinguish the lien.

Source: Laws 2009, LB260, § 5.

29-4606 Provision of services to claimant; how treated.

Nothing contained in the Nebraska Claims for Wrongful Conviction and Imprisonment Act shall preclude the state from providing services to the claimant upon exoneration, and the reasonable value of services provided shall be treated as an advance against any award or judgment under the act.

Source: Laws 2009, LB260, § 6.

29-4607 Filing of claim.

A claim brought pursuant to the Nebraska Claims for Wrongful Conviction and Imprisonment Act shall be filed under the State Tort Claims Act.

Source: Laws 2009, LB260, § 7.

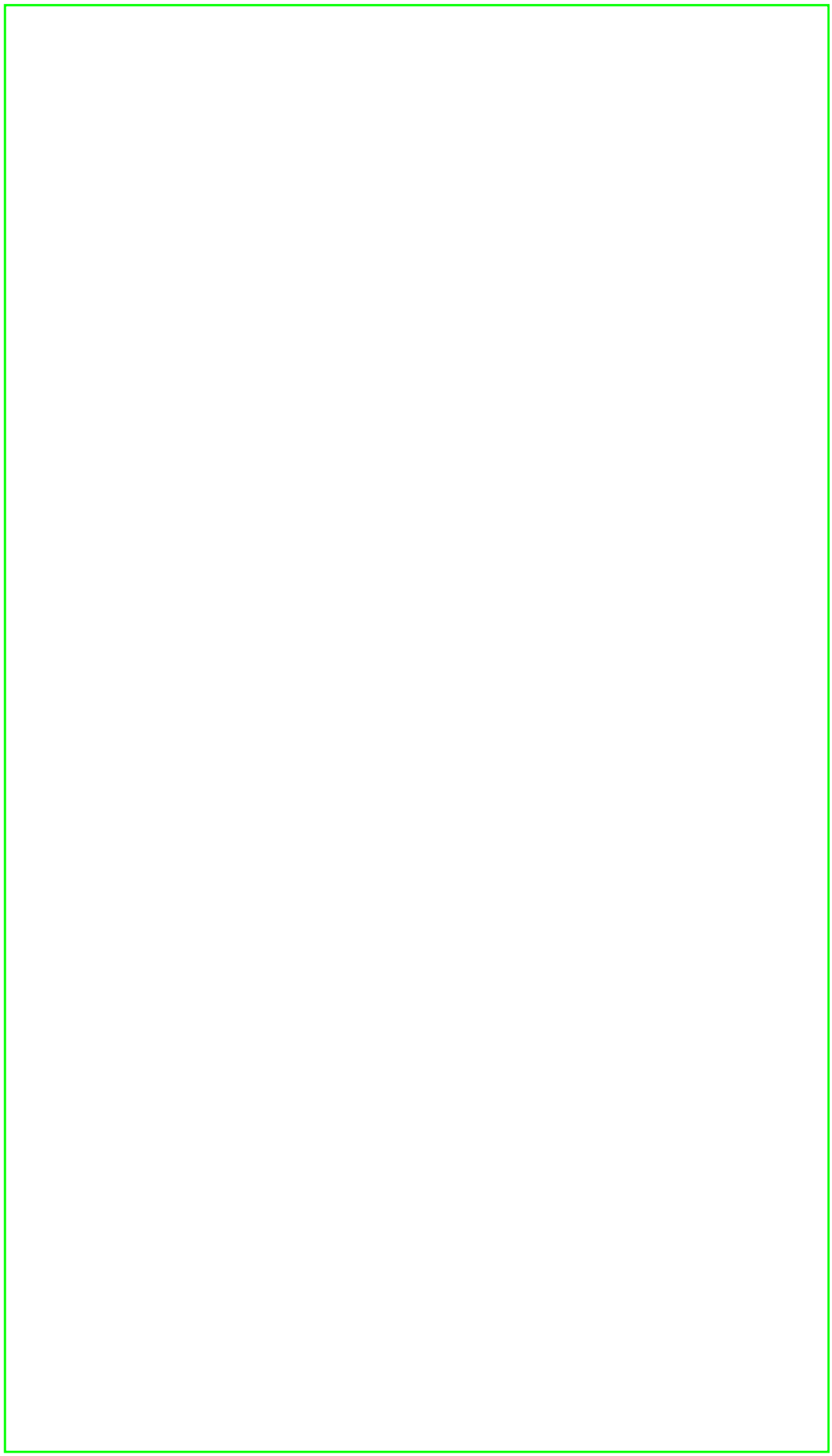
Cross References

State Tort Claims Act, see section 81-8,235.

29-4608 Claimant; rights; recovery under act; effect.

Nothing in the Nebraska Claims for Wrongful Conviction and Imprisonment Act shall limit the claimant from making any other claim available against any other party or based upon any other theory of recovery, except that a claimant who recovers a claim under the act shall not have any other claim against the state based upon any other theory of recovery or law.

Source: Laws 2009, LB260, § 8.



CHAPTER 30

DECEDENTS' ESTATES; PROTECTION OF PERSONS AND PROPERTY

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Part 4— Creation, Validity, Modification, and Termination of Trust. 30-3839.

ARTICLE 22

PROBATE JURISDICTION

PART 1—SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

Section
30-2201. Short title.

PART 1—SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

30-2201 Short title.

Sections 30-2201 to 30-2902 shall be known and may be cited as the Nebraska Probate Code.

Source: Laws 1974, LB 354, § 1, UPC § 1-101; Laws 1985, LB 292, § 1; Laws 1993, LB 250, § 33; Laws 1993, LB 782, § 2; Laws 1997, LB 466, § 2; Laws 1999, LB 100, § 1; Laws 2010, LB758, § 1. Effective date July 15, 2010.

ARTICLE 23
INTESTATE SUCCESSION AND WILLS

PART 1—INTESTATE SUCCESSION

Section
30-2302. Share of the spouse.

PART 4—EXEMPT PROPERTY AND ALLOWANCES

30-2322. Homestead allowance.
30-2323. Exempt property.
30-2325. Source, determination, and documentation.

PART 6—RULES OF CONSTRUCTION

30-2342.01. Gift for benevolent purpose; validity; court; powers; notice to Attorney General.
30-2342.02. Terms relating to federal estate and generation-skipping transfer taxes; how construed.

PART 1—INTESTATE SUCCESSION

30-2302 Share of the spouse.

The intestate share of the surviving spouse is:

(1) if there is no surviving issue or parent of the decedent, the entire intestate estate;

(2) if there is no surviving issue but the decedent is survived by a parent or parents, the first one hundred thousand dollars, plus one-half of the balance of the intestate estate;

(3) if there are surviving issue all of whom are issue of the surviving spouse also, the first one hundred thousand dollars, plus one-half of the balance of the intestate estate;

(4) if there are surviving issue one or more of whom are not issue of the surviving spouse, one-half of the intestate estate.

Source: Laws 1974, LB 354, § 24, UPC § 2-102; Laws 1980, LB 694, § 2; Laws 2009, LB35, § 19.

PART 4—EXEMPT PROPERTY AND ALLOWANCES

30-2322 Homestead allowance.

A surviving spouse of a decedent who was domiciled in this state is entitled to a homestead allowance of seven thousand five hundred dollars for a decedent who dies before January 1, 2011, and twenty thousand dollars for a decedent who dies on or after January 1, 2011. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to the amount allowed for a surviving spouse divided by the number of minor and dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate except for costs and expenses of administration. Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided therein, by intestate succession or by way of elective share.

Source: Laws 1974, LB 354, § 44, UPC § 2-401; Laws 1978, LB 650, § 4; Laws 1980, LB 981, § 1; Laws 2010, LB712, § 18.
Operative date July 15, 2010.

30-2323 Exempt property.

(1) In addition to the homestead allowance, the surviving spouse of a decedent who was domiciled in this state is entitled from the estate to value not exceeding five thousand dollars for a decedent who dies before January 1, 2011, and twelve thousand five hundred dollars for a decedent who dies on or after January 1, 2011, in excess of any security interests therein in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, children of the decedent are entitled jointly to the same value unless the decedent has provided in his or her will that one or more of such children shall be disinherited, in which case only those children not so disinherited shall be so entitled. For purposes of this section, disinherited means providing in one's will that a child shall take nothing or a nominal amount of ten dollars or less from the estate.

(2) If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than the amount allowed under subsection (1) of this section, or if there is not that amount worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the amount allowed under subsection (1) of this section. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate except for costs and expenses of administration, except for claims filed by the Department of Health and Human Services pursuant to section 68-919 notwithstanding the order of payment established in section 30-2487, and except that the right to any assets to make up a deficiency of exempt property shall abate as necessary to permit prior payment of homestead allowance and family allowance.

(3) These rights are in addition to any benefit or share passing to the surviving spouse by the will of the decedent unless otherwise provided therein, by intestate succession, or by way of elective share. These rights are in addition to any benefit or share passing to the surviving children by intestate succession and are in addition to any benefit or share passing by the will of the decedent to those surviving children not disinherited unless otherwise provided in the will.

Source: Laws 1974, LB 354, § 45, UPC § 2-402; Laws 1978, LB 650, § 5; Laws 1980, LB 981, § 2; Laws 1999, LB 318, § 1; Laws 2010, LB712, § 19.
Operative date July 15, 2010.

30-2325 Source, determination, and documentation.

If the estate is otherwise sufficient, property specifically devised is not used to satisfy rights to homestead and exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. After giving such notice as the court may require in a proceeding initiated under the provisions of section 30-2405, the personal representative may make these selections if the surviving spouse, the children or the guardians of the minor children are unable or fail to do so within a reasonable time or if there are no guardians of the minor children. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. The personal representative may determine the family allowance in a lump sum not exceed-

ing nine thousand dollars for a decedent who dies before January 1, 2011, and twenty thousand dollars for a decedent who dies on or after January 1, 2011, or periodic installments not exceeding seven hundred fifty dollars per month for one year for a decedent who dies before January 1, 2011, and one thousand six hundred sixty-six dollars and sixty-seven cents per month for one year for a decedent who dies on or after January 1, 2011. The personal representative may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which relief may provide a family allowance larger or smaller than that which the personal representative determined or could have determined.

The homestead allowance, the exempt property, and the family allowance as finally determined by the personal representative or by the court, shall vest in the surviving spouse as of the date of decedent's death, as a vested indefeasible right of property, shall survive as an asset of the surviving spouse's estate if unpaid on the date of death of such surviving spouse, and shall not terminate upon the death or remarriage of the surviving spouse.

Source: Laws 1974, LB 354, § 47, UPC § 2-404; Laws 1980, LB 981, § 3; Laws 2010, LB712, § 20.
Operative date July 15, 2010.

PART 6—RULES OF CONSTRUCTION

30-2342.01 Gift for benevolent purpose; validity; court; powers; notice to Attorney General.

(a) Except as otherwise provided in subsection (d) of this section, no gift, devise, or endowment for religious, educational, charitable, or benevolent purposes, which in other respects is valid under the laws of this state, shall be invalid or fail by reason of the indefiniteness or uncertainty of the recipient of the gift, devise, or endowment or by reason that it is or has become unlawful, impracticable, impossible to achieve, or wasteful.

(b) The court, on application of any interested person or the Attorney General may determine and order an administration or distribution of the gift, devise, or endowment in a manner as consistent as possible with the intent expressed in the document creating the gift, devise, or endowment. This section shall not be deemed to limit application of the common law doctrines of cy pres and deviation or of section 58-615.

(c) In an application for relief under this section which is not brought by the Attorney General, notice of the proceeding shall be given to the Attorney General as a representative for the charitable interests involved.

(d) Subsection (a) of this section shall not apply if the document creating the gift, devise, or endowment expressly provides for an alternate disposition of the gift, devise, or endowment in the event the gift, devise, or endowment has become unlawful, impracticable, impossible to achieve, or wasteful. A general residuary devise by will shall not be considered an express provision for an alternate disposition.

(e) Any gift, devise, or endowment to a trust with charitable purposes as described in section 30-3831 shall be governed by section 30-3839.

Source: Laws 2010, LB758, § 2.
Effective date July 15, 2010.

30-2342.02 Terms relating to federal estate and generation-skipping transfer taxes; how construed.

(1) A will or trust of a decedent who dies after December 31, 2009, and before January 1, 2011, that contains a formula referring to the ''unified credit'', ''estate tax exemption'', ''applicable exemption amount'', ''applicable credit amount'', ''applicable exclusion amount'', ''generation-skipping transfer tax exemption'', ''GST exemption'', ''marital deduction'', ''maximum marital deduction'', or ''unlimited marital deduction'', or that measures a share of an estate or trust based on the amount that can pass free of federal estate tax or the amount that can pass free of federal generation-skipping transfer tax, or that is otherwise based on a similar provision of federal estate or generation-skipping transfer tax law, shall be deemed to refer to the federal estate and generation-skipping transfer tax laws as they applied with respect to estates of decedents dying on December 31, 2009.

(2) This section does not apply:

(a) If the decedent dies on a date on which there is a then-applicable federal estate or generation-skipping transfer tax; or

(b) With respect to a will or trust that is executed or amended after December 31, 2009, or that manifests an intent that a contrary rule apply if the decedent dies on a date on which there is no then-applicable federal estate or generation-skipping transfer tax.

(3) The personal representative or any affected beneficiary under the will or trust may bring a proceeding to determine whether the decedent intended that the references under subsection (1) of this section be construed with respect to the law as it existed after December 31, 2009. Such a proceeding shall be commenced within twelve months after the death of the decedent.

Source: Laws 2010, LB1047, § 1.
Effective date April 13, 2010.

ARTICLE 24

PROBATE OF WILLS AND ADMINISTRATION

PART 7—DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

Section
30-2476. Transactions authorized for personal representatives; exceptions.

PART 8—CREDITORS' CLAIMS

30-2485. Limitations on presentation of claims.
30-2487. Payment of claims; order.

PART 12—COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT AND SUMMARY ADMINISTRATION PROCEDURE FOR SMALL ESTATES

30-24,125. Collection of personal property by affidavit.

PART 13—SUCCESSION TO REAL PROPERTY BY AFFIDAVIT FOR SMALL ESTATES

30-24,129. Succession to real property by affidavit.

PART 7—DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

30-2476 Transactions authorized for personal representatives; exceptions.

Except as restricted or otherwise provided by the will or by an order in a formal proceeding, without limiting the authority conferred by section 30-2472, and subject to the priorities stated in section 30-24,100, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(1) retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;

(2) receive assets from fiduciaries or other sources;

(3) perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as he or she may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

(i) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

(ii) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;

(4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

(5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including money received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent investments which would be reasonable for use by trustees generally;

(6) acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, and raze existing or erect new party walls or buildings;

(8) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; or adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

(9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) abandon property when, in the opinion of the personal representative, it is valueless, or is so encumbered, or is in condition that it is of no benefit to the estate;

(12) vote stocks or other securities in person or by general or limited proxy;

(13) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

(14) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held;

(15) insure the assets of the estate against damage, loss, and liability and himself or herself against liability as to third persons;

(16) borrow money with or without security to be repaid from the estate assets or otherwise; and advance money for the protection of the estate;

(17) effect a fair and reasonable compromise with any debtor or obligor, or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon property of another person, he or she may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;

(18) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;

(19) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(20) allocate items of income or expense to either estate income or principal, as permitted or provided by law;

(21) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of his or her administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(22) prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his or her duties;

(23) sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, for credit, or for part cash and part credit, and with or without security for unpaid balances;

(24) continue any unincorporated business or venture in which the decedent was engaged at the time of death;

(25) form a business entity that has limited liability, including a limited partnership, limited liability partnership, limited liability company, or corporation, for any business or venture in which the decedent was engaged at the time of death;

(26) provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate;

(27) satisfy and settle claims and distribute the estate as provided in the Nebraska Probate Code.

Source: Laws 1974, LB 354, § 154, UPC § 3-715; Laws 1978, LB 650, § 17; Laws 1993, LB 315, § 1; Laws 2010, LB758, § 3.
Effective date July 15, 2010.

PART 8—CREDITORS' CLAIMS

30-2485 Limitations on presentation of claims.

(a) All claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(1) Within two months after the date of the first publication of notice to creditors if notice is given in compliance with sections 25-520.01 and 30-2483, except that claims barred by the nonclaim statute at the decedent's domicile before the first publication for claims in this state are also barred in this state. If any creditor has a claim against a decedent's estate which arose before the death of the decedent and which was not presented within the time allowed by this subdivision, including any creditor who did not receive notice, such creditor may apply to the court within sixty days after the expiration date provided in this subdivision for additional time and the court, upon good cause shown, may allow further time not to exceed thirty days;

(2) Within three years after the decedent's death if notice to creditors has not been given in compliance with sections 25-520.01 and 30-2483.

(b) All claims, other than for costs and expenses of administration as defined in section 30-2487, against a decedent's estate which arise at or after the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(1) A claim based on a contract with the personal representative, within four months after performance by the personal representative is due;

(2) Any other claim, within four months after it arises.

(c) Nothing in this section affects or prevents:

(1) Any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate; or

(2) To the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he or she is protected by liability insurance.

Source: Laws 1974, LB 354, § 163, UPC § 3-803; Laws 1991, LB 95, § 1; Laws 2009, LB35, § 20.

30-2487 Payment of claims; order.

(a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(1) Costs and expenses of administration;

(2) Reasonable funeral expenses;

(3) Debts and taxes with preference under federal law;

(4) Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent and claims filed by the Department of Health and Human Services pursuant to section 68-919;

(5) Debts and taxes with preference under other laws of this state;

(6) All other claims.

(b) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

(c) For purposes of this section and section 30-2485, costs and expenses of administration includes expenses incurred in taking possession or control of estate assets and the management, protection, and preservation of the estate assets, expenses related to the sale of estate assets, and expenses in the day-to-day operation and continuation of business interests for the benefit of the estate.

Source: Laws 1974, LB 354, § 165, UPC § 3-805; Laws 1975, LB 481, § 17; Laws 1994, LB 1224, § 40; Laws 1996, LB 1044, § 90; Laws 2006, LB 1248, § 53; Laws 2007, LB296, § 49; Laws 2009, LB35, § 21.

PART 12—COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT AND SUMMARY ADMINISTRATION PROCEDURE FOR SMALL ESTATES

30-24,125 Collection of personal property by affidavit.

(a) Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating:

(1) the value of all of the personal property in the decedent's estate, wherever located, less liens and encumbrances, does not exceed fifty thousand dollars;

(2) thirty days have elapsed since the death of the decedent as shown in a certified or authenticated copy of the decedent's death certificate attached to the affidavit;

(3) the claiming successor's relationship to the decedent or, if there is no relationship, the basis of the successor's claim to the personal property;

(4) the person or persons claiming as successors under the affidavit swear or affirm that all statements in the affidavit are true and material and further acknowledge that any false statement may subject the person or persons to penalties relating to perjury under section 28-915;

(5) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(6) the claiming successor is entitled to payment or delivery of the property.

(b) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (a).

(c) In addition to compliance with the requirements of subsection (a), a person seeking a transfer of a certificate of title to a motor vehicle, motorboat, all-terrain vehicle, utility-type vehicle, or minibike shall be required to furnish to the Department of Motor Vehicles an affidavit showing applicability of this section and compliance with the requirements of this section to authorize the department to issue a new certificate of title.

Source: Laws 1974, LB 354, § 203, UPC § 3-1201; Laws 1996, LB 909, § 1; Laws 1999, LB 100, § 4; Laws 1999, LB 141, § 6; Laws 2004, LB 560, § 2; Laws 2009, LB35, § 22; Laws 2010, LB650, § 2.
Operative date January 1, 2011.

PART 13—SUCCESSION TO REAL PROPERTY BY AFFIDAVIT FOR SMALL ESTATES

30-24,129 Succession to real property by affidavit.

(a) Thirty days after the death of a decedent, any person claiming as successor to the decedent's interest in real property in this state may file or cause to be filed on his or her behalf, with the register of deeds office of a county in which the real property of the decedent that is the subject of the affidavit is located, an affidavit describing the real property owned by the decedent and the interest of the decedent in the property. The affidavit shall be signed by all persons claiming as successors or by parties legally acting on their behalf and shall be prima facie evidence of the facts stated in the affidavit. The affidavit shall state:

(1) the value of the decedent's interest in all real property in the decedent's estate located in this state does not exceed thirty thousand dollars. The value of the decedent's interest shall be determined from the value of the property as shown on the assessment rolls for the year in which the decedent died;

(2) thirty days have elapsed since the death of the decedent as shown in a certified or authenticated copy of the decedent's death certificate attached to the affidavit;

(3) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;

(4) the claiming successor is entitled to the real property by reason of the homestead allowance, exempt property allowance, or family allowance, by intestate succession, or by devise under the will of the decedent;

(5) the claiming successor has made an investigation and has been unable to determine any subsequent will;

(6) no other person has a right to the interest of the decedent in the described property;

(7) the claiming successor's relationship to the decedent and the value of the entire estate of the decedent; and

(8) the person or persons claiming as successors under the affidavit swear or affirm that all statements in the affidavit are true and material and further acknowledge that any false statement may subject the person or persons to penalties relating to perjury under section 28-915.

(b) The recorded affidavit and certified or authenticated copy of the decedent's death certificate shall also be recorded by the claiming successor in any other county in this state in which the real property of the decedent that is the subject of the affidavit is located.

Source: Laws 1999, LB 100, § 2; Laws 2009, LB35, § 23.

ARTICLE 26

PROTECTION OF PERSONS UNDER DISABILITY AND THEIR PROPERTY

PART 1—GENERAL PROVISIONS

Section
30-2604. Delegation of powers by parent or guardian.

PART 5—POWERS OF ATTORNEY

30-2664. Act, how cited.
30-2665.01. Powers relating to rights of survivorship and beneficiary designations.

PART 1—GENERAL PROVISIONS

30-2604 Delegation of powers by parent or guardian.

A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding six months, any of his or her powers regarding care, custody, or property of the minor child or ward, except his or her power to consent to marriage or adoption of a minor ward. A parent or guardian of a minor who is at least eighteen years of age and who is not a ward of the state, by a properly executed power of attorney, may delegate to such minor, for a period not exceeding one year, the parent's or guardian's power to consent to such minor's own health care and medical treatment.

Source: Laws 1974, LB 354, § 222, UPC § 5-104; Laws 2010, LB226, § 1. Effective date March 4, 2010.

PART 5—POWERS OF ATTORNEY

30-2664 Act, how cited.

Sections 30-2664 to 30-2672 shall be known and may be cited as the Uniform Durable Power of Attorney Act.

Source: Laws 1985, LB 292, § 5; Laws 2010, LB712, § 21. Operative date July 15, 2010.

30-2665.01 Powers relating to rights of survivorship and beneficiary designations.

An agent or attorney in fact under a durable power of attorney may do the following on behalf of the principal or with the principal's property only if the durable power of attorney expressly grants the agent or attorney in fact the

authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

(1) Create or change rights of survivorship; or

(2) Create or change a beneficiary designation.

Source: Laws 2010, LB712, § 22.
Operative date July 15, 2010.

ARTICLE 27
NONPROBATE TRANSFERS

PART 1—PROVISIONS RELATING TO EFFECT OF DEATH

Section
30-2715. Nonprobate transfers on death.
30-2715.01. Motor vehicle; transfer on death; certificate of title.

PART 1—PROVISIONS RELATING TO EFFECT OF DEATH

30-2715 Nonprobate transfers on death.

(a) A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, marital property agreement, certificate of title, or other written instrument of a similar nature is nontestamentary. This subsection includes a written provision that:

(1) money or other benefits due to, controlled by, or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later;

(2) money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or

(3) any property controlled by or owned by the decedent before death which is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later.

(b) This section does not limit rights of creditors under other laws of this state.

Source: Laws 1993, LB 250, § 1; Laws 2010, LB712, § 24.
Operative date July 15, 2010.

30-2715.01 Motor vehicle; transfer on death; certificate of title.

(1) A person who owns a motor vehicle may provide for the transfer of such vehicle upon his or her death or the death of the last survivor of a joint tenancy with right of survivorship by including in the certificate of title a designation of beneficiary or beneficiaries to whom the vehicle will be transferred on the death of the owner or the last survivor, subject to the rights of all lienholders, whether created before, simultaneously with, or after the creation of the transfer-on-death interest. A trust may be the beneficiary of a transfer-on-death certificate of title. The certificate of title shall include the name of the owner,

the name of any tenant-in-common owner or the name of any joint-tenant-with-right-of-survivorship owner, followed in substance by the words transfer on death to (name of beneficiary or beneficiaries or name of trustee if a trust is to be the beneficiary). The abbreviation TOD may be used instead of the words transfer on death to.

(2) A transfer-on-death beneficiary shall have no interest in the motor vehicle until the death of the owner or the last survivor of the joint-tenant-with-right-of-survivorship owners. A beneficiary designation may be changed at any time by the owner or by the joint-tenant-with-right-of-survivorship owners then surviving without the consent of any beneficiary by filing an application for a subsequent certificate of title.

(3) Ownership of a motor vehicle which has a designation of beneficiary as provided in subsection (1) of this section and for which an application for a subsequent certificate of title has not been filed shall vest in the designated beneficiary or beneficiaries on the death of the owner or the last of the joint-tenant-with-right-of-survivorship owners, subject to the rights of all lienholders.

Source: Laws 2010, LB712, § 23.
Operative date January 1, 2011.

ARTICLE 31

UNIFORM PRINCIPAL AND INCOME ACT

PART 1—DEFINITIONS AND FIDUCIARY DUTIES

Section
30-3116. Act, how cited.
30-3119.01. Conversion to total return trust.

PART 4—ALLOCATION OF RECEIPTS DURING ADMINISTRATION OF TRUST

SUBPART 3—RECEIPTS NORMALLY APPORTIONED

30-3135. Deferred compensation, annuities, and similar payments; allocation to principal and income.
30-3135.01. Trust; marital deduction; when provisions applicable.

PART 5—ALLOCATION OF DISBURSEMENTS DURING ADMINISTRATION OF TRUST

30-3146. Income taxes.

PART 1—DEFINITIONS AND FIDUCIARY DUTIES

30-3116 Act, how cited.

Sections 30-3116 to 30-3149 shall be known and may be cited as the Uniform Principal and Income Act.

Source: Laws 2001, LB 56, § 1; Laws 2005, LB 533, § 33; Laws 2009, LB80, § 1.

30-3119.01 Conversion to total return trust.

(1) Unless expressly prohibited by a trust, a trustee may release the power to adjust described in section 30-3119 and convert a trust to a total return trust as described in this section if all of the following apply:

(a) The trustee determines that the conversion will enable the trustee to better carry out the intent of the settlor and the purpose of the trust;

(b) The trustee sends written notice of the trustee's decision to convert the trust to a total return trust specifying a prospective effective date for the conversion which shall not be sooner than sixty days after the notice is sent and which shall include a copy of this section of law and shall specifically recite the time period within which a timely objection may be made. Such notice shall be sent to the qualified beneficiaries determined as of the date the notice is sent and assuming nonexercise of all powers of appointment;

(c) There are one or more legally competent beneficiaries who are currently eligible to receive income from the trust and one or more legally competent beneficiaries who would receive a distribution of principal if the trust were to terminate immediately before the notice is given; and

(d) No beneficiary has objected in writing to the conversion to a total return trust and delivered such objection to the trustee within sixty days after the notice was sent.

(2) Conversion to a total return trust or reconversion to an income trust may be made by agreement between the trustee and all qualified beneficiaries of the trust. The trustee and all qualified beneficiaries of the trust may also agree to modify the distribution percentage, except that the trustee and the qualified beneficiaries may not agree to a distribution percentage of less than three percent or greater than five percent. The agreement may include any other actions a court could properly order pursuant to subsection (7) of this section.

(3)(a) The trustee may, for any reason, elect to petition the court to order conversion to a total return trust including, without limitation, the reason that conversion under subsection (1) of this section is unavailable because:

(i) A beneficiary timely objects to the conversion to a total return trust;

(ii) There are no legally competent beneficiaries who are currently eligible to receive income from the trust; or

(iii) There are no legally competent beneficiaries who would receive a distribution of principal if the trust were to terminate immediately.

(b) A beneficiary may request the trustee to convert to a total return trust or adjust the distribution percentage pursuant to this subsection. If the trustee declines or fails to act within six months after receiving a written request from a beneficiary to do so, the beneficiary may petition the court to order the conversion or adjustment.

(c) The trustee may petition the court prospectively to reconvert from a total return trust or to adjust the distribution percentage if the trustee determines that the reconversion or adjustment will enable the trustee to better carry out the purposes of the trust. A beneficiary may request the trustee to petition the court prospectively to reconvert from a total return trust or adjust the distribution percentage. If the trustee declines or fails to act within six months after receiving a written request from a beneficiary to do so, the beneficiary may petition the court to order the reconversion or adjustment.

(d)(i) In a judicial proceeding instituted under this subsection, the trustee may present opinions and reasons concerning:

(A) The trustee's support for or opposition to a conversion to a total return trust, a reconversion from a total return trust, or an adjustment of the distribution percentage of a total return trust, including whether the trustee believes conversion, reconversion, or adjustment of the distribution percentage would enable the trustee to better carry out the purposes of the trust; and

(B) Any other matter relevant to the proposed conversion, reconversion, or adjustment of the distribution percentage.

(ii) A trustee's actions undertaken in accordance with this subsection shall not be deemed improper or inconsistent with the trustee's duty of impartiality unless the court finds from all the evidence that the trustee acted in bad faith.

(e) The court shall order conversion to a total return trust, reconversion prospectively from a total return trust, or adjustment of the distribution percentage of a total return trust if the court determines that the conversion, reconversion, or adjustment of the distribution percentage will enable the trustee to better carry out the purposes of the trust.

(f) If a conversion to a total return trust is made pursuant to a court order, the trustee may reconvert the trust to an income trust only:

(i) Pursuant to a subsequent court order; or

(ii) By filing with the court an agreement made pursuant to subsection (2) of this section to reconvert to an income trust.

(g) Upon a reconversion the power to adjust, as described in section 30-3119 and as it existed before the conversion, shall be revived.

(h) An action may be taken under this subsection no more frequently than every two years, unless a court for good cause orders otherwise.

(4)(a) During the time that a trust is a total return trust, the trustee shall administer the trust in accordance with the provisions of this subsection as follows, unless otherwise expressly provided by the terms of the trust:

(i) The trustee shall invest the trust assets seeking a total return without regard to whether the return is from income or appreciation of principal;

(ii) The trustee shall make income distributions in accordance with the trust subject to the provisions of this section;

(iii) The distribution percentage for any trust converted to a total return trust by a trustee in accordance with subsection (1) of this section shall be four percent, unless a different percentage has been determined in an agreement made pursuant to subsection (2) of this section or ordered by the court pursuant to subsection (3) of this section; and

(iv)(A) The trustee shall pay to a beneficiary in the case of an underpayment within a reasonable time and shall recover from a beneficiary in the case of an overpayment either by repayment by the beneficiary or by withholding from future distributions to the beneficiary:

(I) An amount equal to the difference between the amount properly payable and the amount actually paid; and

(II) Interest compounded annually at a rate per annum equal to the distribution percentage in the year or years during which the underpayment or overpayment occurs.

(B) For purposes of subdivision (4)(a)(iv) of this section, accrual of interest may not commence until the beginning of the trust year following the year in which the underpayment or overpayment occurs.

(b) For purposes of this subsection:

(i) Distribution amount means an annual amount equal to the distribution percentage multiplied by the average net fair market value of the trust's assets.

The average net fair market value of the trust's assets shall be the net fair market value of the trust's assets averaged over the lesser of:

(A) The three preceding years; or

(B) The period during which the trust has been in existence; and

(ii) Income, as that term appears in the governing instrument, means the distribution amount.

(5) The trustee may determine any of the following matters in administering a total return trust as the trustee deems necessary or helpful for the proper functioning of the trust:

(a) The effective date of a conversion to a total return trust pursuant to subsection (1) of this section;

(b) The manner of prorating the distribution amount for a short year in which a beneficiary's interest commences or ceases, or, if the trust is a total return trust for only part of the year or the trustee may elect to treat the trust year as two separate years, the first of which ends at the close of the day on which the conversion or reconversion occurs, and the second of which ends at the close of the trust year;

(c) Whether distributions are made in cash or in kind;

(d) The manner of adjusting valuations and calculations of the distribution amount to account for other payments from, or contributions to, the trust;

(e) Whether to value the trust's assets annually or more frequently;

(f) Which valuation dates to use and how many valuation dates to use;

(g) Valuation decisions concerning any asset for which there is no readily available market value, including:

(i) How frequently to value such an asset;

(ii) Whether and how often to engage a professional appraiser to value such an asset; and

(iii) Whether to exclude the value of such an asset from the net fair market value of the trust's assets for purposes of determining the distribution amount. For purposes of this section, any such asset so excluded shall be referred to as an excluded asset and the trustee shall distribute any net income received from the excluded asset as provided for in the governing instrument, subject to the following principles:

(A) The trustee shall treat each asset for which there is no readily available market value as an excluded asset unless the trustee determines that there are compelling reasons not to do so and the trustee considers all relevant factors including the best interests of the beneficiaries;

(B) If tangible personal property or real property is possessed or occupied by a beneficiary, the trustee may not limit or restrict any right of the beneficiary to use the property in accordance with the governing instrument regardless of whether the trustee treats the property as an excluded asset; and

(C) By way of example and not by way of limitation, assets for which there is a readily available market value include cash and cash equivalents; stocks, bonds, and other securities and instruments for which there is an established market on a stock exchange, in an over-the-counter market, or otherwise; and any other property that can reasonably be expected to be sold within one week of the decision to sell without extraordinary efforts by the seller. By way of

example and not by way of limitation, assets for which there is no readily available market value include stocks, bonds, and other securities and instruments for which there is no established market on a stock exchange, in an over-the-counter market, or otherwise; real property; tangible personal property; and artwork and other collectibles; and

(h) Any other administrative matter that the trustee determines is necessary or helpful for the proper functioning of the total return trust.

(6)(a) Expenses, taxes, and other charges that would otherwise be deducted from income if the trust was not a total return trust may not be deducted from the distribution amount.

(b) Unless otherwise provided by the governing instrument, the distribution amount each year shall be deemed to be paid from the following sources for that year in the following order:

(i) Net income determined as if the trust was not a total return trust;

(ii) Other ordinary income as determined for federal income tax purposes;

(iii) Net realized short-term capital gains as determined for federal income tax purposes;

(iv) Net realized long-term capital gains as determined for federal income tax purposes;

(v) Trust principal comprising assets for which there is a readily available market value; and

(vi) Other trust principal.

(7)(a) The court may order any of the following actions in a proceeding brought by a trustee or a beneficiary pursuant to subdivision (a), (b), or (c) of subsection (3) of this section:

(i) Select a distribution percentage other than four percent, except that the court may not order a distribution percentage of less than three percent or greater than five percent;

(ii) Average the valuation of the trust's net assets over a period other than three years;

(iii) Reconvert prospectively from a total return trust or adjust the distribution percentage of a total return trust;

(iv) Direct the distribution of net income, determined as if the trust were not a total return trust, in excess of the distribution amount as to any or all trust assets if the distribution is necessary to preserve a tax benefit; or

(v) Change or direct any administrative procedure as the court determines is necessary or helpful for the proper functioning of the total return trust.

(b) Nothing in this subsection shall be construed to limit the equitable jurisdiction of the court to grant other relief as the court deems proper.

(8)(a) In the case of a trust for which a marital deduction has been taken for federal tax purposes under section 2056 or section 2523 of the Internal Revenue Code of 1986, as amended, the spouse otherwise entitled to receive the net income of the trust shall have the right, by written instrument delivered to the trustee, to compel the reconversion during that spouse's lifetime of the trust from a total return trust to an income trust, notwithstanding anything in this section to the contrary.

(b) Conversion to a total return trust shall not affect any provision in the governing instrument:

(i) That directs or authorizes the trustee to distribute principal;

(ii) That directs or authorizes the trustee to distribute a fixed annuity or a fixed fraction of the value of trust assets;

(iii) That authorizes a beneficiary to withdraw a portion or all of the principal; or

(iv) That in any manner diminishes an amount permanently set aside for charitable purposes under the governing instrument unless both income and principal are set aside.

(9) If a particular trustee is also a beneficiary of the trust and conversion or failure to convert would enhance or diminish the beneficial interest of that trustee or, if possession or exercise of the conversion power by a particular trustee alone would cause any individual to be treated as owner of a part of the trust for federal income tax purposes or cause a part of the trust to be included in the gross estate of any individual for federal estate tax purposes, then that particular trustee may not participate as a trustee in the exercise of the conversion power, except that:

(a) The trustee may petition the court under subdivision (a) of subsection (3) of this section to order conversion in accordance with this section; and

(b) A cotrustee or cotrustees to whom this subsection does not apply may convert the trust to a total return trust in accordance with subsection (1) or (2) of this section.

(10) A trustee may irrevocably release the power granted by this section if the trustee reasonably believes the release is in the best interests of the trust and its beneficiaries. The release may be personal to the releasing trustee or it may apply generally to some or all subsequent trustees. The release may be for any specified period, including a period measured by the life of an individual.

(11)(a) A trustee who reasonably and in good faith takes any action or omits to take any action under this section is not liable to any person interested in the trust. A discretionary act or omission by a trustee under this section shall be presumed to be reasonable and undertaken in good faith unless the act or omission is determined by a court to have been an abuse of discretion.

(b) If a trustee reasonably and in good faith takes or omits to take any action under this section and a person interested in the trust opposes the act or omission, the person's exclusive remedy shall be to seek an order of the court directing the trustee to:

(i) Convert the trust to a total return trust;

(ii) Reconvert from a total return trust;

(iii) Change the distribution percentage; or

(iv) Order any administrative procedures the court determines are necessary or helpful for the proper functioning of the trust.

(c) A claim for relief under this subsection that is not barred by adjudication, consent, or limitation is nevertheless barred as to any beneficiary who has received a statement fully disclosing the matter unless a proceeding to assert the claim is commenced within six months after receipt of the statement. A beneficiary is deemed to have received a statement if it is received by the

beneficiary or the beneficiary's representative in a manner described in section 30-2222 or 30-3121.

(12) A trustee has no duty to inform a beneficiary about the availability and provisions of this section. A trustee has no duty to review the trust to determine whether any action should be taken under this section unless the trustee is requested in writing by a qualified beneficiary to do so.

(13)(a) This section applies to trusts in existence on September 4, 2005, and to trusts created on or after such date.

(b) This section shall be construed to apply to the administration of a trust that is administered in Nebraska under Nebraska law or that is governed by Nebraska law with respect to the meaning and effect of its terms unless:

(i) The trust is a trust described in the Internal Revenue Code of 1986, as amended, 26 U.S.C. section 170(f)(2)(B), 664(d), 1361(d), 2702(a)(3), or 2702(b);

(ii) Conversion of a trust to a total return trust is clearly contrary to the manifestation of the settlor's intent as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding; or

(iii) The terms of a trust in existence on September 4, 2005, incorporate provisions that operate as a total return trust. The trustee or a beneficiary of such a trust may proceed under section 30-3121 to adopt provisions in this section that do not contradict provisions in the governing instrument.

Source: Laws 2005, LB 533, § 35; Laws 2010, LB760, § 1.
Effective date July 15, 2010.

PART 4—ALLOCATION OF RECEIPTS DURING ADMINISTRATION OF TRUST

SUBPART 3—RECEIPTS NORMALLY APPORTIONED

30-3135 Deferred compensation, annuities, and similar payments; allocation to principal and income.

(a) In this section:

(1) Payment means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer. For purposes of subsections (d), (e), (f), and (g) of this section, the term also includes any payment from any separate fund, regardless of the reason for the payment; and

(2) Separate fund includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(b) To the extent that a payment is characterized as interest, a dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate the payment to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income ten percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not required to be made to the extent that it is made because the trustee exercises a right of withdrawal.

(d) Except as otherwise provided in subsection (e) of this section, subsections (f) and (g) of this section apply, and subsections (b) and (c) of this section do not apply, in determining the allocation of a payment made from a separate fund to:

(1) a trust to which an election to qualify for a marital deduction under section 2056(b)(7) of the Internal Revenue Code of 1986, as amended, has been made; or

(2) a trust that qualifies for the marital deduction under section 2056(b)(5) of the Internal Revenue Code of 1986, as amended.

(e) Subsections (d), (f), and (g) of this section do not apply if and to the extent that the series of payments would, without the application of subsection (d) of this section, qualify for the marital deduction under section 2056(b)(7)(C) of the Internal Revenue Code of 1986, as amended.

(f) A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to the Uniform Principal and Income Act. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

(g) If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal at least three percent of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under section 7520 of the Internal Revenue Code of 1986, as amended, for the month preceding the accounting period for which the computation is made.

(h) This section does not apply to a payment to which section 30-3136 applies.

Source: Laws 2001, LB 56, § 20; Laws 2009, LB80, § 2.

30-3135.01 Trust; marital deduction; when provisions applicable.

Section 30-3135, as amended by Laws 2009, LB 80, applies to a trust described in subsection (d) of section 30-3135 on and after the following dates:

(1) If the trust is not funded as of February 27, 2009, the date of the decedent's death;

(2) If the trust is initially funded in the calendar year beginning January 1, 2009, the date of the decedent's death; or

(3) If the trust is not described in subdivision (1) or (2) of this section, January 1, 2009.

Source: Laws 2009, LB80, § 4.

PART 5—ALLOCATION OF DISBURSEMENTS DURING ADMINISTRATION OF TRUSTS

30-3146 Income taxes.

(a) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid:

(1) from income to the extent that receipts from the entity are allocated to income;

(2) from principal to the extent that receipts from the entity are allocated only to principal;

(3) proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and

(4) from principal to the extent that the tax exceeds the total receipts from the entity.

(d) After applying subsections (a) through (c) of this section, the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

Source: Laws 2001, LB 56, § 31; Laws 2009, LB80, § 3.

ARTICLE 32

FIDUCIARIES

Section
30-3209. Corporate trustee; retirement or pension funds of governmental employees; investments authorized.

30-3209 Corporate trustee; retirement or pension funds of governmental employees; investments authorized.

(1) Corporate trustees authorized by Nebraska law to exercise fiduciary powers and holding retirement or pension funds for the benefit of employees or former employees of cities, villages, school districts, public power districts, or other governmental or political subdivisions may invest and reinvest such funds in such securities and investments as are authorized for trustees, guardians,

conservators, personal representatives, or administrators under the laws of Nebraska. Retirement or pension funds of such cities, villages, districts, or subdivisions may be invested in annuities issued by life insurance companies authorized to do business in Nebraska. Except as provided in subsection (2) of this section, any other retirement or pension funds of cities, including cities operating under home rule charters, villages, school districts except as provided in section 79-9,107, public power districts, and all other governmental or political subdivisions may be invested and reinvested, as the governing body of such city, village, school district, public power district, or other governmental or political subdivision may determine, in the following classes of securities and investments: (a) Bonds, notes, or other obligations of the United States or those guaranteed by or for which the credit of the United States is pledged for the payment of the principal and interest or dividends thereof; (b) bonds or other evidences of indebtedness of the State of Nebraska and full faith and credit obligations of or obligations unconditionally guaranteed as to principal and interest by any other state of the United States; (c) bonds, notes, or obligations of any municipal or political subdivision of the State of Nebraska which are general obligations of the issuer thereof and revenue bonds or debentures of any city, county, or utility district of this state when the earnings available for debt service have, for a five-year period immediately preceding the date of purchase, averaged not less than one and one-half times such debt service requirements; (d) 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; (e) certificates of deposit of banks which are members of the Federal Deposit Insurance Corporation or capital stock financial institutions, and if the amount deposited exceeds the amount of insurance available thereon, then the excess shall be secured in the same manner as for the deposit of public funds; (f) accounts with building and loan associations, qualifying mutual financial institutions, or federal savings and loan associations in the State of Nebraska to the extent that such accounts are insured or guaranteed by the Federal Deposit Insurance Corporation; (g) bonds or other interest-bearing obligations of any corporation organized under the laws of the United States or any state thereof if (i) at the time the purchase is made, they are given, by at least one statistical organization whose publication is in general use, one of the three highest ratings given by such organization and (ii) not more than five percent of the fund shall be invested in the obligations of any one issuer; (h) direct short-term obligations, generally classified as commercial paper, of any corporation organized or existing under the laws of the United States or any state thereof with a net worth of ten million dollars or more; and (i) preferred or common stock of any corporation organized under the laws of the United States or of any state thereof with a net worth of ten million dollars or more if (i) not more than fifty percent of the total investments at the time such investment is made is in this class and not more than five percent is invested in each of the first five years and (ii) not more than five percent thereof is invested in the securities of any one corporation. Notwithstanding the percentage limits stated in this subsection, the cash proceeds of the sale of such preferred or common stock may be reinvested in any securities authorized under this subdivision. No city, village, school district, public power district, or other governmental subdivision or the governing body thereof shall be authorized to sell any securities short, buy on margin, or buy, sell, or engage in puts and calls. Section 77-2366 shall apply to deposits in capital stock financial institu-

tions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

(2) Notwithstanding the limitations prescribed in subsection (1) of this section, trustees holding retirement or pension funds for the benefit of employees or former employees of any city of the metropolitan class, metropolitan utilities district, or county in which a city of the metropolitan class is located shall invest such funds in investments of the nature which individuals of prudence, discretion, and intelligence acquire or retain in dealing with the property of another. Such investments shall not be made for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived. The trustees shall not buy on margin, buy call options, or buy put options. The trustees may lend any security if cash, United States Government obligations, or United States Government agency obligations with a market value equal to or exceeding the market value of the security lent are received as collateral. If shares of stock are purchased under this subsection, all proxies may be voted by the trustees. The asset allocation restrictions set forth in subsection (1) of this section shall not be applicable to the funds of pension or retirement systems administered by or on behalf of a city of the metropolitan class, metropolitan utilities district, or county in which a city of the metropolitan class is located.

Source: Laws 1967, c. 257, § 1, p. 678; Laws 1984, LB 752, § 1; Laws 1989, LB 33, § 25; R.S.Supp.,1989, § 24-601.04; Laws 1992, LB 757, § 21; Laws 1996, LB 900, § 1036; Laws 1998, LB 1321, § 78; Laws 2001, LB 362, § 29; Laws 2001, LB 408, § 12; Laws 2009, LB259, § 12.

ARTICLE 38

NEBRASKA UNIFORM TRUST CODE

PART 4—CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

Section
30-3839. (UTC 413) Cy pres.

PART 4—CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

30-3839 (UTC 413) Cy pres.

(UTC 413) (a) Except as otherwise provided in subsection (b) of this section, if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful:

(1) the trust does not fail, in whole or in part;

(2) the trust property does not revert to the settlor or the settlor's successors in interest; and

(3) the court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.

(b) Subsection (a) of this section does not apply if the document creating the charitable interest expressly provides for an alternate disposition of the charitable interest in the event the charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful. A general residuary disposition by trust shall not be considered an express provision for an alternate disposition.

(c) This section shall not be deemed to limit application of the common law doctrines of cy pres and deviation or section 58-615.

Source: Laws 2003, LB 130, § 39; Laws 2010, LB758, § 4.
Effective date July 15, 2010.

CHAPTER 31
DRAINAGE

Article.
7. Sanitary and Improvement Districts.
(b) Districts Formed under Act of 1949. 31-735.

ARTICLE 7
SANITARY AND IMPROVEMENT DISTRICTS

(b) DISTRICTS FORMED UNDER ACT OF 1949

Section
31-735. District; trustees; election; procedure; term; notice; qualified voters.

(b) DISTRICTS FORMED UNDER ACT OF 1949

31-735 District; trustees; election; procedure; term; notice; qualified voters.

(1) On the first Tuesday after the second Monday in September which is at least fifteen months after the judgment of the district court creating a sanitary and improvement district and on the first Tuesday after the second Monday in September each two years thereafter, the board of trustees shall cause a special election to be held, at which election a board of trustees of five in number shall be elected. Each member elected to the board of trustees shall be elected to a term of two years and shall hold office until such member's successor is elected and qualified. Any person desiring to file for the office of trustee may file for such office with the election commissioner, or county clerk in counties having no election commissioner, of the county in which the greater proportion in area of the district is located not later than fifty days before the election. If such person will serve on the board of trustees as a designated representative of a limited partnership, general partnership, limited liability company, public, private, or municipal corporation, estate, or trust which owns real estate in the district, the filing shall indicate that fact and shall include appropriate documentation evidencing such fact. No filing fee shall be required. A person filing for the office of trustee to be elected at the election held four years after the first election of trustees and each election thereafter shall designate whether he or she is a candidate for election by the resident owners of such district or whether he or she is a candidate for election by all of the owners of real estate located in the district. If a person filing for the office of trustee is a designated representative of a limited partnership, a general partnership, a limited liability company, a public, private, or municipal corporation, an estate, or a trust which owns real estate in the district, the name of such entity shall accompany the name of the candidate on the ballot in the following form: (Name of candidate) to represent (name of entity) as a member of the board. The name of each candidate shall appear on only one ballot.

The name of a person may be written in and voted for as a candidate for the office of trustee, and such write-in candidate may be elected to the office of trustee. A write-in candidate for the office of trustee who will serve as a designated representative of a limited partnership, a general partnership, a

limited liability company, a public, private, or municipal corporation, an estate, or a trust which owns real estate in the district shall not be elected to the office of trustee unless (a) each vote is accompanied by the name of the entity which the candidate will represent and (b) within ten days after the date of the election the candidate provides the county clerk or election commissioner with appropriate documentation evidencing his or her representation of the entity. Votes cast which do not carry such accompanying designation shall not be counted.

A trustee shall be an owner of real estate located in the district or shall be a person designated to serve as a representative on the board of trustees if the real estate is owned by a limited partnership, a general partnership, a limited liability company, a public, private, or municipal corporation, an estate, or a trust. Notice of the date of the election shall be mailed by the clerk of the district not later than sixty-five days prior to the election to each person who is entitled to vote at the election for trustees whose property ownership or lease giving a right to vote is of record on the records of the register of deeds as of a date designated by the election commissioner or county clerk, which date shall be not more than seventy-five days prior to the election.

(2) For any sanitary and improvement district, persons whose ownership or right to vote becomes of record or is received after the date specified pursuant to subsection (1) of this section may vote when such person establishes their right to vote to the satisfaction of the election board. At the first election and at the election held two years after the first election, any person may cast one vote for each trustee for each acre of unplatted land or fraction thereof and one vote for each platted lot which he or she may own in the district. At the election held four years after the first election of trustees, two members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and three members shall be elected by all of the owners of real estate located in the district pursuant to this section. Every resident property owner may cast one vote for a candidate for each office of trustee to be filled by election of resident property owners only. Such resident property owners may also each cast one vote for each acre of unplatted land or fraction thereof and for each platted lot owned within the district for a candidate for each office of trustee to be filled by election of all property owners. For each office of trustee to be filled by election of all property owners of the district, every legal property owner not resident within such sanitary and improvement district may cast one vote for each acre of unplatted land or fraction thereof and one vote for each platted lot which he or she owns in the district. At the election held eight years after the first election of trustees and at each election thereafter, three members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and two members shall be elected by all of the owners of real estate located in the district pursuant to this section, except that if more than fifty percent of the homes in any sanitary and improvement district are used as a second, seasonal, or recreational residence, the owners of such property shall be considered legal property owners resident within such district for purposes of electing trustees, and at the election held six years after the first election of trustees and at each election thereafter, three members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and two members shall be elected by all of the owners of real estate located in the district pursuant to this section. If there are not any

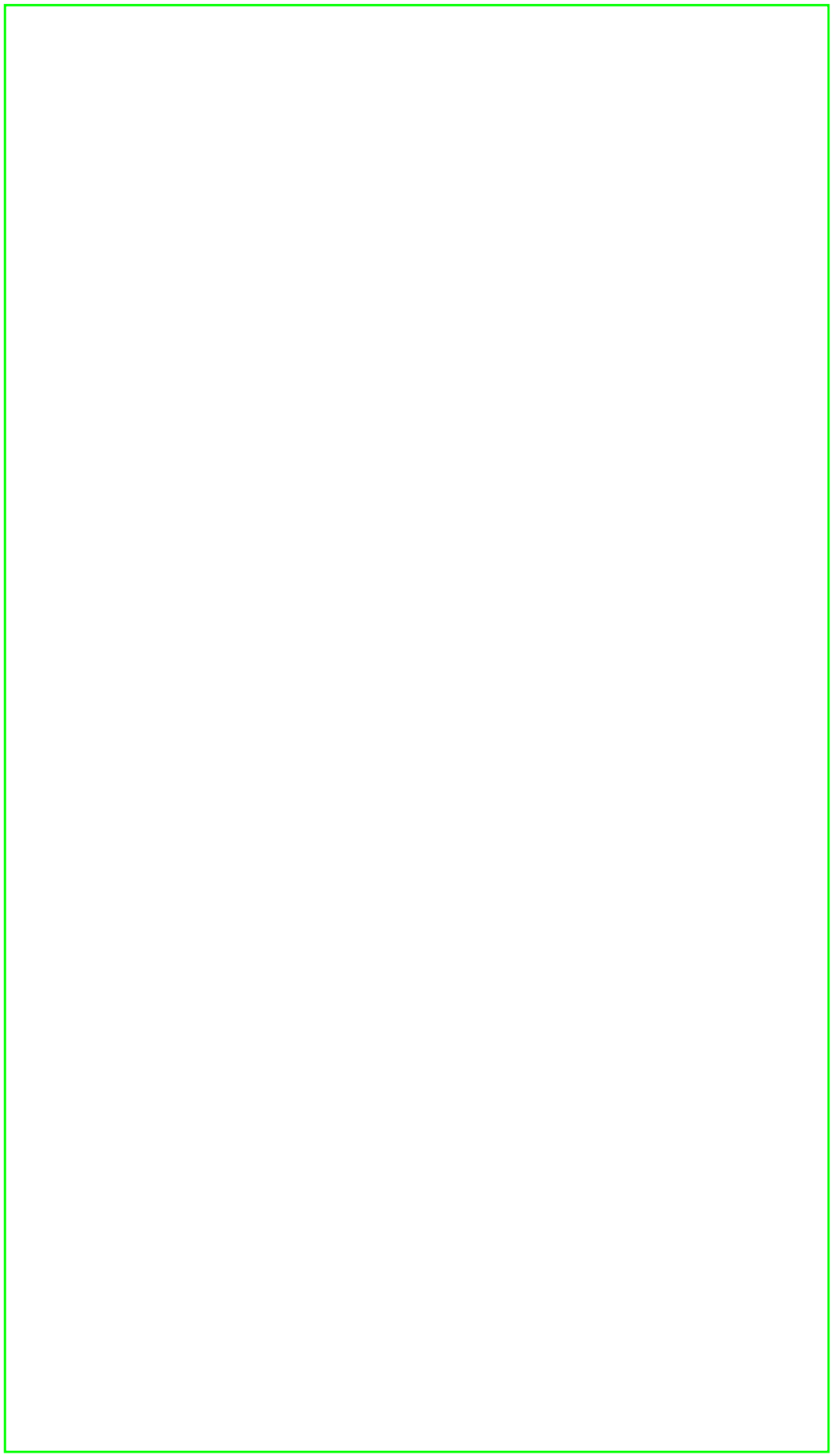
legal property owners resident within such district or if not less than ninety percent of the area of the district is owned for other than residential uses, the five members shall be elected by the legal property owners of all property within such district as provided in this section. Any public, private, or municipal corporation owning any land or lot in the district may vote at such election the same as an individual. For purposes of voting for trustees, each condominium apartment under a condominium property regime established prior to January 1, 1984, under the Condominium Property Act or established after January 1, 1984, under the Nebraska Condominium Act shall be deemed to be a platted lot and the lessee or the owner of the lessee's interest, under any lease for an initial term of not less than twenty years which requires the lessee to pay taxes and special assessments levied on the leased property, shall be deemed to be the owner of the property so leased and entitled to cast the vote of such property. When ownership of a platted lot or unplatted land is held jointly by two or more persons, whether as joint tenants, tenants in common, limited partners, members of a limited liability company, or any other form of joint ownership, only one person shall be entitled to cast the vote of such property. The executor, administrator, guardian, or trustee of any person or estate interested shall have the right to vote. No corporation, estate, or irrevocable trust shall be deemed to be a resident owner for purposes of voting for trustees. Should two or more persons or officials claim the right to vote on the same tract, the election board shall determine the party entitled to vote. Such board shall select one of their number chairperson and one of their number clerk. In case of a vacancy on such board, the remaining trustees shall fill the vacancy on such board until the next election.

(3) The election commissioner or county clerk shall hold any election required by subsection (1) of this section by sealed mail ballot by notifying the board of trustees on or before July 1 of a given year. The election commissioner or county clerk shall, at least twenty days prior to the election, mail a ballot and return envelope to each person who is entitled to vote at the election and whose property ownership or lease giving a right to vote is of record with the register of deeds as of the date designated by the election commissioner or county clerk, which date shall not be more than seventy-five days prior to the election. The ballot and return envelope shall include: (a) The names and addresses of the candidates; (b) room for write-in candidates; and (c) instructions on how to vote and return the ballot. Such ballots shall be returned to the election commissioner or county clerk no later than 5 p.m. on the date set for the election.

Source: Laws 1949, c. 78, § 9, p. 198; Laws 1971, LB 188, § 3; Laws 1974, LB 757, § 10; Laws 1976, LB 313, § 14; Laws 1977, LB 228, § 2; Laws 1981, LB 37, § 1; Laws 1982, LB 359, § 1; Laws 1983, LB 433, § 71; Laws 1984, LB 1105, § 1; Laws 1986, LB 483, § 1; Laws 1987, LB 587, § 1; Laws 1987, LB 652, § 4; Laws 1992, LB 764, § 2; Laws 1993, LB 121, § 195; Laws 1997, LB 874, § 9; Laws 1999, LB 740, § 1; Laws 2005, LB 401, § 1; Laws 2009, LB412, § 1.

Cross References

Condominium Property Act, see section 76-801.
Nebraska Condominium Act, see section 76-825.



CHAPTER 32
ELECTIONS

Article.
1. General Provisions and Definitions. 32-101.
3. Registration of Voters. 32-310 to 32-329.
5. Officers and Issues.
   (a) Offices and Officeholders. 32-519 to 32-546.01.
   (b) Local Elections. 32-555.01.
   (c) Vacancies. 32-570.
6. Filing and Nomination Procedures. 32-604 to 32-607.
7. Political Parties. 32-707.
8. Notice, Publication, and Printing of Ballots. 32-808, 32-816.
9. Voting and Election Procedures. 32-914.02 to 32-960.
10. Counting and Canvassing Ballots. 32-1002.
17. Vote Nebraska Initiative. Repealed.

ARTICLE 1
GENERAL PROVISIONS AND DEFINITIONS

Section
32-101. Act, how cited.

32-101 Act, how cited.

Sections 32-101 to 32-1551 shall be known and may be cited as the Election Act.

Source: Laws 1994, LB 76, § 1; Laws 1995, LB 337, § 1; Laws 1995, LB 514, § 1; Laws 1996, LB 964, § 1; Laws 1997, LB 764, § 8; Laws 2001, LB 768, § 1; Laws 2002, LB 1054, § 7; Laws 2003, LB 181, § 1; Laws 2003, LB 358, § 1; Laws 2003, LB 359, § 1; Laws 2003, LB 521, § 3; Laws 2005, LB 401, § 2; Laws 2005, LB 566, § 1; Laws 2010, LB951, § 1.
Effective date July 15, 2010.

ARTICLE 3
REGISTRATION OF VOTERS

Section
32-310. Voter registration; State Department of Education; Department of Health and Human Services; duties; confidentiality; persons involved in registration; status; delivery of applications; when; registration; when.
32-328. Voter registration register; precinct list; issuance of ballots; correction of errors; procedures.
32-329. Registration list; maintenance; voter registration register; verification; training; procedure.

32-310 Voter registration; State Department of Education; Department of Health and Human Services; duties; confidentiality; persons involved in registration; status; delivery of applications; when; registration; when.

(1) The State Department of Education and the Department of Health and Human Services shall provide the opportunity to register to vote at the time of

application, review, or change of address for the following programs, as applicable: (a) The Supplemental Nutrition Assistance Program; (b) the medicaid program; (c) the WIC program as defined in section 71-2225; (d) the aid to dependent children program; (e) the vocational rehabilitation program; and (f) any other public assistance program or program primarily for the purpose of providing services to persons with disabilities. If the application, review, or change of address is accomplished through an agent or contractor of the department, the agent or contractor shall provide the opportunity to register to vote. Any information on whether an applicant registers or declines to register and the agency at which he or she registers shall be confidential and shall only be used for voter registration purposes.

(2) The department, agent, or contractor shall make the mail-in registration application described in section 32-320 available at the time of application, review, or change of address and shall provide assistance, if necessary, to the applicant in completing the application to register to vote. The department shall retain records indicating whether an applicant accepted or declined the opportunity to register to vote.

(3) Department personnel, agents, and contractors involved in the voter registration process pursuant to this section shall not be considered deputy registrars or agents or employees of the election commissioner or county clerk.

(4) The applicant may return the completed voter registration application to the department, agent, or contractor or may personally mail or deliver the application to the election commissioner or county clerk as provided in section 32-321. If the applicant returns the completed application to the department, agent, or contractor, the department, agent, or contractor shall deliver the application to the election commissioner or county clerk of the county in which the office of the department, agent, or contractor is located not later than ten days after receipt by the department, agent, or contractor, except that if the application is returned to the department, agent, or contractor within five days prior to the third Friday preceding any election, it shall be delivered not later than five days after the date it is returned. The election commissioner or county clerk shall, if necessary, forward the application to the election commissioner or county clerk of the county in which the applicant resides within such prescribed time limits. The application shall be completed and returned to the department, agency, or contractor by the close of business on the third Friday preceding any election to be registered to vote at such election. A registration application received after the deadline shall not be processed by the election commissioner or county clerk until after the election.

(5) The departments shall adopt and promulgate rules and regulations to ensure compliance with this section.

Source: Laws 1994, LB 76, § 72; Laws 1996, LB 1044, § 93; Laws 1997, LB 764, § 33; Laws 2005, LB 566, § 9; Laws 2007, LB296, § 51; Laws 2009, LB288, § 1.

32-328 Voter registration register; precinct list; issuance of ballots; correction of errors; procedures.

(1) The election commissioner or county clerk shall, upon the personal application of any registered voter or whenever informed of any error and after due investigation, correct any error in the voter registration register. For such purpose, the election commissioner or county clerk may summon witnesses and

compel their attendance to appear at the office of the election commissioner or county clerk to give testimony pertaining to residence, qualifications, or any other facts required to be entered in the voter registration register. Such testimony shall be transcribed and become a part of his or her records.

(2) If the name of any registered voter of any precinct does not appear on the precinct list of registered voters through an error and the election commissioner or county clerk informs the precinct inspector or judge of election that credible evidence exists that substantiates that an error has been made, the precinct inspector or judge of election shall enter the correction in the precinct list of registered voters, initial the correction, and authorize the receiving board to issue the proper ballots to the voter as directed by the election commissioner or county clerk and receive his or her vote. The election commissioner or county clerk shall designate whether the voter is entitled to a regular ballot or a provisional ballot as provided in section 32-915. The election commissioner or county clerk shall implement the policy regarding designation of ballots uniformly throughout the county. All corrections shall be entered on the voter registration register as soon as possible after the election.

Source: Laws 1994, LB 76, § 90; Laws 1999, LB 234, § 6; Laws 2005, LB 566, § 28; Laws 2010, LB325, § 1.
Effective date July 15, 2010.

32-329 Registration list; maintenance; voter registration register; verification; training; procedure.

(1) The Secretary of State with the assistance of the election commissioners and county clerks shall perform list maintenance with respect to the computerized statewide voter registration list on a regular basis. The list maintenance shall be conducted in a manner that ensures that:

(a) The name of each registered voter appears in the computerized list;

(b) Only persons who have been entered into the register in error or who are not eligible to vote are removed from the computerized list; and

(c) Duplicate names are eliminated from the computerized list.

(2) The election commissioner or county clerk shall verify the voter registration register by using (a) the National Change of Address program of the United States Postal Service and a confirmation notice pursuant to subsection (3) of this section or (b) the biennial mailing of a nonforwardable notice to each registered voter. The Secretary of State shall provide biennial training for the election commissioners and county clerks responsible for maintaining voter registration lists. No name shall be removed from the voter registration register for the sole reason that such person has not voted for any length of time.

(3) When an election commissioner or county clerk receives information from the National Change of Address program of the United States Postal Service that a registered voter has moved from the address at which he or she is registered to vote, the election commissioner or county clerk shall update the voter registration register to indicate that the voter may have moved and mail a confirmation notice by forwardable first-class mail. If a nonforwardable notice under subdivision (2)(b) of this section is returned as undeliverable, the election commissioner or county clerk shall mail a confirmation notice by forwardable first-class mail. The confirmation notice shall include a confirmation letter and

a preaddressed, postage-paid confirmation card. The confirmation letter shall contain statements substantially as follows:

(a) The election commissioner or county clerk has received information that you have moved to a different residence address from that appearing on the voter registration register;

(b) If you have not moved or you have moved to a new residence within this county, you should return the enclosed confirmation card by the regular registration deadline prescribed in section 32-302. If you fail to return the card by the deadline, you will be required to affirm or confirm your address prior to being allowed to vote. If you are required to affirm or confirm your address, it may result in a delay at your polling place; and

(c) If you have moved out of the county, you must reregister to be eligible to vote. This can be accomplished by mail or in person. For further information, contact your local election commissioner or county clerk.

(4) The election commissioner or county clerk shall maintain for a period of not less than two years a record of each confirmation letter indicating the date it was mailed and the person to whom it was mailed.

(5) If information from the National Change of Address program or the nonforwardable notice under subdivision (2)(b) of this section indicates that the voter has moved outside the jurisdiction and the election commissioner or county clerk receives no response to the confirmation letter and the voter does not offer to vote at any election held prior to and including the second statewide federal general election following the mailing of the confirmation notice, the voter's registration shall be canceled and his or her name shall be deleted from the voter registration register.

Source: Laws 1994, LB 76, § 91; Laws 1997, LB 764, § 44; Laws 1999, LB 234, § 7; Laws 2003, LB 357, § 8; Laws 2005, LB 566, § 29; Laws 2010, LB325, § 2.
Effective date July 15, 2010.

ARTICLE 5

OFFICERS AND ISSUES

(a) OFFICES AND OFFICEHOLDERS

Section
32-519. County assessor; election; when required; terms; qualifications; partisan ballot.
32-524. Clerk of the district court; election; when required; terms; partisan ballot.
32-546.01. Learning community coordinating council; members; election; appointment; vacancies; terms; per diem; expenses.

(b) LOCAL ELECTIONS

32-555.01. Learning community; districts; redistricting.

(c) VACANCIES

32-570. School board; vacancy; how filled.

(a) OFFICES AND OFFICEHOLDERS

32-519 County assessor; election; when required; terms; qualifications; partisan ballot.

(1) Except as provided in section 22-417, at the statewide general election in 1990 and each four years thereafter, a county assessor shall be elected in each

county having a population of more than three thousand five hundred inhabitants and more than one thousand two hundred tax returns. The county assessor shall serve for a term of four years.

(2) The county board of any county shall order the submission of the question of electing a county assessor in the county to the registered voters of the county at the next statewide general election upon presentation of a petition to the county board (a) conforming to the provisions of section 32-628, (b) not less than sixty days before any statewide general election, (c) signed by at least ten percent of the registered voters of the county secured in not less than two-fifths of the townships or precincts of the county, and (d) asking that the question be submitted to the registered voters in the county. The form of submission upon the ballot shall be as follows: For election of county assessor; Against election of county assessor. If a majority of the votes cast on the question are against the election of a county assessor in such county, the duties of the county assessor shall be performed by the county clerk and the office of county assessor shall either cease with the expiration of the term of the incumbent or continue to be abolished if no such office exists at such time. If a majority of the votes cast on the question are in favor of the election of a county assessor, the office shall continue or a county assessor shall be elected at the next statewide general election.

(3) The county assessor shall meet the qualifications found in sections 23-3202 and 23-3204. The county assessor shall be elected on the partisan ballot.

Source: Laws 1994, LB 76, § 115; Laws 1996, LB 1085, § 46; Laws 2009, LB121, § 4.
Operative date July 1, 2013.

32-524 Clerk of the district court; election; when required; terms; partisan ballot.

(1) Except as provided in section 22-417:

(a) In counties having a population of seven thousand inhabitants or more, there shall be elected one clerk of the district court at the statewide general election in 1962 and every four years thereafter; and

(b) In counties having a population of less than seven thousand inhabitants, there shall be elected a clerk of the district court at the first statewide general election following a determination by the county board and the district judge for the county that such officer should be elected and each four years thereafter. When such a determination is not made in such a county, the county clerk shall be ex officio clerk of the district court and perform the duties by law devolving upon that officer.

(2) In any county upon presentation of a petition to the county board (a) not less than sixty days before the statewide general election in 1976 or every four years thereafter, (b) signed by registered voters of the county equal in numbers to at least fifteen percent of the total vote cast for Governor at the most recent gubernatorial election in the county, secured in not less than two-fifths of the townships or precincts of the county, and (c) asking that the question of not electing a clerk of the district court in the county be submitted to the registered voters therein, the county board, at the next statewide general election, shall order the submission of the question to the registered voters of the county. The form of submission upon the ballot shall be as follows:

For election of a clerk of the district court;

Against election of a clerk of the district court.

(3) If a majority of the votes cast on the question are against the election of a clerk of the district court in such county, the duties of the clerk of the district court shall be performed by the county clerk and the office of clerk of the district court shall either cease with the expiration of the term of the incumbent or continue to be abolished if no such office exists at such time.

(4) If a majority of the votes cast on the question are in favor of the election of a clerk of the district court, the office shall continue or a clerk of the district court shall be elected at the next statewide general election as provided in subsection (1) of this section.

(5) The term of the clerk of the district court shall be four years or until his or her successor is elected and qualified. The clerk of the district court shall meet the qualifications found in section 24-337.04. The clerk of the district court shall be elected on the partisan ballot.

Source: Laws 1994, LB 76, § 120; Laws 1996, LB 1085, § 47; Laws 2009, LB7, § 2.

32-546.01 Learning community coordinating council; members; election; appointment; vacancies; terms; per diem; expenses.

(1) Each learning community shall be governed by a learning community coordinating council consisting of eighteen voting members, with twelve members elected on a nonpartisan ballot from six numbered subcouncil districts created pursuant to section 32-555.01 and with six members appointed from such subcouncil districts pursuant to this section. Each voter shall be allowed to cast votes for one candidate at both the primary and general elections to represent the subcouncil district in which the voter resides. The four candidates receiving the most votes at the primary election shall advance to the general election. The two candidates receiving the most votes at the general election shall be elected. A candidate shall reside in the subcouncil district for which he or she is a candidate. Coordinating council members shall be elected on the nonpartisan ballot.

(2) The initial elected members shall be nominated at the statewide primary election and elected at the statewide general election immediately following the certification of the establishment of the learning community, and subsequent members shall be nominated at subsequent statewide primary elections and elected at subsequent statewide general elections. Except as provided in this section, such elections shall be conducted pursuant to the Election Act.

(3) Vacancies in office for elected members shall occur as set forth in section 32-560. Whenever any such vacancy occurs, the remaining elected members of such council shall appoint an individual residing within the geographical boundaries of the subcouncil district for the balance of the unexpired term.

(4) Members elected to represent odd-numbered districts in the first election for the learning community coordinating council shall be elected for two-year terms. Members elected to represent even-numbered districts in the first election for the learning community coordinating council shall be elected for four-year terms. Members elected in subsequent elections shall be elected for four-year terms and until their successors are elected and qualified.

(5) The appointed members shall be appointed in November of each even-numbered year after the general election. Appointed members shall be school board members of school districts in the learning community either elected to take office the following January or continuing their current term of office for the following two years. For learning communities to be established the following January pursuant to orders issued pursuant to section 79-2102, the Secretary of State shall hold a meeting of the school board members of the school districts in such learning community to appoint one member from such school boards to represent each of the subcouncil districts on the coordinating council of such learning community. For subsequent appointments, the current appointed members of the coordinating council shall hold a meeting of the school board members of such school districts to appoint one member from such school boards to represent each of the subcouncil districts on the coordinating council of the learning community. The appointed members shall be selected by the school board members of the school districts in the learning community who reside in the subcouncil district to be represented pursuant to a secret ballot, shall reside in the subcouncil district to be represented, and shall be appointed for two-year terms and until their successors are appointed and qualified.

(6) Vacancies in office for appointed members shall occur upon the resignation, death, or disqualification from office of an appointed member. Disqualification from office shall include ceasing membership on the school board for which membership qualified the member for the appointment to the learning community coordinating council or ceasing to reside in the subcouncil district represented by such member of the learning community coordinating council. Whenever such vacancy occurs, the remaining appointed members shall hold a meeting of the school board members of the school districts in such learning community to appoint a member from such school boards who lives in the subcouncil district to be represented to serve for the balance of the unexpired term.

(7) Each learning community coordinating council shall also have a nonvoting member from each member school district which does not have either an elected or an appointed member who resides in the school district on the council. Such nonvoting members shall be appointed by the school board of the school district to be represented to serve for two-year terms, and notice of the nonvoting member selected shall be submitted to the Secretary of State by such board prior to December 31 of each even-numbered year. Each such nonvoting member shall be a resident of the appointing school district and shall not be a school administrator employed by such school district. Whenever a vacancy occurs, the school board of such school district shall appoint a new nonvoting member and submit notice to the Secretary of State and to the learning community coordinating council.

(8) Members of a learning community coordinating council shall take office on the first Thursday after the first Tuesday in January following their election or appointment, except that members appointed to fill vacancies shall take office immediately following administration of the oath of office. Each voting member elected or appointed prior to April 6, 2010, shall be paid a per diem in an amount determined by such council up to two hundred dollars per day for official meetings of the council and the achievement subcouncil for which he or she is a member, for meetings that occur during the term of office for which the election or appointment of the member took place prior to April 6, 2010, up to

a maximum of twelve thousand dollars per fiscal year. Each voting member shall be eligible for reimbursement of reasonable expenses related to service on the learning community coordinating council. Each nonvoting member shall be eligible for reimbursement of reasonable expenses related to service on the learning community coordinating council.

Source: Laws 2007, LB641, § 49; Laws 2008, LB1154, § 3; Laws 2009, LB392, § 5; Laws 2010, LB937, § 1; Laws 2010, LB1070, § 1. Effective date April 6, 2010.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB937, section 1, with LB1070, section 1, to reflect all amendments.

(b) LOCAL ELECTIONS

32-555.01 Learning community; districts; redistricting.

The election commissioners of the applicable counties, pursuant to certification of the establishment of a learning community pursuant to section 79-2102, shall divide the territory of the new learning community into six numbered districts for the purpose of electing members to the learning community coordinating council in compliance with section 32-553 and for the purpose of organizing achievement subcouncils pursuant to section 79-2117. Such districts shall be compact and contiguous and substantially equal in population. The newly established subcouncil districts shall be certified to the Secretary of State on or before November 1 immediately following such certification. The newly established subcouncil districts shall apply beginning with the election of the first council members for such learning community. Following the drawing of initial subcouncil districts pursuant to this section, additional redistricting thereafter shall be undertaken by the learning community coordinating council according to section 32-553.

Source: Laws 2007, LB641, § 37; Laws 2009, LB392, § 6.

(c) VACANCIES

32-570 School board; vacancy; how filled.

(1) A vacancy in the membership of a school board shall occur as set forth in section 32-560 or in the case of absences, unless excused by a majority of the remaining members of the board, when a member is absent from the district for a continuous period of sixty days at one time or from more than two consecutive regular meetings of the board. The resignation of a member or any other reason for a vacancy shall be made a part of the minutes of the school board. The school board shall give notice of the date the vacancy occurred, the office vacated, and the length of the unexpired term (a) in writing to the election commissioner or county clerk and (b) by a notice published in a newspaper of general circulation in the school district.

(2) A person appointed to fill a vacancy on the school board of a Class I school district by the remaining members of the board shall hold office until the beginning of the next school year. A board member of a Class I school district elected to fill a vacancy at a regular or special school district meeting shall serve for the remainder of the unexpired term or until a successor is elected and qualified.

(3) Except as provided in subsection (4) of this section, a vacancy in the membership of a school board of a Class II, III, IV, V, or VI school district

resulting from any cause other than the expiration of a term shall be filled by appointment of a qualified registered voter by the remaining members of the board. If the vacancy occurs in a Class II school district prior to July 1 preceding the general election in the middle of the vacated term, the appointee shall serve until a registered voter is elected at such general election for the remainder of the unexpired term. If the vacancy occurs in a Class III, IV, V, or VI school district prior to February 1 preceding the general election in the middle of the vacated term, the appointee shall serve until a registered voter is nominated at the next primary election and elected at the following general election for the remainder of the unexpired term. If the vacancy occurs on or after the applicable deadline, the appointment shall be for the remainder of the unexpired term. A registered voter appointed or elected pursuant to this subsection shall meet the same requirements as the member whose office is vacant.

(4) Any vacancy in the membership of a school board of a school district described in section 79-549 which does not nominate candidates at a primary election and elect members at the following general election shall be filled by appointment of a qualified registered voter by the remaining members of the board. If the vacancy occurs at least twenty days prior to the first regular caucus to be held during the term that was vacated, the appointee shall serve until a registered voter is nominated and elected to fill the vacancy for the remainder of the term in the manner provided for nomination and election of board members in the district. If the vacancy occurred less than twenty days prior to the first regular caucus and at least twenty days prior to the second regular caucus to be held during the term that was vacated, the appointee shall serve until a registered voter is nominated and elected to fill the vacancy for the remainder of the term in the manner provided for nomination and election of board members in the district. If the vacancy occurred less than twenty days prior to the second regular caucus held during the term that was vacated or after such caucus, the appointment shall be for the remainder of the unexpired term.

(5) If any school board fails to fill a vacancy on the board, the vacancy may be filled by election at a special election or school district meeting called for that purpose. Such election or meeting shall be called in the same manner and subject to the same procedures as other special elections or school district meetings.

(6) If there are vacancies in the offices of a majority of the members of a school board, the Secretary of State shall conduct a special school district election to fill such vacancies.

Source: Laws 1994, LB 76, § 166; Laws 1999, LB 272, § 15; Laws 2010, LB965, § 1.
Effective date July 15, 2010.

ARTICLE 6
FILING AND NOMINATION PROCEDURES

Section
32-604. Multiple office holding; when allowed.
32-606. Candidate filing form; deadline for filing.
32-607. Candidate filing forms; contents; filing officers.

32-604 Multiple office holding; when allowed.

(1) Except as provided in subsection (2) or (4) of this section, no person shall be precluded from being elected or appointed to or holding an elective office for the reason that he or she has been elected or appointed to or holds another elective office.

(2) No person serving as a member of the Legislature or in an elective office described in Article IV, section 1 or 20, or Article VII, section 3 or 10, of the Constitution of Nebraska shall simultaneously serve in any other elective office, except that such a person may simultaneously serve in another elective office which is filled at an election held in conjunction with the annual meeting of a public body.

(3) Whenever an incumbent serving as a member of the Legislature or in an elective office described in Article IV, section 1 or 20, or Article VII, section 3 or 10, of the Constitution of Nebraska assumes another elective office, except an elective office filled at an election held in conjunction with the annual meeting of a public body, the office first held by the incumbent shall be deemed vacant.

(4) No person serving in a high elective office shall simultaneously serve in any other high elective office, except that a county attorney may serve as the county attorney for more than one county if appointed under subsection (2) of section 23-1201.01.

(5) Notwithstanding subsection (4) of this section, any person holding more than one high elective office upon July 15, 2010, shall be entitled to serve the remainder of all terms for which he or she was elected or appointed.

(6) For purposes of this section, (a) elective office has the meaning found in section 32-109 and includes an office which is filled at an election held in conjunction with the annual meeting of a public body created by an act of the Legislature but does not include a member of a learning community coordinating council appointed pursuant to subsection (5) or (7) of section 32-546.01 and (b) high elective office means a member of the Legislature, an elective office described in Article IV, section 1 or 20, or Article VII, section 3 or 10, of the Constitution of Nebraska, or a county, city, community college area, learning community, or school district elective office.

Source: Laws 1994, LB 76, § 172; Laws 1997, LB 221, § 3; Laws 2003, LB 84, § 2; Laws 2007, LB641, § 2; Laws 2008, LB1154, § 4; Laws 2010, LB951, § 2.
Effective date July 15, 2010.

32-606 Candidate filing form; deadline for filing.

(1) Any candidate may place his or her name on the primary election ballot by filing a candidate filing form prescribed by the Secretary of State as provided in section 32-607. If a candidate for an elective office is an incumbent, the deadline for filing the candidate filing form shall be February 15 prior to the date of the primary election. No incumbent who resigns from elective office prior to the expiration of his or her term shall file for any office after February 15 of that election year. All other candidates shall file for office by March 1 prior to the date of the primary election. A candidate filing form may be transmitted by facsimile for the offices listed in subdivision (1) of section 32-607 if (a) the transmission is received in the office of the filing officer by the filing deadline and (b) the original filing form is mailed to the filing officer with a

legible postmark bearing a date on or prior to the filing deadline and is in the office of the filing officer no later than seven days after the filing deadline.

(2) Any candidate for a township office in a county under township organization, the board of trustees of a village, the board of directors of a reclamation district, the county weed district board, the board of directors of a public power district receiving annual gross revenue of less than forty million dollars, the school board of a Class II school district, or the board of an educational service unit may place his or her name on the general election ballot by filing a candidate filing form prescribed by the Secretary of State as provided in section 32-607. If a candidate for an elective office is an incumbent, the deadline for filing the candidate filing form shall be July 15 prior to the date of the general election. No incumbent who resigns from elective office prior to the expiration of his or her term shall file for any office after July 15 of that election year. All other candidates shall file for office by August 1 prior to the date of the general election. A candidate filing form may be transmitted by facsimile for the offices listed in subdivision (1) of section 32-607 if (a) the transmission is received in the office of the filing officer by the filing deadline and (b) the original filing form is mailed to the filing officer with a legible postmark bearing a date on or prior to the filing deadline and is in the office of the filing officer no later than seven days after the filing deadline.

(3) Any city having a home rule charter may provide for filing deadlines for any person desiring to be a candidate for the office of council member or mayor.

Source: Laws 1994, LB 76, § 174; Laws 1996, LB 967, § 2; Laws 1997, LB 764, § 54; Laws 1999, LB 802, § 12; Laws 2007, LB641, § 3; Laws 2009, LB392, § 7.

32-607 Candidate filing forms; contents; filing officers.

All candidate filing forms shall contain the following statement: I hereby swear that I will abide by the laws of the State of Nebraska regarding the results of the primary and general elections, that I am a registered voter and qualified to be elected, and that I will serve if elected. Candidate filing forms shall also contain the candidate's name; residence address; mailing address if different from the residence address; telephone number; office sought; and party affiliation if the office sought is a partisan office. Candidate filing forms shall be filed with the following filing officers:

(1) For candidates for national, state, or congressional office, directors of public power and irrigation districts, directors of reclamation districts, directors of natural resources districts, members of the boards of educational service units, members of governing boards of community colleges, delegates to national conventions, and other offices filled by election held in more than one county and judges desiring retention, in the office of the Secretary of State;

(2) For officers elected within a county, in the office of the election commissioner or county clerk. If the candidate is not a resident of the county, he or she shall submit a certificate of registration obtained under section 32-316 with the candidate filing form;

(3) For officers in school districts which include land in adjoining counties, in the office of the election commissioner or county clerk of the county in which the greatest number of registered voters entitled to vote for the officers reside. If the candidate is not a resident of the county, he or she shall submit a

certificate of registration obtained under section 32-316 with the candidate filing form; and

(4) For city or village officers, in the office of the election commissioner or county clerk.

Source: Laws 1994, LB 76, § 175; Laws 1997, LB 764, § 55; Laws 1999, LB 571, § 2; Laws 2007, LB603, § 3; Laws 2009, LB501, § 2; Laws 2010, LB325, § 3.
Effective date July 15, 2010.

ARTICLE 7

POLITICAL PARTIES

Section
32-707. County postprimary conventions; time; place; transaction of business.

32-707 County postprimary conventions; time; place; transaction of business.

(1) The county postprimary convention of a political party shall be held in the county any time during the first ten days in June following the statewide primary election at an hour and place to be designated by the chairperson of the county central committee of a political party. The county central committee chairperson shall, after appropriate consultation with the central committee, certify the date, time, and location of the convention to the election commissioner or county clerk not later than the first Tuesday in May preceding the primary election. The election commissioner or county clerk shall issue certificates of election to each person elected delegate to the county postprimary convention of a political party and shall notify each person elected of the time and place of the holding of such county postprimary convention. The county central committee chairperson shall cause to be published, at least fifteen days prior to the date of the county postprimary convention, an official notice of the date, time, and place of the convention in at least one newspaper of general circulation within the county.

(2) The election commissioner or county clerk shall deliver to the temporary secretary of each county postprimary convention of a political party the roll, properly certified, showing the name and address of each delegate elected to such convention. Upon receipt of such roll, the convention shall organize and proceed with the transaction of business which is properly before it. A county chairperson, secretary, treasurer, and other officials may be elected. The authority reposed in delegates to the county postprimary convention by reason of their election shall be deemed personal in its nature, and no such delegate may, by power of attorney, by proxy, or in any other way, authorize any person in such delegate's name or on such delegate's behalf to appear at such county postprimary convention, cast ballots at the convention, or participate in the organization or transaction of any business of the convention. In case of a vacancy in the elected delegates, such elected delegates present shall have the power to fill any vacancy from the qualified registered voters of the precinct in which the vacancy exists.

Source: Laws 1994, LB 76, § 207; Laws 1997, LB 764, § 69; Laws 2009, LB133, § 1.

ARTICLE 8

NOTICE, PUBLICATION, AND PRINTING OF BALLOTS

Section
32-808. Ballots for early voting and applications; delivery; special ballot; publication of application form.
32-816. Official ballots; write-in space provided; exceptions; requirements.

32-808 Ballots for early voting and applications; delivery; special ballot; publication of application form.

(1) Except as otherwise provided in section 32-939.02, ballots for early voting and applications shall be ready for delivery to registered voters at least thirty-five days prior to each statewide primary or general election and at least fifteen days prior to all other elections.

The election commissioner or county clerk shall not forward any ballot for early voting if the election to which such ballot pertains has already been held.

(2) The election commissioner or county clerk shall publish in a newspaper of general circulation in the county an application form to be used by registered voters in making an application for a ballot for early voting after the ballots become available. The publication of the application shall not be required if the election is held by mail pursuant to sections 32-952 to 32-959.

Source: Laws 1994, LB 76, § 229; Laws 1996, LB 964, § 4; Laws 1997, LB 764, § 74; Laws 1999, LB 571, § 3; Laws 2005, LB 98, § 8; Laws 2007, LB646, § 5; Laws 2010, LB951, § 3.
Effective date July 15, 2010.

Cross References

Absentee ballots for school bond elections, see section 10-703.01.

32-816 Official ballots; write-in space provided; exceptions; requirements.

(1) A blank space shall be provided at the end of each office division on the ballot for registered voters to fill in the name of any person for whom they wish to vote and whose name is not printed upon the ballot, except that at the primary election there shall be no write-in space for delegates to the county political party convention or delegates to the national political party convention. A square or oval shall be printed opposite each write-in space similar to the square or oval placed opposite other candidates and issues on the ballot. The square or oval shall be marked to vote for a write-in candidate whose name appears in the write-in space provided.

(2) The Secretary of State shall approve write-in space for optical-scan ballots and electronic voting systems. Adequate provision shall be made for write-in votes sufficient to allow one write-in space for each office to be elected at any election except offices for which write-in votes are specifically prohibited. The write-in ballot shall clearly identify the office for which such write-in vote is cast. The write-in space shall be a part of the official ballot, may be on the envelope or a separate piece of paper from the printed portion of the ballot, and shall allow the voter adequate space to fill in the name of the candidate for whom he or she desires to cast his or her ballot.

Source: Laws 1994, LB 76, § 237; Laws 1997, LB 764, § 79; Laws 2001, LB 252, § 2; Laws 2003, LB 358, § 14; Laws 2010, LB852, § 1.
Operative date January 1, 2011.

ARTICLE 9
VOTING AND ELECTION PROCEDURES

Section
32-914.02. Registered voter; change of residence; entitled to vote; when.
32-915. Provisional ballot; conditions; certification.
32-930. Person; challenge as to age; examination.
32-939. Nebraska resident residing outside the country; registration to vote; application for ballot; when; elector and citizen outside the country; register to vote or voting; form.
32-939.01. Repealed. Laws 2010, LB 951, § 9.
32-939.02. Person residing outside the country; ballot for early voting; request; use of Federal Post Card Application or personal letter; special ballot; use of Federal Write-In Absentee Ballot; Secretary of State; duties.
32-960. County with less than ten thousand inhabitants; elections conducted by mail; application for approval; contents.

32-914.02 Registered voter; change of residence; entitled to vote; when.

If a person who is registered to vote moves to a new residence within the same county and precinct and has continuously resided in such county and precinct since registering to vote but the voter registration register has not been changed to reflect the move, the person shall be entitled to vote at the polling place for the new residence. The election commissioner or county clerk shall designate whether such a person is entitled to a regular ballot upon completing a registration application to update his or her voter registration record at the polling place or a provisional ballot as provided in section 32-915. The election commissioner or county clerk shall implement the policy regarding designation of ballots uniformly throughout the county. The election commissioner or county clerk shall update the voter registration register to reflect the change of address.

Source: Laws 1997, LB 764, § 86; Laws 1999, LB 234, § 11; Laws 2003, LB 358, § 23; Laws 2005, LB 566, § 36; Laws 2010, LB325, § 4. Effective date July 15, 2010.

32-915 Provisional ballot; conditions; certification.

(1) A person whose name does not appear on the precinct list of registered voters at the polling place for the precinct in which he or she resides, whose name appears on the precinct list of registered voters at the polling place for the precinct in which he or she resides at a different residence address as described in section 32-914.02, or whose name appears with a notation that he or she received a ballot for early voting may vote a provisional ballot if he or she:

(a) Claims that he or she is a registered voter who has continuously resided in the county in which the precinct is located since registering to vote;

(b) Is not entitled to vote under section 32-914.01 or 32-914.02;

(c) Has not registered to vote or voted in any other county since registering to vote in the county in which the precinct is located;

(d) Has appeared to vote at the polling place for the precinct to which the person would be assigned based on his or her residence address; and

(e) Completes and signs a registration application before voting.

(2) A voter whose name appears on the precinct list of registered voters for the polling place with a notation that the voter is required to present identification pursuant to section 32-318.01 but fails to present identification may vote a provisional ballot if he or she completes and signs a registration application before voting.

(3) Each person voting by provisional ballot shall enclose his or her ballot in an envelope marked Provisional Ballot and shall, by signing the certification on the front of the envelope or a separate form attached to the envelope, certify to the following facts:

(a) I am a registered voter in . . . . . County;

(b) My name or address did not correctly appear on the precinct list of registered voters;

(c) I registered to vote on or about this date . . . . . ;

(d) I registered to vote

. . . . in person at the election office or a voter registration site,

. . . . by mail,

. . . . on a form through the Department of Motor Vehicles,

. . . . on a form through another state agency,

. . . . in some other way;

(e) I have not resided outside of this county or voted outside of this county since registering to vote in this county;

(f) My current address is shown on the registration application completed as a requirement for voting by provisional ballot; and

(g) I am eligible to vote in this election and I have not voted and will not vote in this election except by this ballot.

(4) The voter shall sign the certification under penalty of election falsification. The following statements shall be on the front of the envelope or on the attached form: By signing the front of this envelope or the attached form you are certifying to the information contained on this envelope or the attached form under penalty of election falsification. Election falsification is a Class IV felony and may be punished by up to five years imprisonment, a fine of up to ten thousand dollars, or both.

(5) If the person's name does not appear on the precinct list of registered voters for the polling place and the judge or clerk of election determines that the person's residence address is located in another precinct within the same county, the judge or clerk of election shall direct the person to his or her correct polling place to vote.

Source: Laws 1994, LB 76, § 258; Laws 1997, LB 764, § 87; Laws 1999, LB 234, § 12; Laws 2003, LB 358, § 24; Laws 2005, LB 401, § 5; Laws 2005, LB 566, § 37; Laws 2010, LB325, § 5; Laws 2010, LB951, § 4.
Effective date July 15, 2010.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB325, section 5, with LB951, section 4, to reflect all amendments.

32-930 Person; challenge as to age; examination.

If a person is challenged on the ground that he or she is not eighteen years of age or, during the years in which a statewide general election is held, that he or

she will not be eighteen years of age by the first Tuesday after the first Monday in November of such year, the person shall answer the following question on the form provided by the election commissioner or county clerk: Will you be at least eighteen years of age on or before the first Tuesday following the first Monday in November of this year?

Source: Laws 1994, LB 76, § 273; Laws 2010, LB325, § 6.
Effective date July 15, 2010.

32-939 Nebraska resident residing outside the country; registration to vote; application for ballot; when; elector and citizen outside the country; register to vote or voting; form.

(1) As provided in section 32-939.02, the persons listed in this subsection who are residents of Nebraska but who reside outside the United States shall be allowed to simultaneously register to vote and make application for ballots for all elections in a calendar year through the use of the Federal Post Card Application or a personal letter which includes the same information as appears on the Federal Post Card Application:

(a) Members of the armed forces of the United States or the United States Merchant Marine, and their spouses and dependents residing with them;

(b) Citizens temporarily residing outside of the United States and the District of Columbia; and

(c) Overseas citizens.

(2)(a) As provided in section 32-939.02, a person who is the age of an elector and a citizen of the United States residing outside the United States, who has never resided in the United States, who has not registered to vote in any other state of the United States, and who has a parent registered to vote within this state shall be eligible to register to vote and vote in one county in which either one of his or her parents is a registered voter.

(b) A person registering to vote or voting pursuant to this subsection shall sign and enclose with the registration application and with the ballot being voted a form provided by the election commissioner or county clerk substantially as follows: I am the age of an elector and a citizen of the United States residing outside the United States, I have never resided in the United States, I have not registered to vote in any other state of the United States, and I have a parent registered to vote in . . . . . County, Nebraska. I hereby declare, under penalty of election falsification, a Class IV felony, that the statements above are true to the best of my knowledge.

THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR UP TO FIVE YEARS OR A FINE NOT TO EXCEED TEN THOUSAND DOLLARS, OR BOTH.

(Signature of Voter) . . . . . .

Source: Laws 1994, LB 76, § 282; Laws 2004, LB 727, § 1; Laws 2005, LB 98, § 11; Laws 2005, LB 401, § 7; Laws 2005, LB 566, § 41; Laws 2010, LB951, § 5.
Effective date July 15, 2010.

32-939.01 Repealed. Laws 2010, LB 951, § 9.

32-939.02 Person residing outside the country; ballot for early voting; request; use of Federal Post Card Application or personal letter; special ballot; use of Federal Write-In Absentee Ballot; Secretary of State; duties.

(1) Upon request for a ballot, a ballot for early voting shall be forwarded to each voter meeting the criteria of section 32-939 at least forty-five days prior to any election.

(2) An omission of required information, except the political party affiliation of the applicant, may prevent the processing of an application for and mailing of ballots. The request for any ballots and a registration application shall be sent to the election commissioner or county clerk of the county of the applicant's residence. The request may be sent at any time in the same calendar year as the election, except that the request shall be received by the election commissioner or county clerk not later than the third Friday preceding an election to vote in that election. If an applicant fails to indicate his or her political party affiliation on the application, the applicant shall be registered as nonpartisan.

(3) A person described in section 32-939 may register to vote through the use of the Federal Post Card Application or a personal letter which includes the same information as appears on the Federal Post Card Application and may simultaneously make application for ballots for all elections in a calendar year. The person may indicate a preference for ballots and other election materials to be delivered via facsimile transmission or electronic mail by indicating such preference on the Federal Post Card Application. If the person indicates such a preference, the election commissioner or county clerk shall accommodate the voter's preference.

(4) If the ballot for early voting has not been printed in sufficient time to meet the request and special requirements of a voter meeting the criteria of section 32-939, the election commissioner or county clerk may issue a special ballot at least sixty days prior to an election to such a voter upon a written request by such voter requesting the special ballot. For purposes of this subsection, a special ballot means a ballot prescribed by the Secretary of State which contains the titles of all offices being contested at such election and permits the voter to vote by writing in the names of the specific candidates or the decision on any issue. The election commissioner or county clerk shall include with the special ballot a complete list of the nominated candidates and issues to be voted upon by the voter which are known at the time of the voter's request.

(5) Any person meeting the criteria in section 32-939 may cast a ballot by the use of the Federal Write-In Absentee Ballot. The Federal Write-In Absentee Ballot may be used for all elections. If a person casting a ballot using the Federal Write-In Absentee Ballot is not a registered voter, the information submitted in the Federal Write-In Absentee Ballot transmission envelope shall be treated as a voter registration application.

(6) Any person requesting a ballot under this section may receive and return the ballot and the oath prescribed in subsection (2) of section 32-947 using any method of transmission authorized by the Secretary of State.

(7) The Secretary of State shall develop a process for a person casting a ballot under this section to check the status of his or her ballot via the Internet or a toll-free telephone call.

Source: Laws 2010, LB951, § 6.
Effective date July 15, 2010.

32-960 County with less than ten thousand inhabitants; elections conducted by mail; application for approval; contents.

In any county with less than ten thousand inhabitants, the county clerk may apply to the Secretary of State to mail ballots for all elections held after approval of the application to registered voters of any or all of the precincts in the county in lieu of establishing polling places for such precincts. The application shall include a written plan for the conduct of the election, including a timetable for the conduct of the election and provisions for the notice of election to be published and for the application for ballots for early voting notwithstanding other statutory provisions regarding the content and publication of a notice of election or the application for ballots for early voting. If the Secretary of State approves such application for one or more precincts in the county, the county clerk shall follow the applicable procedures in sections 32-953 to 32-959 for conducting elections by mail, except that the deadline for receipt of the ballots shall be 8 p.m. on the day of the election.

Source: Laws 2005, LB 401, § 9; Laws 2009, LB501, § 3.

ARTICLE 10

COUNTING AND CANVASSING BALLOTS

Section
32-1002. Provisional ballots; when counted.

32-1002 Provisional ballots; when counted.

(1) As the ballots are removed from the ballot box pursuant to sections 32-1012 to 32-1018, the receiving board shall separate the envelopes containing the provisional ballots from the rest of the ballots and deliver them to the election commissioner or county clerk.

(2) Upon receipt of a provisional ballot, the election commissioner or county clerk shall verify that the certificate on the front of the envelope or the form attached to the envelope is in proper form and that the certification has been signed by the voter.

(3) The election commissioner or county clerk shall also (a) verify that such person has not voted anywhere else in the county or been issued a ballot for early voting, (b) investigate whether any credible evidence exists that the person was properly registered to vote in the county before the deadline for registration for the election, (c) investigate whether any information has been received pursuant to section 32-309, 32-310, or 32-324 that the person has resided, registered, or voted in any other county or state since registering to vote in the county, and (d) upon determining that credible evidence exists that the person was properly registered to vote in the county, make the appropriate changes to the voter registration register by entering the information contained in the registration application completed by the voter at the time of voting a provisional ballot.

(4) A provisional ballot cast by a voter pursuant to section 32-915 shall be counted if:

(a) Credible evidence exists that the voter was properly registered in the county before the deadline for registration for the election;

(b) The voter has resided in the county continuously since registering to vote in the county;

(c) The voter has not voted anywhere else in the county or has not otherwise voted early using a ballot for early voting;

(d) The voter has completed a registration application prior to voting as prescribed in subsection (6) of this section and:

(i) The residence address provided on the registration application completed pursuant to subdivision (1)(e) of section 32-915 is located within the precinct in which the person voted; and

(ii) If the voter is voting in a primary election, the party affiliation provided on the registration application completed prior to voting the provisional ballot is the same party affiliation that appears on the voter's voter registration record based on his or her previous registration application; and

(e) The certification on the front of the envelope or form attached to the envelope is in the proper form and signed by the voter.

(5) A provisional ballot cast by a voter pursuant to section 32-915 shall not be counted if:

(a) The voter was not properly registered in the county before the deadline for registration for the election;

(b) Information has been received pursuant to section 32-309, 32-310, or 32-324 that the voter has resided, registered, or voted in any other county or state since registering to vote in the county in which he or she cast the provisional ballot;

(c) Credible evidence exists that the voter has voted elsewhere or has otherwise voted early;

(d) The voter failed to complete and sign a registration application pursuant to subsection (6) of this section and subdivision (1)(e) of section 32-915;

(e) The residence address provided on the registration application completed pursuant to subdivision (1)(e) of section 32-915 is in a different county or in a different precinct than the county or precinct in which the voter voted;

(f) If the voter is voting in a primary election, the party affiliation on the registration application completed prior to voting the provisional ballot is different than the party affiliation that appears on the voter's voter registration record based on his or her previous registration application; or

(g) The voter failed to complete and sign the certification on the envelope or form attached to the envelope pursuant to subsection (3) of section 32-915.

(6) An error or omission of information on the registration application or the certification required under section 32-915 shall not result in the provisional ballot not being counted if:

(a)(i) The errant or omitted information is contained elsewhere on the registration application or certification; or

(ii) The information is not necessary to determine the eligibility of the voter to cast a ballot; and

(b) Both the registration application and the certification are signed by the voter.

(7) Upon determining that the voter's provisional ballot is eligible to be counted, the election commissioner or county clerk shall remove the ballot from the envelope without exposing the marks on the ballot and shall place the ballot with the ballots to be counted by the county canvassing board.

(8) The election commissioner or county clerk shall notify the system administrator of the system created pursuant to section 32-202 as to whether the ballot was counted and, if not, the reason the ballot was not counted.

(9) The verification and investigation shall be completed within seven days after the election.

Source: Laws 1994, LB 76, § 296; Laws 1999, LB 234, § 13; Laws 2002, LB 1054, § 23; Laws 2003, LB 358, § 30; Laws 2005, LB 566, § 53; Laws 2007, LB646, § 10; Laws 2010, LB325, § 7.
Effective date July 15, 2010.

ARTICLE 17

VOTE NEBRASKA INITIATIVE

Section
32-1701. Repealed. Laws 2009, LB 154, § 27.

32-1701 Repealed. Laws 2009, LB 154, § 27.

CHAPTER 33
FEES AND SALARIES

Section
33-102. Notary public; fees; Administration Cash Fund; created; investment.
33-107.03. Court automation fee.
33-117. Sheriffs; fees; disposition; mileage; report to county board.
33-157. Conviction for misdemeanor or felony; affirmation on appeal; additional assessment of cost; use; Nebraska Crime Victim Fund; created; use.

33-102 Notary public; fees; Administration Cash Fund; created; investment.

The Secretary of State shall be entitled to, for receiving, affixing the great seal to, and forwarding the commission of a notary public, the sum of fifteen dollars and the additional sum of fifteen dollars for filing and approving the bond of a notary public. The Secretary of State shall be entitled to the sum of fifteen dollars for receiving a renewal application pursuant to section 64-104.

The fees received by the Secretary of State pursuant to this section shall be remitted to the State Treasurer for credit seventy-five percent to the General Fund and twenty-five percent to the Administration Cash Fund which is hereby created. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Administration Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1869, § 13, p. 25; R.S.1913, § 2424; Laws 1921, c. 99, § 1, p. 364; C.S.1922, § 2365; C.S.1929, § 33-104; R.S.1943, § 33-102; Laws 1945, c. 145, § 11, p. 494; Laws 1949, c. 93, § 4, p. 246; Laws 1963, c. 184, § 1, p. 625; Laws 1967, c. 396, § 1, p. 1241; Laws 1982, LB 928, § 28; Laws 1994, LB 1004, § 3; Laws 1995, LB 7, § 30; Laws 2009, First Spec. Sess., LB3, § 17. Effective date November 21, 2009.

Cross References

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

33-107.03 Court automation fee.

In addition to all other court costs assessed according to law, a court automation fee of eight dollars shall be taxed as costs for each case filed in each county court, separate juvenile court, and district court, including appeals to such courts, and for each appeal and original action filed in the Court of Appeals and the Supreme Court. The fees shall be remitted to the State Treasurer on forms prescribed by the State Treasurer within ten days after the end of each month. The State Treasurer shall credit the fees to the Supreme Court Automation Cash Fund.

Source: Laws 2002, Second Spec. Sess., LB 13, § 2; Laws 2009, LB35, § 24.

33-117 Sheriffs; fees; disposition; mileage; report to county board.

(1) The several sheriffs shall charge and collect fees at the rates specified in this section. The rates shall be as follows: (a) Serving a capias with commitment or bail bond and return, two dollars; (b) serving a search warrant, two dollars; (c) arresting under a search warrant, two dollars for each person so arrested; (d) unless otherwise specifically listed in subdivisions (f) to (s) of this subsection, serving a summons, subpoena, order of attachment, order of replevin, other order of the court, notice of motion, other notice, other writ or document, or any combination thereof, including any accompanying or attached documents, twelve dollars for each person served, except that when more than one person is served at the same time and location in the same case, the service fee shall be twelve dollars for the first person served at that time and location and three dollars for each other person served at that time and location; (e) making a return of each summons, subpoena, order of attachment, order of replevin, other order of the court, notice of motion, other notice, or other writ or document, whether served or not, six dollars; (f) taking and filing a replevin bond or other indemnification to be furnished and approved by the sheriff, one dollar; (g) making a copy of any process, bond, or other paper not otherwise provided for in this section, twenty-five cents per page; (h) traveling each mile actually and necessarily traveled within or without their several counties in their official duties, three cents more per mile than the rate provided in section 81-1176, except that the minimum fee shall be fifty cents when the service is made within one mile of the courthouse, and, as far as is expedient, all papers in the hands of the sheriff at any one time shall be served in one or more trips by the most direct route or routes and only one mileage fee shall be charged for a single trip, the total mileage cost to be computed as a unit for each trip and the combined mileage cost of each trip to be prorated among the persons or parties liable for the payment of same; (i) levying a writ or a court order and return thereof, eighteen dollars; (j) summoning a grand jury, not including mileage to be paid by the county, ten dollars; (k) summoning a petit jury, not including mileage to be paid by the county, twelve dollars; (l) summoning a special jury, for each person impaneled, fifty cents; (m) calling a jury for a trial of a case or cause, fifty cents; (n) executing a writ of restitution or a writ of assistance and return, eighteen dollars; (o) calling an inquest to appraise lands and tenements levied on by execution, one dollar; (p) calling an inquest to appraise goods and chattels taken by an order of attachment or replevin, one dollar; (q) advertising a sale in a newspaper in addition to the price of printing, one dollar; (r) advertising in writing for a sale of real or personal property, five dollars; and (s) making deeds for land sold on execution or order of sale, five dollars.

(2)(a) Except as provided in subdivision (b) of this subsection, the commission due a sheriff on an execution or order of sale, an order of attachment decree, or a sale of real or personal property shall be: For each dollar not exceeding four hundred dollars, six cents; for every dollar above four hundred dollars and not exceeding one thousand dollars, four cents; and for every dollar above one thousand dollars, two cents.

(b) In real estate foreclosure, when any party to the original action purchases the property or when no money is received or disbursed by the sheriff, the commission shall be computed pursuant to subdivision (a) of this subsection but shall not exceed two hundred dollars.

(3) The sheriff shall, on the first Tuesday in January, April, July, and October of each year, make a report to the county board showing (a) the different items of fees, except mileage, collected or earned, from whom, at what time, and for what service, (b) the total amount of the fees collected or earned by the officer since the last report, and (c) the amount collected or earned for the current year. He or she shall pay all fees earned to the county treasurer who shall credit the fees to the general fund of the county.

(4) Any future adjustment made to the reimbursement rate provided in subsection (1) of this section shall be deemed to apply to all provisions of law which refer to this section for the computation of mileage.

(5) Commencing on and after January 1, 1988, all fees earned pursuant to this section, except fees for mileage, by any constable who is a salaried employee of the State of Nebraska shall be remitted to the clerk of the county court. The clerk of the county court shall pay the same to the General Fund.

Source: R.S.1866, c. 19, § 5, p. 161; Laws 1877, § 1, p. 40; Laws 1877, § 5, p. 217; Laws 1907, c. 53, § 1, p. 225; R.S.1913, §§ 2421, 2441; Laws 1915, c. 37, § 1, p. 106; Laws 1921, c. 102, § 1, p. 371; C.S.1922, §§ 2362, 2381; C.S.1929, §§ 33-101, 33-120; Laws 1933, c. 96, § 7, p. 386; Laws 1935, c. 79, § 1, p. 266; C.S.Supp.,1941, § 33-120; Laws 1943, c. 86, § 1(1), p. 286; R.S. 1943, § 33-117; Laws 1947, c. 123, § 1, p. 358; Laws 1951, c. 266, § 1, p. 895; Laws 1953, c. 118, § 1, p. 373; Laws 1957, c. 70, § 5, p. 297; Laws 1959, c. 84, § 3, p. 385; Laws 1961, c. 161, § 1, p. 487; Laws 1961, c. 162, § 1, p. 489; Laws 1965, c. 186, § 1, p. 575; Laws 1967, c. 125, § 4, p. 401; Laws 1969, c. 273, § 1, p. 1037; Laws 1974, LB 625, § 3; Laws 1978, LB 691, § 3; Laws 1980, LB 615, § 3; Laws 1980, LB 628, § 2; Laws 1981, LB 204, § 51; Laws 1982, LB 662, § 1; Laws 1984, LB 394, § 9; Laws 1987, LB 223, § 1; Laws 1988, LB 1030, § 34; Laws 1996, LB 1011, § 22; Laws 2009, LB35, § 25.

Cross References

For other provisions for fees of sheriff:
Certificate of title, inspection fees, see section 60-158.
Distraint and sale of taxpayer's property, see section 77-3906.
Distress warrant, issuance, levy, and return, fee, see section 77-1720.
Handgun, application, filing fee, see section 69-2404.
Summons in error, see section 25-1904.
Summons of county board of equalization, see section 77-1509.
Summons out of county, see section 25-1713.
Transporting mental health patients, see section 71-929.
Transporting prisoners, see section 83-424.

33-157 Conviction for misdemeanor or felony; affirmation on appeal; additional assessment of cost; use; Nebraska Crime Victim Fund; created; use.

(1) In addition to all other costs assessed according to law, an assessment of one dollar shall be assessed for each conviction of a person for any misdemeanor or felony in county court or district court and each affirmation on appeal. No such assessment shall be collected in any juvenile court proceeding. No county shall be liable for the assessment imposed pursuant to this section. The assessments shall be remitted to the State Treasurer on forms prescribed by the State Treasurer within ten days after the end of the month.

(2) The Nebraska Crime Victim Fund is created. The fund shall contain the amounts remitted pursuant to subsection (1) of this section and section 83-184.

The fund shall be administered by the Nebraska Commission on Law Enforcement and Criminal Justice. As soon as funds become available, the commission shall direct the State Treasurer to transfer money from the Nebraska Crime Victim Fund to the Department of Correctional Services Facility Cash Fund and the Supreme Court Automation Cash Fund to pay for the initial costs in implementing Laws 2010, LB510, in amounts to be determined by the Department of Correctional Services and the Supreme Court and certified to the commission. When such costs are fully reimbursed, the Nebraska Crime Victim Fund shall terminate and the State Treasurer shall distribute seventy-five percent of the funds remitted pursuant to subsection (1) of this section and section 83-184 to the Victim's Compensation Fund to be awarded as compensation for losses and expenses allowable under the Nebraska Crime Victim's Reparations Act and shall distribute twenty-five percent of such funds to the Reentry Cash Fund.

Source: Laws 2010, LB510, § 1.
Effective date July 15, 2010.

CHAPTER 34
FENCES, BOUNDARIES, AND LANDMARKS

Article.
1. Division Fences. 34-101, 34-102.
3. Court Action for Settling Disputed Corners. 34-301.

ARTICLE 1
DIVISION FENCES

Section
34-101. Legislative findings.
34-102. Division fence; adjoining landowners; construct and maintain just proportion of fence.

34-101 Legislative findings.

The Legislature finds the duty of adjoining landowners for the construction and maintenance of division fences to be beneficial to the public interest and welfare. Such benefits are not confined to historical and traditional societal benefits that accrue from the proper constraint of livestock, but also include suppression of civil disputes and public and private nuisances and the protection of public safety. Division fences promote the peace and security of society by the demarcation of rural boundaries, physical separation of conflicting land uses, enhancement of privacy, diminishment of frequency of public burden imposed by incidences of trespass and adverse possession, and the mitigation of impacts of conflicting land use intrusion into those areas of the state devoted to agricultural and horticultural use.

Source: Laws 2010, LB667, § 1.
Effective date July 15, 2010.

34-102 Division fence; adjoining landowners; construct and maintain just proportion of fence.

(1) When there are two or more adjoining landowners, each of them shall construct and maintain a just proportion of the division fence between them. Just proportion means an equitable allocation of the portion of the fenceline to be physically constructed and maintained by each landowner or, in lieu thereof, an equitable contribution to the costs to construct and maintain the division fence to be made by either landowner. Unless otherwise specified in statute or by agreement of the parties, such equitable allocation shall be one which results in an equal burden of construction and maintenance of the division fence. This section shall not be construed to compel the erection and maintenance of a division fence if neither of the adjoining landowners desires such division fence.

(2) Unless the adjoining landowners have agreed otherwise, such fence shall be a wire fence as defined in subdivision (5) of section 34-115.

Source: R.S.1866, c. 1, § 13, p. 8; R.S.1913, § 476; Laws 1919, c. 94, § 2, p. 237; C.S.1922, § 2418; C.S.1929, § 34-102; R.S.1943, § 34-102; Laws 2007, LB108, § 3; Laws 2010, LB667, § 2.
Effective date July 15, 2010.

Cross References

Game and Parks Commission, division fence responsibilities, see section 37-1012.

ARTICLE 3
COURT ACTION FOR SETTLING DISPUTED CORNERS

Section
34-301. Disputed corners and boundaries; court action to settle; procedure.

34-301 Disputed corners and boundaries; court action to settle; procedure.

When one or more owners of land, the corners and boundaries of which are lost, destroyed, or in dispute, desire to have the same established, they may bring an action in the district court of the county where such lost, destroyed, or disputed corners or boundaries, or part thereof, are situated, against the owners of the other tracts which will be affected by the determination or establishment thereof, to have such corners or boundaries ascertained and permanently established. If any public road is likely to be affected thereby, the proper county shall be made defendant. Notice of such action shall be given as in other cases, and if the defendants or any of them are nonresidents of the state, or unknown, they may be served by publication as is provided by law. The action shall be a special one, and the only necessary pleading therein shall be the complaint of the plaintiff describing the land involved, and, so far as may be, the interest of the respective parties and asking that certain corners and boundaries therein described, as accurately as may be, shall be established. Either the plaintiff or defendant may, by proper plea, put in issue the fact that certain alleged boundaries or corners are the true ones, or that such have been recognized and acquiesced in by the parties or their grantors for a period of ten consecutive years, which issue shall be tried before the district court under its equity jurisdiction without the intervention of a jury, and appeals from such proceedings shall be had and taken in conformity with the equity rules.

Source: Laws 1923, c. 103, § 1, p. 258; C.S.1929, § 34-301; R.S.1943, § 34-301; Laws 2009, LB35, § 26.

CHAPTER 35
FIRE COMPANIES AND FIREFIGHTERS

Article.
3. Hours of Duty of Firefighters. 35-302.
9. Volunteer Fire and Rescue Departments. 35-901.
10. Death or Disability. 35-1001.
14. Volunteer Emergency Responders Job Protection Act. 35-1402.

ARTICLE 3
HOURS OF DUTY OF FIREFIGHTERS

Section
35-302. Paid fire departments; firefighters; hours of duty; alternating day schedule; agreement; restrictions.

35-302 Paid fire departments; firefighters; hours of duty; alternating day schedule; agreement; restrictions.

Firefighters employed in the fire departments of cities having paid fire departments shall not be required to remain on duty for periods of time which will aggregate in each month more than an average of sixty hours per week. Each single-duty shift shall consist of twenty-four consecutive hours and shall be followed by an off-duty period as necessary to assure compliance with the requirements of this section unless by voluntary agreement between the city and the authorized collective-bargaining agent or, if there is no collective-bargaining unit, the firefighter, any firefighter may be permitted to work an additional period of consecutive time and may return to work after less than a twenty-four-hour off-duty period. Any firefighter may be assigned to work less than a twenty-four-hour shift, but in such event the firefighter shall not work in excess of forty hours per week unless otherwise provided by voluntary agreement between the city and the authorized collective-bargaining agent or, if there is no collective-bargaining unit, the firefighter. No agreement under this section shall allow a firefighter who is scheduled to work less than a twenty-four-hour shift and who holds the rank of fire chief or works as an immediate subordinate to a fire chief to fill temporary vacancies created by the absence of a firefighter who is assigned to work a twenty-four-hour shift and who holds a rank lower than fire chief. No firefighter shall be required to perform any work or service as such firefighter during any period in which he or she is off duty except in cases of extraordinary conflagration or emergencies or job-related court appearances.

Source: Laws 1953, c. 119, § 1(2), p. 377; Laws 1963, c. 196, § 1, p. 642; Laws 1971, LB 773, § 1; Laws 1979, LB 80, § 101; Laws 2009, LB537, § 1.

ARTICLE 9
VOLUNTEER FIRE AND RESCUE DEPARTMENTS

Section
35-901. Volunteer departments; trust fund; established; use; public funds; restrictions; express authorization required; when; section, how construed; expenditures of public funds; procedure; gambling money; restrictions.

35-901 Volunteer departments; trust fund; established; use; public funds; restrictions; express authorization required; when; section, how construed; expenditures of public funds; procedure; gambling money; restrictions.

(1) For purposes of this section, volunteer department shall mean volunteer fire department or volunteer first-aid, rescue, or emergency squad or volunteer fire company serving any city, village, county, township, or rural or suburban fire protection district.

(2) Except as provided in subsection (4) of this section, each volunteer department may establish a volunteer department trust fund. All general donations or contributions, bequests, or annuities made to the volunteer department and all money raised by or for the volunteer department shall be deposited in the trust fund. The trust fund shall be under the control of the volunteer department, and the volunteer department may make expenditures from the trust fund as it deems necessary. The treasurer of the volunteer department shall be the custodian of the trust fund.

(3) The trust fund shall not be considered public funds or funds of any city, village, county, township, or rural or suburban fire protection district for any purpose, including the Nebraska Budget Act, nor shall any city, village, county, township, or rural or suburban fire protection district incur any liability solely by reason of any expenditure from such fund except liability for property when any city, village, county, township, or rural or suburban fire protection district receives title to property acquired with money from such fund.

(4)(a) If the total amount of expenditures and receipts in the trust fund exceeds one hundred thousand dollars in any twelve-month period, the volunteer department shall inform any city, village, county, township, or rural or suburban fire protection district receiving service from the department and such entity may examine or cause to be examined all books, accounts, vouchers, records, and expenditures with regard to the trust fund.

(b) Funds, fees, or charges solicited, collected, or received by a volunteer department that are (i) in consequence of the performance of fire or rescue services by the volunteer department at a given place and time, (ii) accomplished through the use by the volunteer department of equipment owned by the taxing authority supporting such department and provided to the volunteer department for that purpose, and (iii) paid by or on behalf of the recipient of those services shall not be deposited in a trust fund authorized by this section. Such funds are public funds of the taxing authority supporting the volunteer department and are deemed to have been collected by the volunteer department as the agent of the taxing authority and are held by the department on its behalf. If such funds are in the possession of a volunteer department, the taxing authority shall cause all the books, accounts, records, vouchers, expenditures, and statements regarding such funds to be examined and independently audited at the expense of the taxing authority by a qualified professional auditor or the Auditor of Public Accounts for the immediately preceding five years.

(5) Nothing in this section shall be construed or deemed to permit a violation of the Nebraska Liquor Control Act.

(6) All expenditures of public funds as defined in the Nebraska Budget Act for support of a volunteer department or its purposes shall be submitted as claims, approved by the taxing authority supporting such department or its purposes, and published as required by law. All such claims shall be properly itemized for

proposed expenditure or reimbursement for costs already incurred and paid except as may be otherwise permitted pursuant to section 35-106.

(7) All money raised pursuant to the Nebraska Bingo Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, and the Nebraska Small Lottery and Raffle Act shall be subject to such acts with respect to the deposit and expenditure of such money.

(8) No volunteer department shall solicit, charge, or collect any funds, fees, or charges as described in subdivision (4)(b) of this section without the express authorization of the taxing authority supporting the department by vote of a majority of the members of the governing body of such taxing authority. Such authorization shall not extend beyond a twelve-month period but may be renewed at the discretion of the taxing authority in the same manner in which it was initially granted. Upon collection or receipt, such funds, fees, or charges shall be remitted to the designated officer of the taxing authority for deposit to the account of the taxing authority.

(9) Funds, fees, or charges as described in subdivision (4)(b) of this section which are in the possession of the taxing authority shall be expended by such taxing authority solely (a) for the support of the emergency response activities of the volunteer department which gave rise to those funds, fees, or charges, (b) for charges directly related to the collection of those funds, fees, or charges, or (c) for the support of a service award benefit program adopted and conducted pursuant to the Volunteer Emergency Responders Recruitment and Retention Act.

Source: Laws 1993, LB 516, § 1; Laws 2008, LB1096, § 4; Laws 2010, LB522, § 1.
Effective date July 15, 2010.

Cross References

Nebraska Bingo Act, see section 9-201.
Nebraska Budget Act, see section 13-501.
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 Small Lottery and Raffle Act, see section 9-501.
Volunteer Emergency Responders Recruitment and Retention Act, see section 35-1301.

ARTICLE 10
DEATH OR DISABILITY

Section
35-1001. Death or disability as a result of cancer; death or disability as a result of certain diseases; prima facie evidence.

35-1001 Death or disability as a result of cancer; death or disability as a result of certain diseases; prima facie evidence.

(1) For a firefighter or firefighter-paramedic who is a member of a paid fire department of a municipality or a rural or suburban fire protection district in this state, including a municipality having a home rule charter or a municipal authority created pursuant to a home rule charter that has its own paid fire department, and who suffers death or disability as a result of cancer, including, but not limited to, cancer affecting the skin or the central nervous, lymphatic, digestive, hematological, urinary, skeletal, oral, or prostate systems, evidence

which demonstrates that (a) such firefighter or firefighter-paramedic successfully passed a physical examination upon entry into such service or subsequent to such entry, which examination failed to reveal any evidence of cancer, (b) such firefighter or firefighter-paramedic was exposed to a known carcinogen, as defined on July 19, 1996, by the International Agency for Research on Cancer, while in the service of the fire department, and (c) such carcinogen is reported by the agency to be a suspected or known cause of the type of cancer the firefighter or firefighter-paramedic has, shall be prima facie evidence that such death or disability resulted from injuries, accident, or other cause while in the line of duty for the purposes of sections 16-1020 to 16-1042, a firefighter's pension plan established pursuant to a home rule charter, and a firefighter's pension or disability plan established by a rural or suburban fire protection district.

(2) For a firefighter or firefighter-paramedic who is a member of a paid fire department of a municipality or a rural or suburban fire protection district in this state, including a municipality having a home rule charter or a municipal authority created pursuant to a home rule charter that has its own paid fire department, and who suffers death or disability as a result of a blood-borne infectious disease, tuberculosis, meningococcal meningitis, or methicillin-resistant Staphylococcus aureus, evidence which demonstrates that (a) such firefighter or firefighter-paramedic successfully passed a physical examination upon entry into such service or subsequent to such entry, which examination failed to reveal any evidence of such blood-borne infectious disease, tuberculosis, meningococcal meningitis, or methicillin-resistant Staphylococcus aureus, and (b) such firefighter or firefighter-paramedic has engaged in the service of the fire department within ten years before the onset of the disease, shall be prima facie evidence that such death or disability resulted from injuries, accident, or other cause while in the line of duty for the purposes of sections 16-1020 to 16-1042, a firefighter's pension plan established pursuant to a home rule charter, and a firefighter's pension or disability plan established by a rural or suburban fire protection district.

(3) The prima facie evidence presumed under this section shall extend to death or disability as a result of cancer as described in this section, a blood-borne infectious disease, tuberculosis, meningococcal meningitis, or methicillin-resistant Staphylococcus aureus after the firefighter or firefighter-paramedic separates from his or her service to the fire department if the death or disability occurs within three months after such separation.

(4) For purposes of this section, blood-borne infectious disease means human immunodeficiency virus, acquired immunodeficiency syndrome, and all strains of hepatitis.

Source: Laws 1996, LB 1076, § 45; Laws 2010, LB373, § 2.
Effective date July 15, 2010.

ARTICLE 14

VOLUNTEER EMERGENCY RESPONDERS JOB PROTECTION ACT

Section
35-1402. Terms, defined.

35-1402 Terms, defined.

For purposes of the Volunteer Emergency Responders Job Protection Act:

(1) Employee does not include a career firefighter or law enforcement officer who is acting as a volunteer emergency responder;

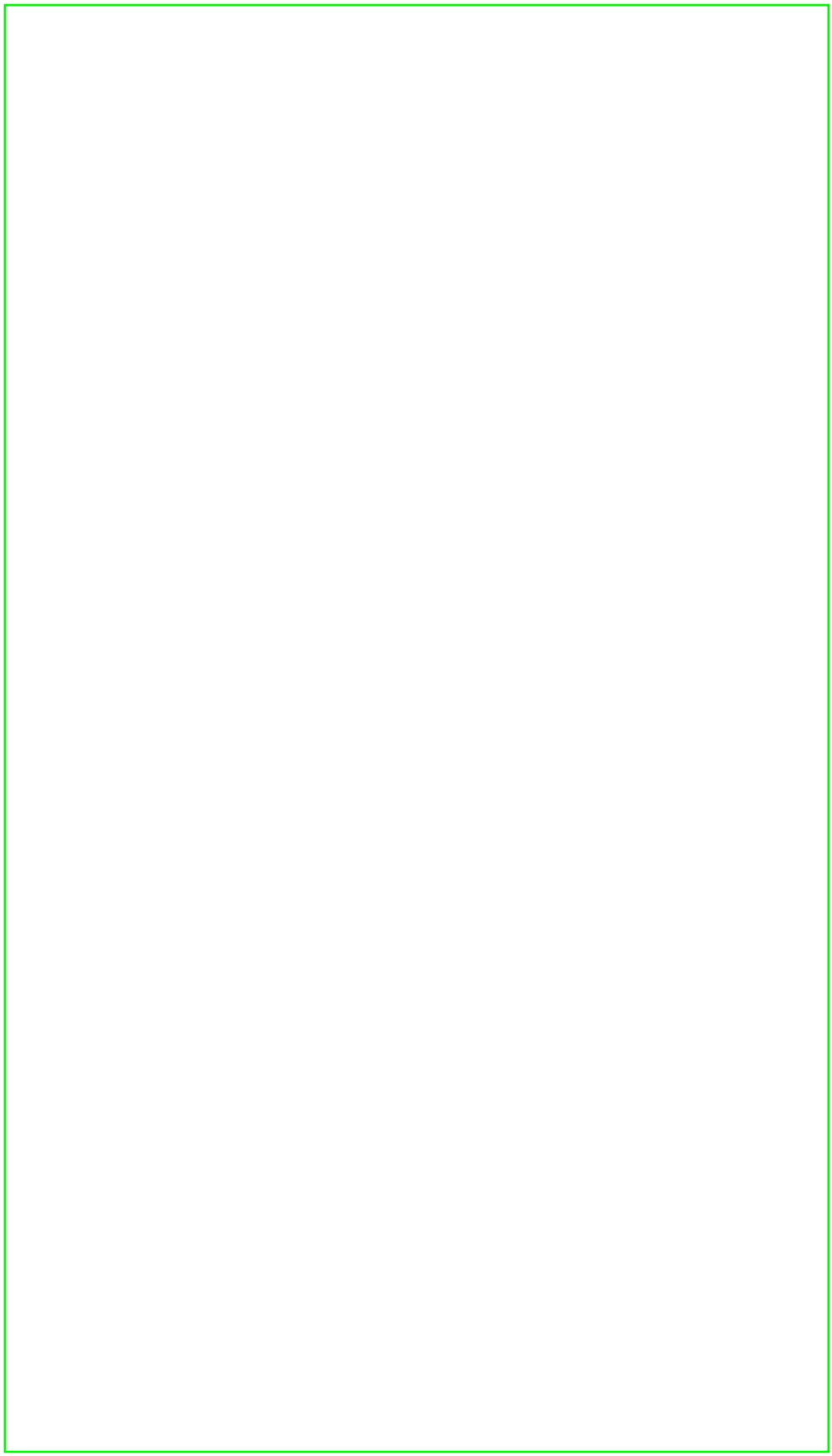
(2) Employer means any person employing ten or more employees; and

(3) Volunteer emergency responder means:

(a) An individual who has been approved by a governing body in Nebraska to serve any volunteer fire department or volunteer first-aid, rescue, ambulance, or emergency squad, or volunteer fire company, association, or organization serving any city, village, or rural or suburban fire protection district by providing fire protection or emergency response services for the purpose of protecting life, health, or property; and

(b) An individual who is in good standing as a volunteer member of the Nebraska Wing of the Civil Air Patrol, the civilian auxiliary of the United States Air Force.

Source: Laws 2008, LB1096, § 12; Laws 2010, LB934, § 1.
Effective date July 15, 2010.



CHAPTER 37
GAME AND PARKS

Article.
2. Game Law General Provisions. 37-201.
3. Commission Powers and Duties.
   (a) General Provisions. 37-314.
   (b) Funds. 37-327.
   (e) State Park System. 37-351.
   (g) Property Conveyed by Commission. 37-354.
4. Permits and Licenses.
   (a) General Permits. 37-407 to 37-440.
   (b) Special Permits and Licenses. 37-447 to 37-4,111.
5. Regulations and Prohibited Acts.
   (a) General Provisions. 37-501 to 37-507.
   (b) Game and Birds. 37-513 to 37-528.
   (e) Damage by Wildlife. 37-559.
6. Enforcement. 37-613, 37-614.
7. Recreational Lands.
   (c) Privately Owned Lands. 37-727.
12. State Boat Act. 37-1201 to 37-1290.
13. Nebraska Shooting Range Protection Act. 37-1301 to 37-1310.

ARTICLE 2

GAME LAW GENERAL PROVISIONS

Section
37-201. Law, how cited.

37-201 Law, how cited.

Sections 37-201 to 37-811 shall be known and may be cited as the Game Law.

Source: Laws 1929, c. 112, I, § 2, p. 408; C.S.1929, § 37-102; R.S.1943, § 37-102; Laws 1989, LB 34, § 2; Laws 1989, LB 251, § 1; Laws 1991, LB 403, § 2; Laws 1993, LB 830, § 7; Laws 1994, LB 1088, § 2; Laws 1994, LB 1165, § 6; Laws 1995, LB 274, § 1; Laws 1996, LB 923, § 2; Laws 1997, LB 19, § 2; R.S.Supp.,1997, § 37-102; Laws 1998, LB 922, § 11; Laws 1999, LB 176, § 2; Laws 2000, LB 788, § 2; Laws 2002, LB 1003, § 14; Laws 2003, LB 305, § 1; Laws 2004, LB 826, § 1; Laws 2005, LB 121, § 2; Laws 2005, LB 162, § 1; Laws 2007, LB504, § 1; Laws 2009, LB105, § 2; Laws 2010, LB743, § 3; Laws 2010, LB836, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB743, section 3, with LB836, section 1, to reflect all amendments.

Note: Changes made by LB743 became effective March 4, 2010. Changes made by LB836 became effective July 15, 2010.

ARTICLE 3
COMMISSION POWERS AND DUTIES

(a) GENERAL PROVISIONS

Section
37-314. Seasons; opening and closing; powers of commission; rules and regulations; violations; penalty.

(b) FUNDS

37-327. Commission; fees; duty to establish; limit on increase.

(e) STATE PARK SYSTEM

37-351. Nebraska Outdoor Recreation Development Cash Fund; created; investment.

(g) PROPERTY CONVEYED BY COMMISSION

37-354. Operation and maintenance; requirements; compliance and enforcement.

(a) GENERAL PROVISIONS

37-314 Seasons; opening and closing; powers of commission; rules and regulations; violations; penalty.

(1) The commission may, in accordance with the Game Law, other provisions of law, and lawful rules and regulations, fix, prescribe, and publish rules and regulations as to open seasons and closed seasons, either permanent or temporary, as to conservation orders or similar wildlife management activities authorized by the United States Fish and Wildlife Service, as to bag limits or the methods or type, kind, and specifications of hunting, fur-harvesting, or fishing gear used in the taking of any game, game fish, nongame fish, game animals, fur-bearing animals, or game birds, as to the age, sex, species, or area of the state in which any game, game fish, nongame fish, game animals, fur-bearing animals, or game birds may be taken, or as to the taking of any particular kinds, species, or sizes of game, game fish, nongame fish, game animals, fur-bearing animals, and game birds in any designated waters or areas of this state after due investigation and having due regard to the distribution, abundance, economic value, breeding habits, migratory habits, and causes of depletion or extermination of the same in such designated waters or areas and having due regard to the volume of the hunting, fur harvesting, and fishing practiced therein and the climatic, seasonal, and other conditions affecting the protection, preservation, and propagation of the same in such waters or areas. Such rules and regulations may be amended, modified, or repealed from time to time, subject to such limitations and standards, and such rules and regulations and all amendments, modifications, and repeals thereof shall be based upon investigation and available but reliable data relative to such limitations and standards.

(2) Each such rule, regulation, amendment, modification, and repeal shall specify the date when it shall become effective and while it remains in effect shall have the force and effect of law.

(3) Regardless of the provisions of this section or of other sections of the Game Law which empower the commission to set seasons on game birds, fish, or animals or provide the means and method by which such seasons are set or promulgated and regardless of the provisions of the Administrative Procedure Act, the commission may close or reopen any open season previously set on game birds, fish, or animals in all or any specific portion of the state. The

commission shall only close or reopen such seasons by majority vote at a valid special meeting called under section 37-104 and other provisions of statutes regarding the holding of public meetings. Any closing or reopening of an open season previously set by the commission shall not be effective for at least twenty-four hours after such action by the commission. The commission shall make every effort to make available to all forms of the news media the information on any opening or closing of any open season on game birds, fish, or animals previously set. The commission may only use this special provision allowing the commission to open or close game bird, fish, or animal seasons previously set in emergency situations in which the continuation of the open season would result in grave danger to human life or property. The commission may also close or reopen any season established by a conservation order under the same provisions pertaining to closing and reopening seasons in this section.

(4) Any person violating the rules and regulations adopted and promulgated pursuant to this section shall be guilty of a Class III misdemeanor and shall be fined at least one hundred dollars upon conviction.

Source: Laws 1929, c. 112, III, § 1, p. 413; C.S.1929, § 37-301; Laws 1931, c. 70, § 1, p. 190; Laws 1937, c. 89, § 5, p. 292; C.S.Supp.,1941, § 37-301; Laws 1943, c. 94, § 5, p. 324; R.S. 1943, § 37-301; Laws 1957, c. 242, § 31, p. 844; Laws 1972, LB 777, § 4; Laws 1972, LB 1284, § 14; Laws 1975, LB 489, § 2; Laws 1981, LB 72, § 13; Laws 1989, LB 34, § 12; R.S.1943, (1993), § 37-301; Laws 1998, LB 922, § 72; Laws 1999, LB 176, § 14; Laws 2009, LB105, § 3.

Cross References

Administrative Procedure Act, see section 84-920.

(b) FUNDS

37-327 Commission; fees; duty to establish; limit on increase.

(1) The commission shall establish fees for licenses, permits, stamps, bands, registrations, and certificates issued under the Game Law and the State Boat Act and shall establish the fee required by section 37-562 as provided in such law, act, and section. The commission shall not increase any fee more than six percent per year, except that if a fee has not been increased by such percentage in the immediately preceding year, the difference between a six percent increase and the actual percentage increase in such preceding year may be added to the percentage increase in the following year. Such fees shall be collected and disposed of as provided in such law, act, and section. The commission shall, as provided in such law, act, and section, establish issuance fees to be retained by authorized agents of such licenses, permits, stamps, bands, registrations, and certificates under such law, act, and section. The commission shall establish such fees by the adoption and promulgation of rules and regulations.

(2) Prior to establishing any fee, the commission shall, at least thirty days prior to the hearing required in section 84-907, make the following information available for public review:

(a) The commission's policy on the minimum cash balance to be maintained in the fund in which the revenue from the fee being established is deposited and the justification in support of such policy;

(b) Monthly estimates of cash fund revenue, expenditures, and ending balances for the current fiscal year and the following two fiscal years for the fund in which the revenue from the fee being established is deposited. Estimates shall be prepared for both the current fee schedule and the proposed fee schedule; and

(c) A statement of the reasons for establishing the fee at the proposed level.

(3) The commission may adopt and promulgate rules and regulations to establish fees for expired licenses, permits, stamps, bands, registrations, and certificates issued under the Game Law and the State Boat Act. The commission shall collect the fees and remit them to the State Treasurer for credit to the State Game Fund.

Source: Laws 1993, LB 235, § 1; R.S.1943, (1996), § 81-814.02; Laws 1998, LB 922, § 85; Laws 1999, LB 176, § 16; Laws 2009, LB105, § 4.

Cross References

State Boat Act, see section 37-1291.

(e) STATE PARK SYSTEM

37-351 Nebraska Outdoor Recreation Development Cash Fund; created; investment.

There is hereby created a fund to be known as the Nebraska Outdoor Recreation Development Cash Fund. The fund shall contain the money received pursuant to section 77-2602 and any funds donated as gifts, bequests, or other contributions to such fund from public or private entities. Transfers may be made from the fund to the General Fund at the direction of the Legislature through June 30, 2011. Any money in the Nebraska Outdoor Recreation Development 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 1978, LB 109, § 4; R.S.1943, (1993), § 37-1303; Laws 1998, LB 922, § 109; Laws 2009, First Spec. Sess., LB3, § 18.
Effective date November 21, 2009.

Cross References

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

(g) PROPERTY CONVEYED BY COMMISSION

37-354 Operation and maintenance; requirements; compliance and enforcement.

Property conveyed by the commission pursuant to sections 90-272 and 90-273 shall be operated and maintained as follows:

(1) The property shall be maintained so as to appear attractive and inviting to the public;

(2) Sanitation and sanitary facilities shall be maintained in accordance with applicable health standards;

(3) Properties shall be kept reasonably open, accessible, and safe for public use. Fire prevention and similar activities shall be maintained for proper public safety;

(4) Buildings, roads, trails, and other structures and improvements shall be kept in reasonable repair throughout their estimated lifetime to prevent undue deterioration and to encourage public use; and

(5) The facility shall be kept open for public use at reasonable hours and times of the year, according to the type of area or facility.

The commission shall be responsible for compliance and enforcement of the requirements set forth in this section.

Source: Laws 2010, LB743, § 4.
Effective date March 4, 2010.

ARTICLE 4

PERMITS AND LICENSES

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Section

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(a) GENERAL PERMITS

37-407 Hunting, fishing, and fur-harvesting permits; fees.

The commission may offer multiple-year permits or combinations of permits at reduced rates and may establish fees pursuant to section 37-327 to be paid to the state for resident and nonresident hunting permits, annual fishing permits, three-day fishing permits, one-day fishing permits, combination hunting and fishing permits, fur-harvesting permits, and nonresident special two-day hunting permits issued for periods of two consecutive days between the Wednesday immediately preceding Thanksgiving Day and December 31 of the same calendar year and limited to one special two-day permit per applicant per year, as follows:

(1) Resident fees shall be (a) not more than thirteen dollars for hunting, (b) not more than seventeen dollars and fifty cents for fishing, (c) not more than eleven dollars and fifty cents for a three-day fishing permit, (d) not more than eight dollars for a one-day fishing permit, (e) not more than twenty-nine dollars for both fishing and hunting, and (f) not more than twenty dollars for fur harvesting; and

(2) Nonresident fees shall be (a) not more than two hundred sixty dollars for a period of time specified by the commission for fur harvesting one thousand or less fur-bearing animals and not more than seventeen dollars and fifty cents additional for each one hundred or part of one hundred fur-bearing animals harvested, (b)(i) for persons sixteen years of age and older, not more than eighty dollars for hunting and (ii) for persons under sixteen years of age, not less than the fee required pursuant to subdivision (1)(a) of this section for hunting, (c) not more than thirty-five dollars for a special two-day hunting permit plus the cost of a habitat stamp, (d) not more than nine dollars for a one-day fishing permit, (e) not more than sixteen dollars and fifty cents for a three-day fishing permit, (f) not more than forty-nine dollars and fifty cents for an annual fishing permit, and (g)(i) for persons sixteen years of age and older, not more than one hundred fifty dollars for both fishing and hunting and (ii) for persons under sixteen years of age, not less than the fee required pursuant to subdivision (1)(e) of this section for both fishing and hunting.

Source: Laws 1929, c. 112, II, § 4, p. 410; C.S.1929, § 37-204; Laws 1935, c. 84, § 2, p. 275; Laws 1939, c. 44, § 1, p. 203; C.S.Supp.,1941, § 37-204; Laws 1943, c. 94, § 3, p. 323; R.S.1943, § 37-204; Laws 1945, c. 78, § 1, p. 288; Laws 1947, c. 132, § 1, p. 374; Laws 1949, c. 101, § 1, p. 278; Laws 1955, c. 130, § 1, p. 376; Laws 1957, c. 140, § 2, p. 475; Laws 1959, c. 150, § 1, p. 568; Laws 1963, c. 203, § 1, p. 654; Laws 1963, c. 202, § 2, p. 652; Laws 1965, c. 195, § 1, p. 594; Laws 1967, c. 215, § 1, p. 576; Laws 1969, c. 290, § 1, p. 1060; Laws 1972, LB 777, § 1; Laws 1974, LB 811, § 4; Laws 1975, LB 489, § 1; Laws 1976, LB 861, § 4; Laws 1977, LB 129, § 1; Laws 1979, LB 78, § 1; Laws 1979, LB 553, § 1; Laws 1981, LB 72, § 4; Laws 1987, LB 105, § 2; Laws 1989, LB 34, § 5; Laws 1993, LB 235, § 6; Laws 1995, LB 579, § 1; Laws 1995, LB 583, § 1; R.S.Supp.,1996, § 37-204; Laws 1998, LB 922, § 117; Laws 2001, LB 111, § 1; Laws 2002, LB 1003, § 19; Laws 2003, LB 306, § 1; Laws 2005, LB 162, § 2; Laws 2007, LB299, § 2; Laws 2009, LB105, § 5.

37-410 Permits; unlawful acts; penalty; confiscation of permits; residents under sixteen years of age, no permit necessary.

(1) It shall be unlawful (a) for any person who has been issued a permit under the Game Law to lend or transfer his or her permit to another or for any person to borrow or use the permit of another, (b) for any person to procure a permit under an assumed name or to falsely state the place of his or her legal residence or make any other false statement in securing a permit, (c) for any person to knowingly issue or aid in securing a permit under the Game Law for any person not legally entitled thereto, (d) for any person disqualified for a permit to hunt, fish, or harvest fur with or without a permit during any period when such right has been forfeited or for which his or her permit has been revoked by the commission, or (e) for any nonresident under the age of sixteen years to receive a permit to harvest fur from any fur-bearing animal under the Game Law without presenting a written request therefor signed by his or her father, mother, or guardian.

(2) All children who are residents of the State of Nebraska and are under sixteen years of age shall not be required to have a permit to hunt, harvest fur, or fish.

(3) Any person violating subdivision (1)(a), (b), (c), or (d) of this section shall be guilty of a Class II misdemeanor and, upon conviction, shall be fined at least one hundred dollars for violations involving a fishing permit, at least one hundred fifty dollars for violations involving a small game, fur-harvesting, paddlefish, or deer permit, at least two hundred fifty dollars for violations involving an antelope permit, at least five hundred dollars for violations involving an elk permit, and at least one thousand dollars for violations involving a mountain sheep permit. Any person violating subdivision (1)(e) of this section shall be guilty of a Class III misdemeanor and shall be fined at least seventy-five dollars. Any permits purchased or used in violation of this section shall be confiscated by the court.

Source: Laws 1929, c. 112, II, § 8, p. 411; C.S.1929, § 37-208; Laws 1941, c. 72, § 8, p. 305; C.S.Supp.,1941, § 37-208; R.S.1943, § 37-208; Laws 1949, c. 102, § 1, p. 280; Laws 1959, c. 150, § 2, p. 569; Laws 1977, LB 40, § 173; Laws 1981, LB 72, § 6; Laws 1989, LB 34, § 9; R.S.1943, (1993), § 37-208; Laws 1998, LB 922, § 120; Laws 1999, LB 176, § 22; Laws 2003, LB 305, § 7; Laws 2009, LB105, § 6.

37-411 Hunting, fishing, or fur harvesting without permit; unlawful; exceptions; violations; penalties.

(1) Unless issued a permit as required in the Game Law, it shall be unlawful:

(a) For any resident of Nebraska who is sixteen years of age or older or any nonresident of Nebraska to engage in fur harvesting or possess any fur-bearing animal or raw fur, except that a person may possess a fur-bearing animal or raw fur for up to ten days after expiration of a valid permit. Nonresident fur-harvesting permits may be issued only to residents of states which issue similar permits to residents of Nebraska;

(b) For any resident of Nebraska who is sixteen years of age or older or any nonresident of Nebraska to hunt or possess any kind of game birds, game animals, or crows;

(c) For any person who is sixteen years of age or older to hunt or possess any migratory waterfowl without a federal migratory bird hunting stamp and a Nebraska migratory waterfowl stamp as required under the Game Law and rules and regulations of the commission; or

(d) For any person who is sixteen years of age or older to take any kind of fish, bullfrog, snapping turtle, tiger salamander, or mussel from the waters of this state or possess the same except as provided in section 37-402. All nonresident anglers under sixteen years of age shall be accompanied by a person who has a valid fishing permit.

(2) It shall be unlawful for a nonresident to hunt or possess any kind of game birds or game animals, to take any kind of fish, mussel, turtle, or amphibian, or to harvest fur with a resident permit illegally obtained.

(3) It shall be unlawful for anyone to do or attempt to do any other thing for which a permit is required by the Game Law without first obtaining such permit and paying the fee required.

(4) Any nonresident who hunts or has in his or her possession any wild mammal or wild bird shall first have a nonresident hunting permit as required under the Game Law and rules and regulations of the commission.

(5) Any nonresident who takes or has in his or her possession any wild turtle, mussel, or amphibian shall first have a nonresident fishing permit as required under the Game Law and rules and regulations of the commission.

(6) Except as provided in this section and sections 37-407 and 37-418, it shall be unlawful for any nonresident to trap or attempt to trap or to harvest fur or attempt to harvest fur from any wild mammal.

(7)(a) Any person violating this section shall be guilty of a Class II misdemeanor and, upon conviction, shall be fined at least fifty dollars for failure to hold the appropriate stamp under subdivision (1)(c) of this section, at least one hundred dollars for failure to hold a fishing permit, at least one hundred fifty dollars for failure to hold a small game, fur-harvesting, paddlefish, or deer permit, at least two hundred fifty dollars for failure to hold an antelope permit, at least five hundred dollars for failure to hold an elk permit, and at least one thousand dollars for failure to hold a mountain sheep permit.

(b) If the offense is failure to hold a hunting, fishing, fur-harvesting, deer, turkey, or antelope permit as required, unless issuance of the required permit is restricted so that permits are not available, the court shall require the offender to purchase the required permit and exhibit proof of such purchase to the court.

Source: Laws 1929, c. 112, II, § 13, p. 412; C.S.1929, § 37-213; Laws 1937, c. 89, § 4, p. 292; Laws 1941, c. 72, § 3, p. 301; C.S.Supp.,1941, § 37-213; R.S.1943, § 37-213; Laws 1949, c. 102, § 2, p. 280; Laws 1957, c. 139, § 5, p. 466; Laws 1959, c. 154, § 1, p. 580; Laws 1959, c. 150, § 4, p. 571; Laws 1959, c. 149, § 2, p. 565; Laws 1961, c. 169, § 2, p. 502; Laws 1961, c. 171, § 1, p. 511; Laws 1965, c. 197, § 1, p. 598; Laws 1965, c. 194, § 2, p. 592; Laws 1967, c. 216, § 5, p. 581; Laws 1972, LB 777, § 2; Laws 1973, LB 331, § 3; Laws 1977, LB 40, § 176; Laws 1978, LB 75, § 1; Laws 1979, LB 553, § 2; Laws 1979, LB 435, § 1; Laws 1981, LB 72, § 9; Laws 1987, LB 171, § 1; Laws 1987, LB 105, § 4; Laws 1989, LB 34, § 11; Laws 1989, LB 127,

§ 1; Laws 1993, LB 235, § 10; Laws 1996, LB 584, § 5; R.S.Supp.,1996, § 37-213; Laws 1998, LB 922, § 121; Laws 1999, LB 176, § 23; Laws 1999, LB 404, § 23; Laws 2003, LB 305, § 8; Laws 2005, LB 162, § 3; Laws 2009, LB105, § 7.

Cross References

Predatory animals, subject to destruction, see sections 23-358 and 81-2,236.

37-413 Firearm hunter education program; commission issue certificate; hunting, lawful when; apprentice hunter education exemption certificate; fee.

(1) For the purpose of establishing and administering a mandatory firearm hunter education program for persons twelve through twenty-nine years of age who hunt with a firearm or crossbow any species of game, game birds, or game animals, the commission shall provide a program of firearm hunter education training leading to obtaining a certificate of successful completion in the safe handling of firearms and shall locate and train volunteer firearm hunter education instructors. The program shall provide a training course having a minimum of (a) ten hours of classroom instruction or (b) independent study on the part of the student sufficient to pass an examination given by the commission followed by such student's participation in a minimum of four hours of practical instruction. The program shall provide instruction in the areas of safe firearms use, shooting and sighting techniques, hunter ethics, game identification, and conservation management. The commission shall issue a firearm hunter education certificate of successful completion to persons having satisfactorily completed a firearm hunter education course accredited by the commission and shall print, purchase, or otherwise acquire materials as necessary for effective program operation. The commission shall adopt and promulgate rules and regulations for carrying out and administering such programs.

(2) It shall be unlawful for any person twenty-nine years of age or younger to hunt with a firearm or crossbow any species of game, game birds, or game animals except:

(a) A person under the age of twelve years who is accompanied by a person nineteen years of age or older having a valid hunting permit;

(b) A person twelve through twenty-nine years of age who has on his or her person proof of successful completion of a hunter education course or a firearm hunter education course issued by the person's state or province of residence or by an accredited program recognized by the commission; or

(c) A person twelve through twenty-nine years of age who has on his or her person the appropriate hunting permit and an apprentice hunter education exemption certificate issued by the commission pursuant to subsection (3) of this section and who is accompanied as described in subsection (4) of this section.

(3) An apprentice hunter education exemption certificate may be issued to a person twelve through twenty-nine years of age, once during such person's lifetime with one renewal, upon payment of a fee of five dollars and shall expire at midnight on December 31 of the year for which the apprentice hunter education exemption certificate is issued. The commission may adopt and promulgate rules and regulations allowing for the issuance of apprentice hunter education exemption certificates. All fees collected under this subsection shall be remitted to the State Treasurer for credit to the State Game Fund.

(4) For purposes of this section, accompanied means under the direct supervision of a person who is: (a) Nineteen years of age or older having a valid hunting permit. If such person is nineteen years of age or older but not older than twenty-nine years of age, he or she shall have also completed the required course of instruction to receive a certificate of completion for firearm hunter education if hunting with a firearm or crossbow as described in subdivision (2)(b) of this section or for bow hunter education if hunting with a bow and arrow as described in section 37-414; and (b) at all times in unaided visual and verbal communication of no more than two persons having an apprentice hunter education exemption certificate. This subsection does not prohibit the use by such person nineteen years of age or older of ordinary prescription eyeglasses or contact lenses or ordinary hearing instruments.

Source: Laws 1969, c. 766, § 1, p. 2903; Laws 1974, LB 865, § 1; Laws 1996, LB 584, § 1; R.S.Supp.,1996, § 37-104; Laws 1998, LB 922, § 123; Laws 2001, LB 111, § 3; Laws 2003, LB 305, § 9; Laws 2008, LB690, § 1; Laws 2009, LB195, § 4; Laws 2010, LB871, § 1.
Effective date July 15, 2010.

37-415 Lifetime fur-harvesting, fishing, hunting, or combination permit; fees; replacement; rules and regulations.

(1) The commission may issue to any Nebraska resident a lifetime fur-harvesting, fishing, hunting, or combination hunting and fishing permit upon application and payment of the appropriate fee. The fee for a resident lifetime fur-harvesting permit shall be not more than two hundred ninety-nine dollars, the fee for a resident lifetime hunting permit shall be not more than two hundred ninety-nine dollars, the fee for a resident lifetime fishing permit shall be not more than three hundred forty-five dollars plus the cost of a lifetime aquatic habitat stamp, and the fee for a resident lifetime combination hunting and fishing permit shall be not more than five hundred ninety-eight dollars plus the cost of a lifetime aquatic habitat stamp, as such fees are established by the commission pursuant to section 37-327. Payment of the fee shall be made in a lump sum at the time of application.

(2) A resident lifetime permit shall not be made invalid by reason of the holder subsequently residing outside the state.

(3) The commission may issue to any nonresident a lifetime fishing, hunting, or combination hunting and fishing permit upon application and payment of the appropriate fee. The fee for a nonresident lifetime hunting permit shall be not more than twelve hundred fifty dollars, the fee for a nonresident lifetime fishing permit shall be not more than eight hundred fifty dollars plus the cost of a lifetime aquatic habitat stamp, and the fee for a nonresident lifetime combination hunting and fishing permit shall be not more than two thousand dollars plus the cost of a lifetime aquatic habitat stamp, as such fees are established by the commission pursuant to section 37-327. Payment of the fee shall be made in a lump sum at the time of application.

(4) A replacement resident or nonresident lifetime permit may be issued if the original has been lost or destroyed. The fee for a replacement shall be not less than one dollar and fifty cents and not more than five dollars, as established by the commission.

(5) The commission may adopt and promulgate rules and regulations to carry out this section and sections 37-416 and 37-417. Such rules and regulations may include, but need not be limited to, establishing fees which vary based on the age of the applicant.

Source: Laws 1983, LB 173, § 1; Laws 1993, LB 235, § 4; R.S.1943, (1993), § 37-202.01; Laws 1998, LB 922, § 125; Laws 1999, LB 176, § 24; Laws 2001, LB 111, § 5; Laws 2003, LB 306, § 2; Laws 2005, LB 162, § 4; Laws 2008, LB1162, § 1; Laws 2009, LB105, § 8.

37-417 Lifetime permits; fees; disposition.

Fees received for lifetime permits under the Game Law shall be credited to the State Game Fund. Twenty-five percent of the fees for lifetime permits shall not be expended but may be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Income from such investments may be expended by the commission.

Source: Laws 1983, LB 173, § 3; Laws 1995, LB 7, § 32; R.S.Supp.,1996, § 37-202.03; Laws 1998, LB 922, § 127; Laws 2009, LB105, § 9.

Cross References

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

37-426 Taking birds, animals, and aquatic organisms; stamps; when required; exhibit on request; fees.

(1) Except as provided in subsection (4) of this section:

(a) No resident of Nebraska sixteen years of age or older and no nonresident of Nebraska regardless of age shall hunt, harvest, or possess any game bird, upland game bird, game animal, or fur-bearing animal unless, at the time of such hunting, harvesting, or possessing, such person has an unexpired habitat stamp as prescribed by the rules and regulations of the commission prior to the time of hunting, harvesting, or possessing such bird or animal;

(b) No resident or nonresident of Nebraska shall take or possess any aquatic organism requiring a Nebraska fishing permit, including any fish, bullfrog, snapping turtle, tiger salamander, or mussel, unless, at the time of such taking or possessing, such person has an unexpired aquatic habitat stamp as prescribed by the rules and regulations of the commission prior to the time of taking or possessing a fish, bullfrog, snapping turtle, tiger salamander, or mussel; and

(c) No resident of Nebraska sixteen years of age or older and no nonresident of Nebraska regardless of age shall hunt, harvest, or possess any migratory waterfowl unless, at the time of such hunting, harvesting, or possessing, such person has an unexpired Nebraska migratory waterfowl stamp as prescribed by the rules and regulations of the commission prior to the time of hunting, harvesting, or possessing such migratory waterfowl.

(2)(a) The commission may issue a lifetime habitat stamp upon application and payment of the appropriate fee. The fee for a lifetime habitat stamp shall be twenty times the fee required in subsection (5) of this section for an annual habitat stamp. Payment of such fee shall be made in a lump sum at the time of application. A replacement lifetime habitat stamp may be issued if the original

is lost or destroyed. The fee for a replacement shall be not more than five dollars, as established by the commission.

(b) The commission may issue a lifetime Nebraska migratory waterfowl stamp upon application and payment of the appropriate fee. The fee for a lifetime Nebraska migratory waterfowl stamp shall be twenty times the fee required in subsection (5) of this section for an annual Nebraska migratory waterfowl stamp. Payment of such fee shall be made in a lump sum at the time of application. A replacement Nebraska lifetime migratory waterfowl stamp may be issued if the original is lost or destroyed. The fee for a replacement shall be not more than five dollars, as established by the commission.

(3) The commission may issue a lifetime aquatic habitat stamp upon application and payment of the appropriate fee. The fee for a lifetime aquatic habitat stamp shall be not more than two hundred dollars as established by the commission pursuant to section 37-327. Payment of such fee shall be made in a lump sum at the time of application. A lifetime aquatic habitat stamp shall not be made invalid by reason of the holder subsequently residing outside the state. A replacement lifetime aquatic habitat stamp may be issued if the original is lost or destroyed. The fee for a replacement shall be not more than five dollars, as established by the commission.

(4) Habitat stamps are not required for holders of limited permits issued under section 37-455. Aquatic habitat stamps are not required (a) when a fishing permit is not required, (b) for holders of permits pursuant to section 37-424, or (c) for holders of lifetime fishing permits or lifetime combination hunting and fishing permits purchased prior to January 1, 2006. Nebraska migratory waterfowl stamps are not required for hunting, harvesting, or possessing any species other than ducks, geese, or brant. For purposes of this section, a showing of proof of the electronic issuance of a stamp by the commission shall fulfill the requirements of this section.

(5) Any person to whom a stamp has been issued shall, immediately upon request, exhibit evidence of issuance of the stamp to any officer. Any person hunting, fishing, harvesting, or possessing any game bird, upland game bird, game animal, or fur-bearing animal or any aquatic organism requiring a fishing permit in this state without evidence of issuance of the appropriate stamp shall be deemed to be without such stamp. A habitat stamp shall be issued upon the payment of a fee of twenty dollars per stamp. An aquatic habitat stamp shall be issued in conjunction with each fishing permit for a fee of ten dollars per stamp for annual fishing permits, three-day fishing permits, or combination hunting and fishing permits and a fee of not more than two hundred dollars for lifetime fishing or combination hunting and fishing permits. The fee established under section 37-407 for a one-day fishing permit shall include an aquatic habitat stamp. One dollar from the sale of each one-day fishing permit shall be remitted to the State Treasurer for credit to the Nebraska Aquatic Habitat Fund. A Nebraska migratory waterfowl stamp shall be issued upon the payment of a fee of not more than sixteen dollars per stamp. The commission shall establish the fees pursuant to section 37-327.

Source: Laws 1976, LB 861, § 7; Laws 1981, LB 72, § 12; Laws 1983, LB 170, § 3; Laws 1991, LB 340, § 1; Laws 1993, LB 235, § 15; Laws 1996, LB 584, § 9; Laws 1997, LB 19, § 3; R.S.Supp.,1997, § 37-216.01; Laws 1998, LB 922, § 136; Laws 1999, LB 176, § 27; Laws 2001, LB 111, § 6; Laws 2002, LB 1003, § 20; Laws

2003, LB 305, § 11; Laws 2003, LB 306, § 3; Laws 2005, LB 162, § 8; Laws 2007, LB299, § 4; Laws 2008, LB1162, § 2; Laws 2009, LB105, § 10.

37-431 Nebraska Habitat Fund; Nebraska Aquatic Habitat Fund; created; use; investment; stamps; fees; disposition; duties of officials; violation; penalty.

(1)(a) The Nebraska Habitat Fund is created. The commission shall remit fees received for habitat stamps and Nebraska migratory waterfowl stamps to the State Treasurer for credit to the Nebraska Habitat 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. Up to twenty-five percent of the annual receipts of the fund may be spent by the commission to provide access to private wildlife lands and habitat areas, and the remainder of the fund shall not be spent until the commission has presented a habitat plan to the Committee on Appropriations of the Legislature for its approval.

(b) Fees received for lifetime habitat stamps and lifetime Nebraska migratory waterfowl stamps under the Game Law shall be credited to the Nebraska Habitat Fund. Twenty-five percent of the fees for such stamps shall not be expended but may be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Income from such investments may be expended by the commission pursuant to section 37-432.

(2)(a) The Nebraska Aquatic Habitat Fund is created. The commission shall remit fees received for aquatic habitat stamps and one dollar of the one-day fishing permit fee as provided in section 37-426 to the State Treasurer for credit to the Nebraska Aquatic Habitat 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. Up to thirty percent of the annual receipts of the fund may be spent by the commission to provide public waters angler access enhancements and to provide funding for the administration of programs related to aquatic habitat and public waters angler access enhancements, and the remainder of the fund shall not be spent until the commission has presented a habitat plan to the Committee on Appropriations and the Committee on Natural Resources of the Legislature for their approval.

(b) Fees received for lifetime aquatic habitat stamps shall be credited to the Nebraska Aquatic Habitat Fund and shall not be expended but may be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Income from such investments may be expended by the commission pursuant to section 37-432.

(3) The secretary of the commission and any county clerk or public official designated to sell habitat stamps, aquatic habitat stamps, or Nebraska migratory waterfowl stamps shall be liable upon their official bonds or equivalent commercial insurance policy for failure to remit the money from the sale of the stamps, as required by sections 37-426 to 37-433, coming into their hands. Any agent who receives stamp fees and who fails to remit the fees to the commission within a reasonable time after demand by the commission shall be liable to the commission in damages for double the amount of the funds wrongfully withheld. Any agent who purposefully fails to remit such fees with the intention of

converting them is guilty of theft. The penalty for such violation shall be determined by the amount converted as specified in section 28-518.

Source: Laws 1976, LB 861, § 13; Laws 1983, LB 174, § 7; Laws 1996, LB 584, § 15; R.S.Supp.,1996, § 37-216.07; Laws 1998, LB 922, § 141; Laws 1999, LB 176, § 31; Laws 2001, LB 111, § 8; Laws 2004, LB 884, § 19; Laws 2005, LB 162, § 12; Laws 2007, LB299, § 6; Laws 2009, LB105, § 11.

Cross References

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

37-432 Stamps; money received from fees; administered by commission; purposes.

(1) All money received from the sale of habitat stamps, as provided by sections 37-426 to 37-433, shall be administered by the commission for the acquisition of, on a willing-seller willing-buyer basis only, leasing of, development of, management of, enhancement of, access to, and taking of easements on wildlife lands and habitat areas. Such funds may be used in whole or in part for the matching of federal funds. Up to twenty-five percent of the money received from the sale of habitat stamps may be used to provide access to private wildlife lands and habitat areas.

(2) All money received from the sale of aquatic habitat stamps, as provided by sections 37-426 to 37-433, shall be administered by the commission and shall be used for the maintenance and restoration of existing aquatic habitat if maintenance and restoration is practicable, for the enhancement of existing aquatic habitat, for public waters angler access enhancements, and for administration of programs related to aquatic habitat and public waters angler access enhancements. Such funds may be used in whole or in part for the matching of federal funds. Up to thirty percent of the money received from the sale of aquatic habitat stamps may be used to provide public waters angler access enhancements and to provide funding for administration of programs related to aquatic habitat and public waters angler access enhancements.

(3) All money received from the sale of Nebraska migratory waterfowl stamps, as provided by sections 37-426 to 37-433, shall be administered by the commission for the acquisition on a willing-seller willing-buyer basis only, leasing, development, management, and enhancement of and taking of easements on migratory waterfowl habitat. Such funds may be used in whole or in part for the matching of federal funds.

Source: Laws 1976, LB 861, § 14; Laws 1983, LB 174, § 8; Laws 1996, LB 584, § 16; R.S.Supp.,1996, § 37-216.08; Laws 1998, LB 922, § 142; Laws 2005, LB 162, § 13; Laws 2009, LB105, § 12.

37-433 Violations; penalty; affirmative defense.

Unless otherwise provided in sections 37-426 to 37-433, any person who violates any provision of sections 37-426 to 37-433 or who violates or fails to comply with any rule or regulation thereunder shall be guilty of a Class V misdemeanor and shall be fined at least fifty dollars upon conviction.

It shall be an affirmative defense to prosecution for any violation of sections 37-426 to 37-433 for which possession is an element of the offense that such possession was not the result of effort or determination or that the actor was

unaware of his or her physical possession or control for a sufficient period to have been able to terminate such possession or control.

Source: Laws 1976, LB 861, § 15; Laws 1977, LB 41, § 7; Laws 1983, LB 174, § 9; Laws 1996, LB 584, § 17; R.S.Supp.,1996, § 37-216.09; Laws 1998, LB 922, § 143; Laws 2009, LB105, § 13.

37-440 Display and issuance of permits; where procured; clerical fee.

(1) The commission shall prescribe the type and design of permits and the method of display of permits for motor vehicles. The commission may provide for the electronic issuance of permits and may enter into contracts to procure necessary services and supplies for the electronic issuance of permits.

(2) The permits may be procured from the central and district offices of the commission, at areas of the Nebraska state park system where commission offices are maintained, from self-service vending stations at designated park areas, from designated commission employees, through Internet sales from the commission's web site, from appropriate offices of county government, and from various private persons, firms, or corporations designated by the commission as permit agents. The commission and county offices or private persons, firms, or corporations designated by the commission as permit agents shall be entitled to collect and retain a fee of not less than twenty-five cents and not more than thirty-five cents, as established by the commission pursuant to section 37-327, for each permit as reimbursement for the clerical work of issuing the permits and remitting therefor. The commission shall be entitled to collect and retain a fee of one dollar for each permit sold through its web site as reimbursement for the clerical work and postage associated with issuing the permit.

Source: Laws 1977, LB 81, § 8; Laws 1980, LB 723, § 5; Laws 1993, LB 235, § 34; R.S.1943, (1993), § 37-1108; Laws 1998, LB 922, § 150; Laws 1999, LB 176, § 37; Laws 2002, LB 1003, § 21; Laws 2009, LB105, § 14.

(b) SPECIAL PERMITS AND LICENSES

37-447 Permit to hunt deer; regulation and limitation by commission; issuance; fee; violation; penalty.

(1) The commission may issue permits for the hunting of deer and prescribe and adopt and promulgate rules and regulations and limitations for the hunting, transportation, and possession of deer. The commission may offer multiple-year permits or combinations of permits at reduced rates. The commission may specify by regulation the information to be required on applications for such permits. Regulations and limitations for the hunting, transportation, and possession of deer may include, but not be limited to, regulations and limitations as to the type, caliber, and other specifications of firearms and ammunition used and specifications for bows and arrows used. Such regulations and limitations may further specify and limit the method of hunting deer and may provide for dividing the state into management units or areas, and the commission may enact different deer hunting regulations for the different management units pertaining to sex, species, and age of the deer hunted.

(2) The number of such permits may be limited as provided by the rules and regulations of the commission, and except as provided in section 37-454, the

permits shall be disposed of in an impartial manner. Whenever the commission deems it advisable to limit the number of permits issued for any or all management units, the commission shall, by rules and regulations, determine who shall be eligible to obtain such permits. In establishing eligibility, the commission may give preference to persons who did not receive a permit or a specified type of permit during the previous year or years.

(3) Such permits may be issued to allow deer hunting in the Nebraska National Forest and other game reserves and such other areas as the commission may designate whenever the commission deems that permitting such hunting will not be detrimental to the proper preservation of wildlife in Nebraska in such forest, reserves, or areas.

(4)(a) The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-nine dollars for residents and not more than two hundred fourteen dollars for nonresidents for each permit issued under this section except as otherwise provided in subdivision (b) of this subsection and subsection (6) of this section.

(b) The fee for a statewide buck-only permit shall be no more than two and one-half times the amount of a regular deer permit. The commission may provide different fees for different species.

(5) The commission may issue nonresident permits after preference has been given for the issuance of resident permits as provided in rules and regulations adopted and promulgated by the commission. The commission may require a predetermined application period for permit applications in specified management units. Such permits shall be issued after a reasonable period for making application, as established by the commission, has expired. When more valid applications are received for a designated management unit than there are permits available, such permits shall be allocated on the basis of a random drawing. All valid applications received during the predetermined application period shall be considered equally in any such random drawing without regard to time of receipt of such applications by the commission.

(6) The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-five dollars for residents and not more than forty-five dollars for nonresidents for a youth deer permit.

(7) Any person violating the rules and regulations adopted and promulgated pursuant to this section shall be guilty of a Class II misdemeanor and shall be fined at least one hundred dollars upon conviction.

Source: Laws 1945, c. 85, § 1, p. 305; Laws 1947, c. 133, § 1, p. 376; Laws 1949, c. 103, § 1(1), p. 282; Laws 1951, c. 109, § 1, p. 517; Laws 1953, c. 124, § 1, p. 389; Laws 1957, c. 141, § 1, p. 477; Laws 1959, c. 156, § 1, p. 584; Laws 1969, c. 292, § 1, p. 1063; Laws 1972, LB 777, § 3; Laws 1974, LB 767, § 1; Laws 1976, LB 861, § 6; Laws 1979, LB 437, § 1; Laws 1981, LB 72, § 11; Laws 1984, LB 1001, § 1; Laws 1985, LB 557, § 2; Laws 1993, LB 235, § 13; Laws 1994, LB 1088, § 4; Laws 1995, LB 583, § 2; Laws 1995, LB 862, § 1; Laws 1996, LB 584, § 6; Laws 1997, LB 107, § 2; R.S.Supp.,1997, § 37-215; Laws 1998, LB 922, § 157; Laws 1999, LB 176, § 42; Laws 2003, LB 306, § 4; Laws 2005, LB 162, § 15; Laws 2007, LB299, § 7; Laws 2009, LB105, § 15.

37-448 Special deer depredation season; extension of existing deer hunting season; permit; issuance; fee; free permits; when issued.

(1) Subject to rules and regulations adopted and promulgated by the commission, the secretary of the commission may designate special deer depredation seasons or extensions of existing deer hunting seasons by executive order. The secretary may designate a depredation season or an extension of an existing deer hunting season whenever he or she determines that deer are causing excessive property damage. The secretary shall specify the number of permits to be issued, the species of deer allowed to be taken, the bag limit for such species, the beginning and ending dates for the depredation season or hunting season extension, shooting hours, the length of the depredation season or hunting season extension, and the geographic area in which hunting will be permitted. Hunting during a special depredation season or hunting season extension shall be limited to residents, and the rules and regulations shall allow use of any weapon permissible for use during the regular deer season.

(2) The depredation season may commence not less than five days after the first public announcement that the depredation season has been established. Permits shall be issued in an impartial manner at a location determined by the secretary. The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-five dollars for a special depredation season permit. The commission shall use the income from the sale of special depredation season permits for abatement of damage caused by deer. The commission shall also provide for an unlimited number of free permits for the taking of antlerless deer upon request to any person owning or operating at least twenty acres of farm or ranch land within the geographic area in which hunting will be permitted and to any member of the immediate family of any such person as defined in subdivision (2)(a) of section 37-455. A free permit shall be valid only within such area and only during the designated deer depredation season. Receipt of a depredation season permit shall not in any way affect a person's eligibility for a regular season permit.

Source: Laws 1998, LB 922, § 158; Laws 2008, LB1162, § 4; Laws 2010, LB836, § 2.
Effective date July 15, 2010.

37-449 Permit to hunt antelope; regulation and limitation by commission; issuance; fees; violation; penalty.

(1) The commission may issue permits for hunting antelope and may adopt and promulgate separate and, when necessary, different rules and regulations therefor within the limitations prescribed in sections 37-447 and 37-452 for hunting deer. The commission may offer multiple-year permits or combinations of permits at reduced rates.

(2) The commission may, pursuant to section 37-327, establish and charge a nonrefundable application fee of not more than seven dollars. The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-nine dollars for residents and not more than one hundred forty-nine dollars and fifty cents for nonresidents for each permit issued under this section except as provided in subsection (4) of this section.

(3) The provisions for the distribution of deer permits and the authority of the commission to determine eligibility of applicants for permits as described in

sections 37-447 and 37-452 shall also apply to the distribution of antelope permits.

(4) The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-five dollars for residents and not more than forty-five dollars for nonresidents for a youth antelope permit.

(5) Any person violating the rules and regulations adopted and promulgated pursuant to this section shall be guilty of a Class II misdemeanor and shall be fined at least one hundred dollars upon conviction.

Source: Laws 1998, LB 922, § 159; Laws 2003, LB 305, § 14; Laws 2003, LB 306, § 5; Laws 2007, LB299, § 8; Laws 2009, LB105, § 16.

37-450 Permit to hunt elk; regulation and limitation by commission; issuance; fee; violation; penalty.

(1) The commission may issue permits for hunting elk and may adopt and promulgate separate and, when necessary, different rules and regulations therefor within the limitations prescribed in sections 37-447 and 37-452 for hunting deer.

(2) The commission shall, pursuant to section 37-327, establish and charge (a) a nonrefundable application fee of not more than eight dollars and fifty cents for a resident elk permit and not to exceed three times such amount for a nonresident elk permit and (b) a fee of not more than one hundred forty-nine dollars and fifty cents for each resident elk permit issued and not to exceed three times such amount for each nonresident elk permit issued.

(3) A person may obtain only one antlered-elk permit in his or her lifetime except for a limited permit to hunt elk pursuant to section 37-455.

(4) The provisions for the distribution of deer permits and the authority of the commission to determine eligibility of applicants for permits as described in sections 37-447 and 37-452 shall also apply to the distribution of elk permits.

(5) Any person violating the rules and regulations adopted and promulgated pursuant to this section shall be guilty of a Class III misdemeanor and shall be fined at least two hundred dollars upon conviction.

Source: Laws 1998, LB 922, § 160; Laws 2003, LB 306, § 6; Laws 2005, LB 162, § 16; Laws 2007, LB299, § 9; Laws 2009, LB105, § 17.

37-451 Permit to hunt mountain sheep; regulation and limitation by commission; issuance; fee; violation; penalty.

(1) The commission may issue permits for hunting mountain sheep and may adopt and promulgate separate and, when necessary, different rules and regulations therefor within the limitations prescribed in subsection (1) of section 37-447 and section 37-452 for hunting deer. Such rules and regulations shall include provisions allowing persons who find dead mountain sheep, or any part of a mountain sheep, to turn over to the commission such mountain sheep or part of a mountain sheep. The commission may dispose of such mountain sheep or part of a mountain sheep as it deems reasonable and prudent. Except as otherwise provided in this section, the permits shall be issued to residents of Nebraska.

(2) The commission shall, pursuant to section 37-327, establish and charge a nonrefundable application fee of not more than twenty-five dollars for permits issued only to residents. Any number of resident-only permits, as authorized by

the commission, shall be awarded by random drawing to eligible applicants. No permit fee shall be charged in addition to the nonrefundable application fee.

(3) No more than one additional permit may be authorized and issued pursuant to an auction open to residents and nonresidents. The auction shall be conducted according to rules and regulations prescribed by the commission. Any money derived from the sale of permits by auction shall be used only for perpetuation and management of mountain sheep, elk, and deer.

(4) If the commission determines to limit the number of permits issued for any or all management units, the commission shall by rule and regulation determine eligibility requirements for the permits.

(5) A person may obtain only one mountain sheep permit in his or her lifetime.

(6) Any person violating the rules and regulations adopted and promulgated pursuant to this section shall be guilty of a Class III misdemeanor and shall be fined at least five hundred dollars upon conviction.

Source: Laws 1998, LB 922, § 161; Laws 2008, LB1162, § 5; Laws 2009, LB105, § 18.

37-455 Limited deer, antelope, wild turkey, or elk permit; conditions; fee.

(1) The commission may issue a limited permit for deer, antelope, wild turkey, or elk to a person who is a qualifying landowner or leaseholder and his or her immediate family as described in this section. The commission may issue nonresident landowner limited permits after preference has been given for the issuance of resident permits as provided in rules and regulations adopted and promulgated by the commission. A permit shall be valid during the predetermined period established by the commission pursuant to sections 37-447 to 37-450, 37-452, 37-456, or 37-457. Upon receipt of an application in proper form as prescribed by the rules and regulations of the commission, the commission may issue (a) a limited deer, antelope, or wild turkey permit valid for hunting on all of the land which is owned or leased by the qualifying landowner or leaseholder if such lands are identified in the application or (b) a limited elk permit valid for hunting on the entire elk management unit of which the land of the qualifying landowner or leaseholder included in the application is a part.

(2)(a) The commission shall adopt and promulgate rules and regulations prescribing procedures and forms and create requirements for documentation by an applicant or permittee to determine whether the applicant or permittee is a Nebraska resident and is a qualifying landowner or leaseholder of the described property or is a member of the immediate family of such qualifying landowner or leaseholder. Only a person who is a qualifying landowner or leaseholder and such person's immediate family may apply for a limited permit. An applicant may apply for no more than one permit per species per year except as otherwise provided in the rules and regulations of the commission. For purposes of this section, immediate family means and is limited to a husband and wife and their children or siblings sharing ownership in the property.

(b) The conditions applicable to permits issued pursuant to sections 37-447 to 37-450, 37-452, 37-456, or 37-457, whichever is appropriate, shall apply to limited permits issued pursuant to this section, except that the commission may adopt and promulgate rules and regulations for species harvest allocation

pertaining to the sex and age of the species harvested which are different for a limited permit than for other hunting permits. For purposes of this section, white-tailed deer and mule deer shall be treated as one species.

(3)(a) To qualify for a limited permit to hunt deer or antelope, the applicant shall be a Nebraska resident who owns or leases eighty acres or more of farm or ranch land for agricultural purposes or a member of such person's immediate family. The number of limited permits issued annually per species for each farm or ranch shall not exceed the total acreage of the farm or ranch divided by eighty. The fee for a limited permit to hunt deer or antelope shall be one-half the fee for the regular permit for such species.

(b) A nonresident of Nebraska who owns three hundred twenty acres or more of farm or ranch land in the State of Nebraska for agricultural purposes or a member of such person's immediate family may apply for a limited deer or antelope permit. The number of limited permits issued annually per species for each farm or ranch shall not exceed the total acreage of the farm or ranch divided by three hundred twenty. The fee for such a permit to hunt deer or antelope shall be one-half the fee for a nonresident permit to hunt such species.

(c) The commission may adopt and promulgate rules and regulations providing for the issuance of an additional limited deer permit to a qualified individual for the taking of a deer without antlers at a fee equal to or less than the fee for the original limited permit.

(4)(a) To qualify for a limited permit to hunt wild turkey, the applicant shall be a Nebraska resident who owns or leases eighty acres or more of farm or ranch land for agricultural purposes or a member of such person's immediate family. The number of limited permits issued annually per season for each farm or ranch shall not exceed the total acreage of the farm or ranch divided by eighty. An applicant may apply for no more than one limited permit per season. The fee for a limited permit to hunt wild turkey shall be one-half the fee for the regular permit to hunt wild turkey.

(b) A nonresident of Nebraska who owns three hundred twenty acres or more of farm or ranch land in the State of Nebraska for agricultural purposes or a member of such person's immediate family may apply for a limited permit to hunt wild turkey. Only one limited wild turkey permit per three hundred twenty acres may be issued annually for each wild turkey season under this subdivision. The fee for such a permit to hunt shall be one-half the fee for a nonresident permit to hunt wild turkey.

(5) To qualify for a limited permit to hunt elk, (a) the applicant shall be (i) a Nebraska resident who owns three hundred twenty acres or more of farm or ranch land for agricultural purposes, (ii) a Nebraska resident who leases six hundred forty acres or more of farm or ranch land for agricultural purposes or has a leasehold interest and an ownership interest in farm or ranch land used for agricultural purposes which when added together totals at least six hundred forty acres, (iii) a nonresident of Nebraska who owns at least one thousand two hundred eighty acres of farm or ranch land for agricultural purposes, or (iv) a member of such owner's or lessee's immediate family and (b) the qualifying farm or ranch land of the applicant shall be within an area designated as an elk management zone by the commission in its rules and regulations. An applicant shall not be issued a limited bull elk permit more than once every three years, and the commission may give preference to a person who did not receive a limited elk permit or a specified type of limited elk permit during the previous

years. The fee for a resident landowner limited permit to hunt elk shall not exceed one-half the fee for the regular permit to hunt elk. The fee for a nonresident landowner limited permit to hunt elk shall not exceed three times the cost of a resident elk permit. The number of applications allowed for limited elk permits for each farm or ranch shall not exceed the total acreage of the farm or ranch divided by the minimum acreage requirements established for the property. No more than one person may qualify for the same described property.

Source: Laws 1969, c. 761, § 1, p. 2878; Laws 1974, LB 767, § 2; Laws 1975, LB 270, § 1; Laws 1983, LB 170, § 2; Laws 1985, LB 557, § 5; Laws 1993, LB 235, § 14; Laws 1996, LB 584, § 7; Laws 1997, LB 107, § 3; Laws 1997, LB 173, § 3; R.S.Supp.,1997, § 37-215.03; Laws 1998, LB 922, § 165; Laws 2001, LB 111, § 9; Laws 2002, LB 1003, § 23; Laws 2003, LB 305, § 16; Laws 2004, LB 1149, § 1; Laws 2009, LB105, § 19.

37-455.01 Permit to hunt antelope, elk, deer, and wild turkey; auction or lottery permits; issuance; fee.

The commission may issue auction or lottery permits for up to five permits each for antelope and elk and up to twenty-five permits each for deer and wild turkey during the calendar year. Included in that number are single species and combination species permits and shared revenue permits that may be issued by the commission. The shared revenue permits may be issued under agreements with nonprofit conservation organizations and may be issued by auction or lottery, with the commission receiving at least eighty percent of any profit realized. The commission shall by rule and regulation adopt limitations for any such permits that are issued. The auction or lottery shall be conducted according to rules and regulations adopted and promulgated by the commission. The commission shall adopt and promulgate rules and regulations to set a nonrefundable lottery application fee for each type of single species or combination species permit offered directly through the commission.

Source: Laws 2005, LB 162, § 18; Laws 2009, LB105, § 20.

37-456 Limited antelope or elk permit; issuance; limitation.

The issuance of limited antelope permits pursuant to section 37-455 in any management unit shall not exceed fifty percent of the regular permits authorized for such antelope management unit. The issuance of limited elk permits pursuant to section 37-455 in any management unit shall not exceed fifty percent of the regular permits authorized for such elk management unit.

Source: Laws 1974, LB 865, § 2; Laws 1975, LB 270, § 2; Laws 1985, LB 557, § 7; Laws 1996, LB 584, § 8; R.S.Supp.,1996, § 37-215.08; Laws 1998, LB 922, § 166; Laws 2009, LB105, § 21.

37-457 Hunting wild turkey; permit required; fee; issuance.

(1) The commission may issue permits for hunting wild turkey and prescribe and establish regulations and limitations for the hunting, transportation, and possession of wild turkey. The commission may offer multiple-year permits or combinations of permits at reduced rates. The number of such permits may be limited as provided by the regulations of the commission, but the permits shall be disposed of in an impartial manner. Such permits may be issued to allow

wild turkey hunting in the Nebraska National Forest and other game reserves and such other areas as the commission may designate whenever the commission deems that permitting such hunting would not be detrimental to the proper preservation of wildlife in such forest, reserves, or areas.

(2) The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-three dollars for residents and not more than ninety-five dollars for nonresidents for each permit issued under this section except as provided in subsection (5) of this section.

(3) The commission may issue nonresident permits after preference has been given for the issuance of resident permits as provided in rules and regulations adopted and promulgated by the commission. The commission may require a predetermined application period for permit applications in specified management units.

(4) The provisions of section 37-447 for the distribution of deer permits also may apply to the distribution of wild turkey permits. No permit to hunt wild turkey shall be issued without payment of the fee required by this section.

(5) The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-five dollars for residents and not more than forty-five dollars for nonresidents for a youth wild turkey permit.

Source: Laws 1961, c. 172, § 1, p. 513; Laws 1969, c. 292, § 2, p. 1064; Laws 1976, LB 861, § 16; Laws 1993, LB 235, § 17; R.S.1943, (1993), § 37-227; Laws 1998, LB 922, § 167; Laws 1999, LB 176, § 44; Laws 2003, LB 306, § 7; Laws 2005, LB 162, § 19; Laws 2007, LB299, § 11; Laws 2009, LB105, § 22.

37-472 Permit to kill mountain lions; eligibility.

(1) The commission may issue a permit for the killing of one or more mountain lions which are preying on livestock or poultry. The permit shall be valid for up to thirty days and shall require the commission to be notified immediately by the permitholder after the killing of a mountain lion and shall require the carcass to be transferred to the commission.

(2) To be eligible for a permit under this section, a farmer or rancher owning or operating a farm or ranch shall contact the commission to confirm that livestock or poultry on his or her property or property under his or her control has been subject to depredation by a mountain lion. The commission shall confirm that the damage was caused by a mountain lion prior to issuing the permit. The farmer or rancher shall be allowed up to thirty days, as designated by the commission, to kill the mountain lion on such property and shall notify the commission immediately after the killing of a mountain lion and arrange with the commission to transfer the mountain lion to the commission.

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

Source: Laws 2010, LB836, § 5.
Effective date July 15, 2010.

37-477 Certain animals kept in captivity; permit required; exceptions; rules and regulations.

(1) No person shall keep in captivity in this state any wild birds, any wild mammals, any nongame wildlife in need of conservation as determined by the

commission under section 37-805, or any wildlife determined to be an endangered or threatened species under the Endangered Species Act or section 37-806 without first having obtained a permit to do so as provided by section 37-478 or 37-479.

(2) Except as provided in subsection (3) of this section, no person shall keep in captivity in this state any wolf, any skunk, or any member of the families Felidae and Ursidae. This subsection shall not apply to (a) the species Felis domesticus, (b) any zoo, park, refuge, wildlife area, or nature center owned or operated by a city, village, state, or federal agency or any zoo accredited by the Association of Zoos and Aquariums or the Zoological Association of America, or (c) any person who holds a captive wildlife permit issued pursuant to section 37-479 and who raises Canada Lynx (Lynx canadensis) or bobcats (Lynx rufus) solely for the purpose of producing furs for sale to individuals or businesses or for the purpose of producing breeding stock for sale to persons engaged in fur production.

(3) Any person legally holding in captivity, on March 1, 1986, any animal subject to the prohibition contained in subsection (2) of this section shall be allowed to keep the animal for the duration of its life. Such animal shall not be traded, sold, or otherwise disposed of without written permission from the commission.

(4) The commission shall adopt and promulgate rules and regulations governing the purchase, possession, propagation, sale, and barter of wild birds, wild mammals, and wildlife in captivity.

Source: Laws 1957, c. 151, § 1, p. 490; Laws 1971, LB 733, § 9; Laws 1986, LB 558, § 1; Laws 1987, LB 379, § 1; R.S.1943, (1993), § 37-713; Laws 1998, LB 922, § 187; Laws 1999, LB 176, § 56; Laws 2009, LB105, § 23.

37-479 Captive wildlife permit; issuance; fee; prohibited acts; violation; penalty.

(1) To purchase, possess, propagate, or sell captive wild birds, captive wild mammals, or captive wildlife as specified in subsection (1) of section 37-477 or to sell parts thereof, except as provided in section 37-505, a person shall apply to the commission on a form prescribed by the commission for a captive wildlife permit. The commission shall adopt and promulgate rules and regulations specifying application requirements and procedures. The permit shall expire on December 31. The application for the permit shall include the applicant's social security number. The annual fee for such permit shall be not more than thirty dollars, as established by the commission pursuant to section 37-327. A holder of a captive wildlife permit shall report to the commission by January 15 for the preceding calendar year on forms provided by the commission. The commission shall adopt and promulgate rules and regulations specifying the requirements for the reports.

(2) A permitholder shall not (a) take wild birds, wild mammals, or wildlife from the wild in Nebraska or (b) purchase wild birds, wild mammals, or wildlife from any person other than the commission or a person authorized to propagate and dispose of wild birds, wild mammals, or wildlife. A permit under this section is not required for possession or production of domesticated cervine animals as defined in section 54-701.03.

(3) It shall be unlawful to lure or entice wildlife into a domesticated cervine animal facility for the purpose of containing such wildlife. Any person violating this subsection shall be guilty of a Class II misdemeanor and upon conviction shall be fined at least one thousand dollars.

Source: Laws 1957, c. 151, § 3, p. 490; Laws 1981, LB 72, § 21; Laws 1987, LB 379, § 2; Laws 1993, LB 235, § 27; Laws 1997, LB 752, § 92; R.S.Supp.,1997, § 37-715; Laws 1998, LB 922, § 189; Laws 1999, LB 176, § 58; Laws 2008, LB1162, § 11; Laws 2009, LB105, § 24.

37-481 Certain wild animals; keeping in captivity; permit not required; when.

Sections 37-477 to 37-480 shall not be construed to require the obtaining of a permit for the purpose of keeping in captivity wild birds, wild mammals, or wildlife as specified in subsection (1) of section 37-477 or for the purpose of purchasing, possessing, propagating, selling, bartering, or otherwise disposing of any wild birds, wild mammals, or wildlife as specified in subsection (1) of section 37-477 by (1) any zoo, park, refuge, wildlife area, or nature center owned or operated by a city, village, state, or federal agency or any zoo accredited by the Association of Zoos and Aquariums or the Zoological Association of America or (2) any circus licensed by the United States Department of Agriculture.

Source: Laws 1957, c. 151, § 5, p. 491; Laws 1969, c. 296, § 1, p. 1069; Laws 1986, LB 558, § 3; R.S.1943, (1993), § 37-717; Laws 1998, LB 922, § 191; Laws 1999, LB 176, § 60; Laws 2009, LB105, § 25.

37-4,111 Permit to take paddlefish; issuance; fee.

The commission may adopt and promulgate rules and regulations to provide for the issuance of permits for the taking of paddlefish. The commission may, pursuant to section 37-327, establish and charge a fee of not more than thirty-five dollars for residents. The fee for a nonresident permit to take paddlefish shall be two times the resident permit fee. All fees collected under this section shall be remitted to the State Treasurer for credit to the State Game Fund.

Source: Laws 2002, LB 1003, § 30; Laws 2007, LB299, § 12; Laws 2009, LB105, § 26.

ARTICLE 5

REGULATIONS AND PROHIBITED ACTS

(a) GENERAL PROVISIONS

Section
37-501. Game and fish; bag and possession limit; violation; penalty.
37-504. Violations; penalties; exception.
37-507. Game bird, game animal, or game fish; abandonment or needless waste; penalty.

(b) GAME AND BIRDS

37-513. Shooting at wildlife from highway or roadway; violation; penalty; trapping in county road right-of-way; county; powers; limitation on traps.
37-514. Hunting wildlife with artificial light; unlawful acts; exception; violation; penalty.

Section
37-523. Wild mammal or wild bird; hunt or trap; unlawful in certain areas; violation; penalty.
37-528. Administration of drugs to wildlife; prohibited acts; violation; penalty; section, how construed; powers of conservation officer.

(e) DAMAGE BY WILDLIFE

37-559. Destruction of predators; permit required; when; mountain lion; actions authorized.

(a) GENERAL PROVISIONS

37-501 Game and fish; bag and possession limit; violation; penalty.

Except as otherwise provided by the Game Law or rules and regulations of the commission, it shall be unlawful for any person in any one day to take or have in his or her possession at any time a greater number of game birds, game animals, or game fish of any one kind than as established pursuant to section 37-314. Any person violating this section shall be guilty of a Class III misdemeanor and, upon conviction, shall be fined at least two hundred dollars for violations relating to turkeys, small game animals, or game fish.

Source: Laws 1929, c. 112, III, § 4, p. 416; C.S.1929, § 37-304; Laws 1933, c. 69, § 1, p. 308; Laws 1937, c. 89, § 7, p. 294; C.S.Supp.,1941, § 37-304; R.S.1943, § 37-303; Laws 1989, LB 34, § 13; R.S.1943, (1993), § 37-303; Laws 1998, LB 922, § 221; Laws 2009, LB105, § 27.

37-504 Violations; penalties; exception.

(1) Any person who at any time, except during an open season ordered by the commission as authorized in the Game Law, unlawfully hunts, traps, or has in his or her possession any elk, deer, antelope, swan, or wild turkey shall be guilty of a Class III misdemeanor and, upon conviction, shall be fined at least five hundred dollars for a violation involving elk and at least two hundred dollars for a violation involving deer, antelope, swan, or wild turkey.

(2) Any person who at any time, except during an open season ordered by the commission as authorized in the Game Law, unlawfully hunts, traps, or has in his or her possession any mountain sheep shall be guilty of a Class II misdemeanor and shall be fined at least one thousand dollars upon conviction.

(3) Any person who at any time, except during an open season ordered by the commission as authorized in the Game Law, unlawfully hunts, traps, or has in his or her possession any quail, pheasant, partridge, Hungarian partridge, curlew, grouse, mourning dove, sandhill crane, or waterfowl shall be guilty of a Class III misdemeanor and shall be fined at least one hundred dollars upon conviction.

(4) Any person who unlawfully takes any game or unlawfully has in his or her possession any such game shall be guilty of a Class III misdemeanor and, except as otherwise provided in this section and section 37-501, shall be fined at least fifty dollars upon conviction.

(5) Any person who, in violation of the Game Law, takes any mourning dove that is not flying shall be guilty of a Class V misdemeanor.

(6) Any person who, in violation of the Game Law, has in his or her possession any protected bird, or destroys or takes the eggs or nest of any such bird, shall be guilty of a Class V misdemeanor.

(7) The provisions of this section shall not render it unlawful for anyone operating a captive wildlife facility or an aquaculture facility, pursuant to the laws of this state, to at any time kill game or fish actually raised thereon or lawfully placed thereon by such person.

(8) A person holding a special permit pursuant to the Game Law for the taking of any game or any birds not included in the definition of game shall not be liable under this section while acting under the authority of such permit.

Source: Laws 1929, c. 112, III, § 9, p. 419; C.S.1929, § 37-309; Laws 1937, c. 89, § 10, p. 295; Laws 1941, c. 72, § 4, p. 302; C.S.Supp.,1941, § 37-309; Laws 1943, c. 94, § 8, p. 327; R.S. 1943, § 37-308; Laws 1947, c. 134, § 1, p. 377; Laws 1949, c. 104, § 1, p. 283; Laws 1953, c. 123, § 3, p. 387; Laws 1957, c. 139, § 10, p. 469; Laws 1975, LB 142, § 3; Laws 1977, LB 40, § 182; Laws 1981, LB 72, § 16; Laws 1989, LB 34, § 18; Laws 1997, LB 107, § 4; R.S.Supp.,1997, § 37-308; Laws 1998, LB 922, § 224; Laws 1999, LB 176, § 67; Laws 2009, LB105, § 28.

37-507 Game bird, game animal, or game fish; abandonment or needless waste; penalty.

Any person who at any time takes any game bird, game animal, or game fish other than baitfish in this state and who intentionally leaves or abandons such bird, animal, or fish or an edible portion thereof resulting in wanton or needless waste or otherwise intentionally allows it or an edible portion thereof to be wantonly or needlessly wasted or fails to dispose thereof in a reasonable and sanitary manner shall be guilty of a Class III misdemeanor.

Source: Laws 1959, c. 150, § 11, p. 575; Laws 1977, LB 40, § 197; R.S.1943, (1993), § 37-525; Laws 1998, LB 922, § 227; Laws 2009, LB105, § 29.

(b) GAME AND BIRDS

37-513 Shooting at wildlife from highway or roadway; violation; penalty; trapping in county road right-of-way; county; powers; limitation on traps.

(1) It shall be unlawful to shoot at any wildlife from any highway or roadway, which includes that area of land from the center of the traveled surface to the right-of-way on either side. Any person violating this subsection shall be guilty of a Class III misdemeanor and shall be fined at least one hundred dollars.

(2)(a) Any county may adopt a resolution having the force and effect of law to prohibit the trapping of wildlife in the county road right-of-way or in a certain area of the right-of-way as designated by the county.

(b) A person trapping wildlife in a county road right-of-way is not allowed to use traps in the county road right-of-way that are larger than those allowed by the commission as of February 1, 2009, on any land owned or controlled by the commission.

(c) For purposes of this subsection, county road right-of-way means the area which has been designated a part of the county road system and which has not been vacated pursuant to law.

Source: Laws 1929, c. 112, V, § 1, p. 426; C.S.1929, § 37-501; Laws 1937, c. 89, § 11, p. 296; Laws 1941, c. 72, § 6, p. 303; C.S.Supp.,1941, § 37-501; Laws 1943, c. 94, § 11, p. 329; R.S.1943, § 37-501; Laws 1947, c. 137, § 1, p. 382; Laws 1959, c. 150, § 6, p. 572; Laws 1961, c. 169, § 5, p. 503; Laws 1963, c. 204, § 1, p. 656; Laws 1965, c. 203, § 1, p. 606; Laws 1967, c. 220, § 1, p. 594; Laws 1969, c. 294, § 1, p. 1066; Laws 1972, LB 1447, § 1; Laws 1974, LB 765, § 1; Laws 1974, LB 779, § 1; Laws 1975, LB 220, § 1; Laws 1975, LB 142, § 4; Laws 1989, LB 34, § 26; Laws 1989, LB 171, § 1; R.S.1943, (1993), § 37-501; Laws 1998, LB 922, § 233; Laws 2007, LB299, § 13; Laws 2008, LB865, § 1; Laws 2009, LB5, § 1; Laws 2009, LB105, § 30.

37-514 Hunting wildlife with artificial light; unlawful acts; exception; violation; penalty.

(1) Except as provided in section 37-4,107, it shall be unlawful to hunt any wildlife by projecting or casting the rays of a spotlight, headlight, or other artificial light attached to or used from a vehicle or boat in any field, pasture, woodland, forest, prairie, water area, or other area which may be inhabited by wildlife while having in possession or control, either singly or as one of a group of persons, any firearm or bow and arrow.

(2) Nothing in this section shall prohibit (a) the hunting on foot of raccoon with the aid of a handlight, (b) the hunting of species of wildlife not protected by the Game Law in the protection of property by landowners or operators or their regular employees on land under their control on foot or from a motor vehicle with the aid of artificial light, or (c) the taking of nongame fish by means of bow and arrow from a vessel with the aid of artificial light.

(3) Any person violating this section shall be guilty of a Class III misdemeanor and shall be fined at least two hundred fifty dollars upon conviction.

Source: Laws 1998, LB 922, § 234; Laws 1999, LB 176, § 70; Laws 2009, LB105, § 31.

37-523 Wild mammal or wild bird; hunt or trap; unlawful in certain areas; violation; penalty.

(1) It shall be unlawful to hunt with a rifle within a two-hundred-yard radius of an inhabited dwelling or livestock feedlot, to hunt without a rifle or trap any form of wild mammal or wild bird within a one-hundred-yard radius of an inhabited dwelling or livestock feedlot, or to trap within a two-hundred-yard radius of any passage used by livestock to pass under any highway, road, or bridge.

(2) This section shall not prohibit any owner, tenant, or operator or his or her guests from hunting or trapping any form of wild mammal or wild bird within such radius if the area is under his or her ownership or control. This section shall not prohibit duly authorized personnel of any county, city, or village health or animal control department from trapping with a humane live box trap or pursuing any form of wild mammal or wild bird, when conducting such

activities within the scope of the authorization, within such radius if the area is under the jurisdiction of the county, city, or village.

(3) Any person violating this section shall be guilty of a Class III misdemeanor and shall be fined at least one hundred dollars upon conviction.

Source: Laws 1967, c. 214, § 1, p. 575; Laws 1974, LB 779, § 2; Laws 1983, LB 24, § 1; R.S.1943, (1993), § 37-526; Laws 1998, LB 922, § 243; Laws 2009, LB105, § 32; Laws 2010, LB836, § 3. Effective date July 15, 2010.

37-528 Administration of drugs to wildlife; prohibited acts; violation; penalty; section, how construed; powers of conservation officer.

(1) For purposes of this section, drug means any chemical substance, other than food, that affects the structure or biological function of any wildlife under the jurisdiction of the commission.

(2) Except with written authorization from the secretary of the commission or his or her designee or as otherwise provided by law, a person shall not administer a drug to any wildlife under the jurisdiction of the commission, including, but not limited to, a drug used for fertility control, disease prevention or treatment, immobilization, or growth stimulation.

(3) This section does not prohibit the treatment of wildlife to prevent disease or the treatment of sick or injured wildlife by a licensed veterinarian, a holder of a federal migrating bird rehabilitation permit, a holder of a permit regulated under the authority of section 37-316, a holder of a permit regulated under the authority of section 37-4,106, or a holder of a license regulated under the authority of section 37-4,108.

(4) This section shall not be construed to limit employees of agencies of the state or the United States or employees of an animal control facility, animal rescue, or animal shelter licensed under section 54-627 in the performance of their official duties related to public health or safety, wildlife management, or wildlife removal, except that a drug shall not be administered by any person for fertility control or growth stimulation except as provided in subsection (2) of this section.

(5) A conservation officer may take possession or dispose of any wildlife under the jurisdiction of the commission that the officer reasonably believes has been administered a drug in violation of this section.

(6) A person who violates this section is guilty of a Class IV misdemeanor.

Source: Laws 2009, LB105, § 33; Laws 2010, LB910, § 2. Effective date July 15, 2010.

(e) DAMAGE BY WILDLIFE

37-559 Destruction of predators; permit required; when; mountain lion; actions authorized.

(1) Any farmer or rancher owning or operating a farm or ranch may destroy or have destroyed any predator preying on livestock or poultry or causing other agricultural depredation on land owned or controlled by him or her without a permit issued by the commission. For purposes of this subsection, predator means a badger, bobcat, coyote, gray fox, long-tailed weasel, mink, opossum, raccoon, red fox, or skunk.

(2) Any farmer or rancher owning or operating a farm or ranch, or his or her agent, may kill a mountain lion immediately without prior notice to or permission from the commission if he or she encounters a mountain lion and the mountain lion is in the process of stalking, killing, or consuming livestock on the farmer's or rancher's property. The farmer or rancher or his or her agent shall be responsible for immediately notifying the commission and arranging with the commission to transfer the mountain lion to the commission.

(3) Any person shall be entitled to defend himself or herself or another person without penalty if, in the presence of such person, a mountain lion stalks, attacks, or shows unprovoked aggression toward such person or another person.

(4) This section shall not be construed to allow a farmer or rancher or his or her agent to destroy or have destroyed species which are protected by the Nongame and Endangered Species Conservation Act or rules and regulations adopted and promulgated under the act, the federal Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq., the federal Fish and Wildlife Coordination Act, as amended, 16 U.S.C. 661 et seq., the federal Bald and Golden Eagle Protection Act, as amended, 16 U.S.C. 668 et seq., the federal Migratory Bird Treaty Act, as amended, 16 U.S.C. 703 et seq., or federal regulations under such federal acts.

Source: Laws 1998, LB 922, § 279; Laws 2010, LB836, § 4.
Effective date July 15, 2010.

Cross References

Nongame and Endangered Species Conservation Act, see section 37-801.

ARTICLE 6
ENFORCEMENT

Section
37-613. Wildlife; prohibited acts; liquidated damages; schedule; disposition.
37-614. Revocation and suspension of permits; grounds.

37-613 Wildlife; prohibited acts; liquidated damages; schedule; disposition.

(1) Any person who sells, purchases, takes, or possesses contrary to the Game Law any wildlife shall be liable to the State of Nebraska for the damages caused thereby. Such damages shall be:

(a) Fifteen thousand dollars for each mountain sheep;

(b) Five thousand dollars for each elk with a minimum of twelve total points and one thousand five hundred dollars for any other elk;

(c) Five thousand dollars for each whitetail deer with a minimum of eight total points and an inside spread between beams of at least eighteen inches, one thousand dollars for any other antlered whitetail deer, and two hundred fifty dollars for each antlerless whitetail deer and whitetail doe deer;

(d) Five thousand dollars for each mule deer with a minimum of eight total points and an inside spread between beams of at least twenty-four inches and one thousand dollars for any other mule deer;

(e) Five thousand dollars for each antelope with the shortest horn measuring a minimum of fourteen inches in length and one thousand dollars for any other antelope;

(f) One thousand five hundred dollars for each bear or moose or each individual animal of any threatened or endangered species of wildlife not otherwise listed in this subsection;

(g) Five hundred dollars for each mountain lion, lynx, bobcat, river otter, or raw pelt thereof;

(h) Twenty-five dollars for each raccoon, opossum, skunk, or raw pelt thereof;

(i) Five thousand dollars for each eagle;

(j) One hundred dollars for each wild turkey;

(k) Twenty-five dollars for each dove;

(l) Seventy-five dollars for each other game bird, other game animal, other fur-bearing animal, raw pelt thereof, or nongame wildlife in need of conservation as designated by the commission pursuant to section 37-805, not otherwise listed in this subsection;

(m) Fifty dollars for each wild bird not otherwise listed in this subsection;

(n) Seven hundred fifty dollars for each swan or paddlefish;

(o) Two hundred dollars for each master angler fish measuring more than twelve inches in length;

(p) Fifty dollars for each game fish measuring more than twelve inches in length not otherwise listed in this subsection;

(q) Twenty-five dollars for each other game fish; and

(r) Fifty dollars for any other species of game not otherwise listed in this subsection.

(2) The commission shall adopt and promulgate rules and regulations to provide for a list of master angler fish which are subject to this section and to prescribe guidelines for measurements and point determinations as required by this section. The commission may adopt a scoring system which is uniformly recognized for this purpose.

(3) Such damages may be collected by the commission by civil action. In every case of conviction for any of such offenses, the court or magistrate before whom such conviction is obtained shall further enter judgment in favor of the State of Nebraska and against the defendant for liquidated damages in the amount set forth in this section and collect such damages by execution or otherwise. Failure to obtain conviction on a criminal charge shall not bar a separate civil action for such liquidated damages. Damages collected pursuant to this section shall be remitted to the secretary of the commission who shall remit them to the State Treasurer for credit to the State Game Fund.

Source: Laws 1929, c. 112, VI, § 14, p. 437; C.S.1929, § 37-614; R.S. 1943, § 37-614; Laws 1949, c. 105, § 1, p. 285; Laws 1957, c. 139, § 17, p. 472; Laws 1989, LB 34, § 43; Laws 1989, LB 43, § 1; R.S.1943, (1993), § 37-614; Laws 1998, LB 922, § 303; Laws 1999, LB 176, § 88; Laws 2001, LB 130, § 5; Laws 2009, LB105, § 34.

37-614 Revocation and suspension of permits; grounds.

(1) When a person pleads guilty to or is convicted of any violation listed in this subsection, the court shall, in addition to any other penalty, revoke and require the immediate surrender of all permits to hunt, fish, and harvest fur

held by such person and suspend the privilege of such person to hunt, fish, and harvest fur and to purchase such permits for a period of not less than one nor more than three years. The court shall consider the number and severity of the violations of the Game Law in determining the length of the revocation and suspension. The violations shall be:

(a) Carelessly or purposely killing or causing injury to livestock with a firearm or bow and arrow;

(b) Purposely taking or having in his or her possession a number of game animals, game fish, game birds, or fur-bearing animals exceeding twice the limit established pursuant to section 37-314;

(c) Taking any species of wildlife protected by the Game Law during a closed season in violation of section 37-502;

(d) Resisting or obstructing any officer or any employee of the commission in the discharge of his or her lawful duties in violation of section 37-609; and

(e) Being a habitual offender of the Game Law.

(2) When a person pleads guilty to or is convicted of any violation listed in this subsection, the court may, in addition to any other penalty, revoke and require the immediate surrender of all permits to hunt, fish, and harvest fur held by such person and suspend the privilege of such person to hunt, fish, and harvest fur and to purchase such permits for a period of not less than one nor more than three years. The court shall consider the number and severity of the violations of the Game Law in determining the length of the revocation and suspension. The violations shall be:

(a) Hunting, fishing, or fur harvesting without a permit in violation of section 37-411;

(b) Hunting from a vehicle, aircraft, or boat in violation of section 37-513, 37-514, 37-515, 37-535, or 37-538; and

(c) Knowingly taking any wildlife on private land without permission in violation of section 37-722.

(3) When a person pleads guilty to or is convicted of any violation of the Game Law or the rules and regulations of the commission not listed in subsection (1) or (2) of this section, the court may, in addition to any other penalty, revoke and require the immediate surrender of all permits to hunt, fish, and harvest fur held by such person and suspend the privilege of such person to hunt, fish, and harvest fur and to purchase such permits for a period of one year.

Source: Laws 1998, LB 922, § 304; Laws 1999, LB 176, § 89; Laws 2007, LB299, § 16; Laws 2009, LB5, § 2.

ARTICLE 7

RECREATIONAL LANDS

(c) PRIVATELY OWNED LANDS

Section
37-727. Hunting; privately owned land; violations; penalty.

(c) PRIVATELY OWNED LANDS

37-727 Hunting; privately owned land; violations; penalty.

Any person violating section 37-722 or sections 37-724 to 37-726 shall be guilty of a Class III misdemeanor and shall be fined at least two hundred dollars upon conviction.

Source: Laws 1963, c. 199, § 5, p. 647; Laws 1977, LB 40, § 178; R.S.1943, (1993), § 37-213.06; Laws 1998, LB 922, § 341; Laws 2009, LB105, § 35.

ARTICLE 12

STATE BOAT ACT

Section

37-1201. Act, how cited; declaration of policy.
37-1211. Motorboat; numbering required; operation of unnumbered motorboat prohibited; exceptions.
37-1241.07. Motorboat or personal watercraft; age restriction on lease, hire, or rental; restriction on operation; duties of owner, agent, or employee.
37-1241.08. Sections; applicability.
37-1277. Acquisition of motorboat; requirements.
37-1279. Certificate of title; issuance; form; county clerk or designated county official; duties; filing.
37-1280.01. County treasurer; assume powers and duties of county clerk; when.
37-1282. Department of Motor Vehicles; implement electronic title and lien system for motorboats; security interest; financing instruments; provisions applicable; priority; notation of liens; cancellation.
37-1282.01. Printed certificate of title; when issued.
37-1283. New certificate; when issued; proof required; processing of application.
37-1287. Fees; disposition.
37-1290. Security interest perfected prior to January 1, 1997; treatment; notation of lien.

37-1201 Act, how cited; declaration of policy.

Sections 37-1201 to 37-12,110 shall be known and may be cited as the State Boat Act. It is the policy of this state to promote safety for persons and property in and connected with the use, operation, and equipment of vessels and to promote uniformity of laws relating thereto.

Source: Laws 1978, LB 21, § 1; Laws 2004, LB 560, § 3; Laws 2009, LB49, § 3; Laws 2009, LB202, § 1.

37-1211 Motorboat; numbering required; operation of unnumbered motorboat prohibited; exceptions.

(1) Except as provided in subsections (2) and (3) of this section and sections 37-1249 and 37-1250, every motorboat on the waters of this state shall be numbered and no person shall operate or give permission for the operation of any vessel on such waters unless the vessel is numbered in accordance with the State Boat Act or in accordance with the laws of another state if the commission has by regulation approved the numbering system of such state and unless the certificate of number awarded to such vessel is in full force and effect and the identifying number set forth in the certificate of number is displayed and legible on each side of the forward half of the vessel.

(2) The owner of each motorboat may operate or give permission for the operation of such vessel for thirty days from the date the vessel was acquired in anticipation of the vessel being numbered. A duly executed bill of sale, certificate of title, or other satisfactory evidence of the right of possession of the

vessel as prescribed by the Department of Motor Vehicles must be available for inspection at all times from the operator of the vessel.

(3) The owner or his or her invitee who operates a personal watercraft on any body of water (a) which is entirely upon privately owned land owned by only one person or one family and, if leased, leased by only one person or one family, (b) which does not connect by any permanent or intermittent inflow or outflow with other water outside such land, and (c) which is not operated on a commercial basis for profit may operate any personal watercraft on such body of water without complying with subsection (1) of this section.

Source: Laws 1978, LB 21, § 11; Laws 1995, LB 376, § 1; Laws 1998, LB 922, § 394; Laws 2009, LB202, § 2.

37-1241.07 Motorboat or personal watercraft; age restriction on lease, hire, or rental; restriction on operation; duties of owner, agent, or employee.

(1) The owner of a boat livery, or his or her agent or employee, shall not lease, hire, or rent a motorboat or personal watercraft to any person under eighteen years of age.

(2) Except as provided in subdivision (1)(a) of section 37-1241.06, a person younger than eighteen years of age may operate a motorboat or personal watercraft rented, leased, or hired by a person eighteen years of age or older if the person younger than eighteen years of age holds a valid boating safety certificate issued under section 37-1241.06.

(3) The owner of a boat livery, or his or her agent or employee, engaged in the business of renting or leasing motorboats shall list on each rental or lease agreement for a motorboat the name and age of each person who is authorized to operate the motorboat. The person to whom the motorboat is rented or leased shall ensure that only those persons who are listed as authorized operators are allowed to operate the motorboat.

(4) The owner of a boat livery, or his or her agent or employee, engaged in the business of renting or leasing motorboats shall display for review by each person who is authorized to operate the motorboat a summary of the statutes and the rules and regulations governing the operation of a motorboat and instructions regarding the safe operation of the motorboat. Each person who is listed as an authorized operator of the motorboat shall review the summary of the statutes, rules, regulations, and instructions and sign a statement indicating that he or she has done so prior to leaving the rental or leasing office.

Source: Laws 1999, LB 176, § 108; Laws 2003, LB 305, § 23; Laws 2005, LB 21, § 1; Laws 2009, LB105, § 36.

37-1241.08 Sections; applicability.

Sections 37-1241.01 to 37-1241.07 shall not apply to a person participating in a regatta, race, marine parade, tournament, or exhibition which has been authorized or permitted by the commission pursuant to sections 37-1262 and 37-1263 or is otherwise exempt from the provisions of the State Boat Act.

Source: Laws 1999, LB 176, § 109; Laws 2009, LB105, § 37.

37-1277 Acquisition of motorboat; requirements.

(1) Except as provided in subsections (2) and (3) of this section, no person acquiring a motorboat from the owner thereof, whether the owner is a manu-

facturer, importer, dealer, or otherwise, shall acquire any right, title, claim, or interest in or to such motorboat until he or she has physical possession of the motorboat and a certificate of title or a manufacturer's or importer's certificate with assignments on the certificate to show title in the purchaser or an instrument in writing required by section 37-1281. No waiver or estoppel shall operate in favor of such person against a person having physical possession of the motorboat and the certificate of title, the manufacturer's or importer's certificate, or an instrument in writing required by section 37-1281. No court in any case at law or in equity shall recognize the right, title, claim, or interest of any person in or to any motorboat sold, disposed of, mortgaged, or encumbered unless there is compliance with this section.

(2) A motorboat manufactured before November 1, 1972, is exempt from the requirement to have a certificate of title. If a person acquiring a motorboat which is exempt from the requirement to have a certificate of title desires to acquire a certificate of title for the motorboat, the person may apply for a certificate of title pursuant to section 37-1278.

(3) A motorboat owned by the United States, the State of Nebraska, or an agency or political subdivision of either is exempt from the requirement to have a certificate of title. A person other than an agency or political subdivision acquiring such a motorboat which is not covered under subsection (2) of this section shall apply for a certificate of title pursuant to section 37-1278. The person shall show proof of purchase from a governmental agency or political subdivision to obtain a certificate of title.

(4) Beginning on the implementation date of the electronic title and lien system designated by the Director of Motor Vehicles pursuant to section 37-1282, an electronic certificate of title record shall be evidence of an owner's right, title, claim, or interest in a motorboat.

Source: Laws 1994, LB 123, § 5; Laws 1996, LB 464, § 13; Laws 1997, LB 720, § 4; Laws 2009, LB202, § 3.

37-1279 Certificate of title; issuance; form; county clerk or designated county official; duties; filing.

(1) The county clerk or designated county official shall issue the certificate of title. The county clerk or designated county official shall sign and affix his or her seal to the original certificate of title and deliver the certificate to the applicant if there are no liens on the motorboat. If there are one or more liens on the motorboat, the certificate of title shall be handled as provided in section 37-1282. The county clerk or designated county official shall keep on hand a sufficient supply of blank forms which shall be furnished and distributed without charge to manufacturers, dealers, or other persons residing within the county, except that certificates of title shall only be issued by the county clerk, designated county official, or the Department of Motor Vehicles. Each county shall issue and file certificates of title using the vehicle titling and registration computer system.

(2) Each county clerk or designated county official of the various counties shall provide his or her seal without charge to the applicant on any certificate of title, application for certificate of title, duplicate copy, assignment or reassignment, power of attorney, statement, or affidavit pertaining to the issuance of a certificate of title. The department shall prescribe a uniform method of numbering certificates of title.

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

Source: Laws 1994, LB 123, § 7; Laws 1996, LB 464, § 16; Laws 2009, LB202, § 4.

Cross References

Certificate of title, negligent execution by government employee, see sections 13-910 and 81-8,219.

37-1280.01 County treasurer; assume powers and duties of county clerk; when.

On and after the implementation date designated under section 23-186 by the Director of Motor Vehicles, the county treasurer shall have all of the powers and duties of the county clerk as specified under the State Boat Act.

Source: Laws 2009, LB49, § 4.

37-1282 Department of Motor Vehicles; implement electronic title and lien system for motorboats; security interest; financing instruments; provisions applicable; priority; notation of liens; cancellation.

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

(2) The provisions of article 9, Uniform Commercial Code, shall not be construed to apply to or to permit or require the deposit, filing, or other record whatsoever of a security agreement, conveyance intended to operate as a mortgage, trust receipt, conditional sales contract, or similar instrument or any copy of the same covering a motorboat. Any mortgage, conveyance intended to operate as a security agreement as provided by article 9, Uniform Commercial Code, trust receipt, conditional sales contract, or other similar instrument covering a motorboat, if such instrument is accompanied by delivery of such manufacturer's or importer's certificate and followed by actual and continued possession of same by the holder of the instrument or, in the case of a

certificate of title, if a notation of same has been made electronically as prescribed in subsection (1) of this section or by the county clerk, the designated county official, or the department on the face of the certificate of title or on the electronic certificate of title record, shall be valid as against the creditors of the debtor, whether armed with process or not, and subsequent purchasers, secured parties, and other lienholders or claimants, but otherwise shall not be valid against them, except that during any period in which a motorboat is inventory, as defined in section 9-102, Uniform Commercial Code, held for sale by a person or corporation that is in the business of selling motorboats, the filing provisions of article 9, Uniform Commercial Code, as applied to inventory, shall apply to a security interest in the motorboat created by such person or corporation as debtor without the notation of lien on the instrument of title. A buyer at retail from a dealer of any motorboat in the ordinary course of business shall take the motorboat free of any security interest.

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

(4) Upon presentation of a security agreement, trust receipt, conditional sales contract, or similar instrument to the county clerk, designated county official, or department together with the certificate of title and the fee prescribed by section 37-1287, the holder of such instrument may have a notation of the lien made on the face of the certificate of title. The owner of a motorboat may present a valid out-of-state certificate of title issued to such owner for such motorboat with a notation of lien on such certificate of title and the prescribed fee to the county clerk, designated county official, or department and have the notation of lien made on the new certificate of title issued pursuant to section 37-1278 without presenting a copy of the lien instrument. The county clerk, the designated county official, or the department shall enter the notation and the date thereof over the signature of the person making the notation and the seal of office. If noted by a county clerk or designated county official, he or she shall on that day notify the department which shall note the lien on its records. The county clerk, the designated county official, or the department shall also indicate by appropriate notation and on such instrument itself the fact that the lien has been noted on the certificate of title.

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

the purpose of showing such other lien on the certificate of title within fifteen days from the date when notified to do so shall be liable for damages to such other lienholder for the amount of damages such other lienholder suffered by reason of the holder of the certificate of title refusing to permit the showing of such lien on the certificate of title.

(6) Beginning on the implementation date of the electronic title and lien system, upon receipt of a subsequent lien instrument duly signed by the owner in the manner prescribed by law governing such lien instruments or a notice of lien filed electronically, together with an application for notation of the subsequent lien, the fee prescribed in section 37-1287, and, if a printed certificate of title exists, the presentation of the certificate of title, the county clerk, designated county official, or department shall make notation of such other lien. If the certificate of title is not an electronic certificate of title record, the county clerk, designated county official, or department, upon receipt of a lien instrument duly signed by the owner in the manner prescribed by law governing such lien instruments together with the fee prescribed for notation of lien, shall notify the first lienholder to deliver to the county clerk, designated county official, or department, within fifteen days after the date of notice, the certificate of title to permit notation of such other lien. After such notation of lien, the lien shall become part of the electronic certificate of title record created by the county clerk, designated county official, or department which is maintained on the electronic title and lien system. The holder of a certificate of title who refuses to deliver a certificate of title to the county clerk, designated county official, or department for the purpose of noting such other lien on such certificate of title within fifteen days after the date when notified to do so shall be liable for damages to such other lienholder for the amount of damages such other lienholder suffered by reason of the holder of the certificate of title refusing to permit the noting of such lien on the certificate of title.

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

Source: Laws 1994, LB 123, § 10; Laws 1996, LB 464, § 18; Laws 1999, LB 550, § 7; Laws 2008, LB756, § 1; Laws 2009, LB202, § 5.

Cross References

Certificate of title, negligent execution by government employee, see sections 13-910 and 81-8,219.

37-1282.01 Printed certificate of title; when issued.

Beginning on the implementation date of the electronic title and lien system designated by the Director of Motor Vehicles pursuant to section 37-1282, a lienholder, at the owner's request, may request the issuance of a printed certificate of title if the owner of the motorboat relocates to another state or country or if requested for any other purpose approved by the Department of Motor Vehicles. Upon proof by the owner that a lienholder has not provided the requested certificate of title within fifteen days after the owner's request, the department may issue to the owner a printed certificate of title with all liens duly noted.

Source: Laws 2009, LB202, § 6.

37-1283 New certificate; when issued; proof required; processing of application.

(1) In the event of the transfer of ownership of a motorboat by operation of law as upon inheritance, devise, or bequest, order in bankruptcy, insolvency, replevin, or execution sale, (2) whenever a motorboat is sold to satisfy storage or repair charges, or (3) whenever repossession is had upon default in performance of the terms of a chattel mortgage, trust receipt, conditional sales contract, or other like agreement, the county clerk or designated county official of the county in which the last certificate of title to the motorboat was issued or the Department of Motor Vehicles if the last certificate of title was issued by the department, upon the surrender of the prior certificate of title or the manufacturer's or importer's certificate, or when that is not possible, upon presentation of satisfactory proof of ownership and right of possession to the motorboat, and upon payment of the fee prescribed in section 37-1287 and the presentation of an application for certificate of title, may issue to the applicant a certificate of title thereto. If the prior certificate of title issued for the motorboat provided for joint ownership with right of survivorship, a new certificate of title shall be issued to a subsequent purchaser upon the assignment of the prior certificate of title by the surviving owner and presentation of satisfactory proof of death of the deceased owner. Only an affidavit by the person or agent of the person to whom possession of the motorboat has so passed, setting forth facts entitling him or her to such possession and ownership, together with a copy of the journal entry, court order, or instrument upon which such claim of possession and ownership is founded shall be considered satisfactory proof of ownership and right of possession, except that if the applicant cannot produce such proof of ownership, he or she may submit to the department such evidence as he or she may have and the department may thereupon, if it finds the evidence sufficient, issue the certificate of title or authorize the county clerk or designated county official to issue a certificate of title, as the case may be. If from the records in the office of the county clerk, the designated county official, or the department there appear to be any liens on the motorboat, the certificate of title shall comply with section 37-1282 regarding the liens unless the application is accompanied by proper evidence of their satisfaction or extinction.

Source: Laws 1994, LB 123, § 11; Laws 1996, LB 464, § 19; Laws 2009, LB202, § 7.

Cross References

Certificate of title, negligent execution by government employee, see sections 13-910 and 81-8,219.

37-1287 Fees; disposition.

(1) The county clerks, the designated county officials, or the Department of Motor Vehicles shall charge a fee of six dollars for each certificate of title and a fee of three dollars for each notation of any lien on a certificate of title. The county clerks or designated county officials shall retain for the county four dollars of the six dollars charged for each certificate of title and two dollars for each notation of lien. The remaining amount of the fee charged for the certificate of title and notation of lien under this subsection shall be remitted to the State Treasurer for credit to the General Fund.

(2) The county clerks, the designated county officials, or the department shall charge a fee of ten dollars for each replacement or duplicate copy of a certificate of title, and the duplicate copy issued shall show only those unreleased liens of record. Such fees shall be remitted by the county or the department to the State Treasurer for credit to the General Fund.

(3) In addition to the fees prescribed in subsections (1) and (2) of this section, the county clerks, the designated county officials, or the department shall charge a fee of four dollars for each certificate of title, each replacement or duplicate copy of a certificate of title, and each notation of lien on a certificate of title. The county clerks, the designated county officials, or the department shall remit the fee charged under this subsection to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(4) The county clerks or designated county officials shall remit fees due the State Treasurer for credit to the General Fund under this section monthly and not later than the fifth day of the month following collection. The county clerks or designated county officials shall remit fees not due to the State Treasurer for credit to the General Fund to their respective county treasurers who shall credit the fees to the county general fund.

Source: Laws 1994, LB 123, § 15; Laws 1995, LB 467, § 1; Laws 1996, LB 464, § 23; Laws 2009, LB202, § 8.

37-1290 Security interest perfected prior to January 1, 1997; treatment; notation of lien.

(1) Any security interest in a motorboat perfected prior to January 1, 1997, shall continue to be perfected (a) until the financing statement perfecting such security interest is terminated or would have lapsed in the absence of the filing of a continuation statement pursuant to article 9, Uniform Commercial Code, or (b) until a motorboat certificate of title is issued and a lien noted pursuant to section 37-1282.

(2) Any lien noted on the face of a motorboat certificate of title or on an electronic certificate of title record after January 1, 1997, pursuant to subsection (1) of this section, on behalf of the holder of a security interest in the motorboat, shall have priority as of the date such security interest was originally perfected.

(3) The holder of a motorboat certificate of title shall, upon request, surrender the motorboat certificate of title to a holder of a security interest in the motorboat which was perfected prior to January 1, 1997, to permit notation of

a lien on the motorboat certificate of title and shall do such other acts as may be required to permit such notation.

(4) The assignment, release, or satisfaction of a security interest in a motorboat shall be governed by the laws under which it was perfected.

Source: Laws 1994, LB 123, § 18; Laws 1999, LB 550, § 8; Laws 2009, LB202, § 9.

ARTICLE 13

NEBRASKA SHOOTING RANGE PROTECTION ACT

Section
37-1301. Act, how cited.
37-1302. Terms, defined.
37-1303. Rules and regulations; shooting range performance standards; review.
37-1304. Existing shooting range; effect of zoning provisions.
37-1305. Existing shooting range; effect of noise provisions.
37-1306. Discharge of firearm at shooting range; how treated.
37-1307. Existing shooting range; permitted activities.
37-1308. Hours of operation.
37-1309. Presumption with respect to noise.
37-1310. Regulation of location and construction; limit on taking of property.

37-1301 Act, how cited.

Sections 37-1301 to 37-1310 shall be known and may be cited as the Nebraska Shooting Range Protection Act.

Source: Laws 2009, LB503, § 1.

37-1302 Terms, defined.

For purposes of the Nebraska Shooting Range Protection Act:

(1) Firearm has the same meaning as in section 28-1201;

(2) Person means an individual, association, proprietorship, partnership, corporation, club, political subdivision, or other legal entity;

(3) Shooting range means an area or facility designated or operated primarily for the use of firearms or archery and which is operated in compliance with the act and the shooting range performance standards. Shooting range excludes shooting preserves or areas used for law enforcement or military training; and

(4) Shooting range performance standards means the revised edition of the National Rifle Association's range source book titled A Guide To Planning And Construction adopted by the National Rifle Association, as such book existed on January 1, 2009, for the safe operation of shooting ranges.

Source: Laws 2009, LB503, § 2.

37-1303 Rules and regulations; shooting range performance standards; review.

(1) The Game and Parks Commission shall adopt and promulgate as rules and regulations the shooting range performance standards.

(2) The commission shall review the shooting range performance standards at least once every five years and revise them if necessary for the continuing safe operation of shooting ranges.

Source: Laws 2009, LB503, § 3.

37-1304 Existing shooting range; effect of zoning provisions.

Any shooting range that is existing and lawful may continue to operate as a shooting range notwithstanding, and without regard to, any law, rule, regulation, ordinance, or resolution related to zoning enacted thereafter by a city, county, village, or other political subdivision of the state, if operated in compliance with the shooting range performance standards.

Source: Laws 2009, LB503, § 4.

37-1305 Existing shooting range; effect of noise provisions.

Any shooting range that is existing and lawful may continue to operate as a shooting range notwithstanding, and without regard to, any law, rule, regulation, ordinance, or resolution related to noise enacted thereafter by any city, county, village, or other political subdivision of the state, except as provided in section 37-1308, if operated in compliance with the shooting range performance standards.

Source: Laws 2009, LB503, § 5.

37-1306 Discharge of firearm at shooting range; how treated.

No law, rule, regulation, ordinance, or resolution relating to the discharge of a firearm at a shooting range with respect to any shooting range existing and lawful shall be enforced by any city, county, village, or other political subdivision, except as provided in section 37-1308, if operated in compliance with the shooting range performance standards.

Source: Laws 2009, LB503, § 6.

37-1307 Existing shooting range; permitted activities.

A shooting range that is existing and lawful shall be permitted to do any of the following if done in compliance with the shooting range performance standards and generally applicable building and safety codes:

(1) Repair, remodel, or reinforce any improvement or facilities or building or structure as may be necessary in the interest of public safety or to secure the continued use of the building or improvement;

(2) Reconstruct, repair, rebuild, or resume the use of a facility or building; or

(3) Do anything authorized under generally recognized operation practices, including, but not limited to:

(a) Expand or enhance its membership or opportunities for public participation; and

(b) Expand or increase facilities or activities within the existing range area.

Source: Laws 2009, LB503, § 7.

37-1308 Hours of operation.

A city, county, village, or other political subdivision of the state may limit the hours between 10:00 p.m. and 7:00 a.m. that an outdoor shooting range may operate.

Source: Laws 2009, LB503, § 8.

37-1309 Presumption with respect to noise.

A person who is shooting in compliance with the shooting range performance standards at a shooting range between the hours of 7:00 a.m. and 10:00 p.m. is presumed not to be engaging in unlawful conduct merely because of the noise caused by the shooting.

Source: Laws 2009, LB503, § 9.

37-1310 Regulation of location and construction; limit on taking of property.

(1) Except as otherwise provided in the Nebraska Shooting Range Protection Act, the act does not prohibit a city, county, village, or other political subdivision of the state from regulating the location and construction of a shooting range.

(2) A person, the state, or any city, county, village, or other political subdivision of the state shall not take title to property which has a shooting range by condemnation, eminent domain, or similar process when the proposed use of the property would be for shooting-related activities or recreational activities or for private commercial development. This subsection does not limit the exercise of eminent domain or easement necessary for infrastructure additions or improvements, such as highways, waterways, or utilities.

Source: Laws 2009, LB503, § 10.

CHAPTER 38
HEALTH OCCUPATIONS AND PROFESSIONS

Article.
1. Uniform Credentialing Act. 38-101 to 38-1,140.
5. Audiology and Speech-Language Pathology Practice Act. 38-507 to 38-524.
12. Emergency Medical Services Practice Act. 38-1215 to 38-1232.
15. Hearing Instrument Specialists Practice Act. 38-1501 to 38-1518.
19. Medical Radiography Practice Act. 38-1901 to 38-1918.
20. Medicine and Surgery Practice Act. 38-2001 to 38-2062.
26. Optometry Practice Act. 38-2605, 38-2617.
28. Pharmacy Practice Act. 38-2801 to 38-2894.
33. Veterinary Medicine and Surgery Practice Act. 38-3301 to 38-3334.

ARTICLE 1
UNIFORM CREDENTIALING ACT

Section
38-101. Act, how cited.
38-121. Practices; credential required.
38-157. Professional and Occupational Credentialing Cash Fund; created; use; investment.
38-167. Boards; designated; change in name; effect.
38-1,140. Consultation with licensed veterinarian; zoological park or garden; conduct authorized.

38-101 Act, how cited.

Sections 38-101 to 38-1,140 and the following practice acts shall be known and may be cited as the Uniform Credentialing Act:

(1) The Advanced Practice Registered Nurse Practice Act;

(2) The Alcohol and Drug Counseling Practice Act;

(3) The Athletic Training Practice Act;

(4) The Audiology and Speech-Language Pathology Practice Act;

(5) The Certified Nurse Midwifery Practice Act;

(6) The Certified Registered Nurse Anesthetist Practice Act;

(7) The Chiropractic Practice Act;

(8) The Clinical Nurse Specialist Practice Act;

(9) The Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act;

(10) The Dentistry Practice Act;

(11) The Emergency Medical Services Practice Act;

(12) The Environmental Health Specialists Practice Act;

(13) The Funeral Directing and Embalming Practice Act;

(14) The Hearing Instrument Specialists Practice Act;

(15) The Licensed Practical Nurse-Certified Practice Act;

(16) The Massage Therapy Practice Act;

(17) The Medical Nutrition Therapy Practice Act;

(18) The Medical Radiography Practice Act;

(19) The Medicine and Surgery Practice Act;

(20) The Mental Health Practice Act;

(21) The Nurse Practice Act;

(22) The Nurse Practitioner Practice Act;

(23) The Nursing Home Administrator Practice Act;

(24) The Occupational Therapy Practice Act;

(25) The Optometry Practice Act;

(26) The Perfusion Practice Act;

(27) The Pharmacy Practice Act;

(28) The Physical Therapy Practice Act;

(29) The Podiatry Practice Act;

(30) The Psychology Practice Act;

(31) The Respiratory Care Practice Act;

(32) The Veterinary Medicine and Surgery Practice Act; and

(33) The Water Well Standards and Contractors' Practice Act.

If there is any conflict between any provision of sections 38-101 to 38-1,139 and any provision of a practice act, the provision of the practice act shall prevail.

The Revisor of Statutes shall assign the Uniform Credentialing Act, including the practice acts enumerated in subdivisions (1) through (32) of this section, to consecutive articles within Chapter 38.

Source: Laws 1927, c. 167, § 1, p. 454; C.S.1929, § 71-101; R.S.1943, § 71-101; Laws 1972, LB 1067, § 1; Laws 1984, LB 481, § 5; Laws 1986, LB 277, § 2; Laws 1986, LB 286, § 23; Laws 1986, LB 355, § 8; Laws 1986, LB 579, § 15; Laws 1986, LB 926, § 1; Laws 1987, LB 473, § 3; Laws 1988, LB 557, § 12; Laws 1988, LB 1100, § 4; Laws 1989, LB 323, § 2; Laws 1989, LB 344, § 4; Laws 1991, LB 456, § 4; Laws 1993, LB 48, § 1; Laws 1993, LB 187, § 3; Laws 1993, LB 429, § 1; Laws 1993, LB 536, § 43; Laws 1993, LB 669, § 2; Laws 1994, LB 900, § 1; Laws 1994, LB 1210, § 9; Laws 1994, LB 1223, § 2; Laws 1995, LB 406, § 10; Laws 1996, LB 1044, § 371; Laws 1997, LB 622, § 77; Laws 1999, LB 178, § 1; Laws 1999, LB 366, § 7; Laws 1999, LB 828, § 7; Laws 2001, LB 25, § 1; Laws 2001, LB 209, § 1; Laws 2001, LB 270, § 1; Laws 2001, LB 398, § 19; Laws 2002, LB 1021, § 4; Laws 2002, LB 1062, § 11; Laws 2003, LB 242, § 13; Laws 2004, LB 1005, § 8; Laws 2004, LB 1083, § 103; Laws 2005, LB 306, § 1; Laws 2006, LB 994, § 79; R.S.Supp.,2006, § 71-101; Laws 2007, LB236, § 1; Laws 2007, LB247, § 23; Laws 2007, LB247, § 58; Laws 2007, LB296, § 296; Laws 2007, LB463, § 1; Laws 2007, LB481, § 1; Laws 2008, LB928, § 2; Laws 2009, LB195, § 5.

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.

Alcohol and Drug Counseling Practice Act, see section 38-301.
Athletic Training Practice Act, see section 38-401.
Audiology and Speech-Language Pathology Practice Act, see section 38-501.
Certified Nurse Midwifery Practice Act, see section 38-601.
Certified Registered Nurse Anesthetist Practice Act, see section 38-701.
Chiropractic Practice Act, see section 38-801.
Clinical Nurse Specialist Practice Act, see section 38-901.
Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, see section 38-1001.
Dentistry Practice Act, see section 38-1101.
Emergency Medical Services Practice Act, see section 38-1201.
Environmental Health Specialists Practice Act, see section 38-1301.
Funeral Directing and Embalming Practice Act, see section 38-1401.
Hearing Instrument Specialists Practice Act, see section 38-1501.
Licensed Practical Nurse-Certified Practice Act, see section 38-1601.
Massage Therapy Practice Act, see section 38-1701.
Medical Nutrition Therapy Practice Act, see section 38-1801.
Medical Radiography Practice Act, see section 38-1901.
Medicine and Surgery Practice Act, see section 38-2001.
Mental Health Practice Act, see section 38-2101.
Nurse Practice Act, see section 38-2201.
Nurse Practitioner Practice Act, see section 38-2301.
Nursing Home Administrator Practice Act, see section 38-2401.
Occupational Therapy Practice Act, see section 38-2501.
Optometry Practice Act, see section 38-2601.
Perfusion Practice Act, see section 38-2701.
Pharmacy Practice Act, see section 38-2801.
Physical Therapy Practice Act, see section 38-2901.
Podiatry Practice Act, see section 38-3001.
Psychology Practice Act, see section 38-3101.
Respiratory Care Practice Act, see section 38-3201.
Veterinary Medicine and Surgery Practice Act, see section 38-3301.
Water Well Standards and Contractors' Practice Act, see section 46-1201.

38-121 Practices; credential required.

(1) No individual shall engage in the following practices unless such individual has obtained a credential under the Uniform Credentialing Act:

(a) Acupuncture;

(b) Advanced practice nursing;

(c) Alcohol and drug counseling;

(d) Asbestos abatement, inspection, project design, and training;

(e) Athletic training;

(f) Audiology;

(g) Speech-language pathology;

(h) Body art;

(i) Chiropractic;

(j) Cosmetology;

(k) Dentistry;

(l) Dental hygiene;

(m) Electrology;

(n) Emergency medical services;

(o) Esthetics;

(p) Funeral directing and embalming;

(q) Hearing instrument dispensing and fitting;

(r) Lead-based paint abatement, inspection, project design, and training;

(s) Licensed practical nurse-certified;

(t) Massage therapy;

(u) Medical nutrition therapy;

(v) Medical radiography;

(w) Medicine and surgery;

(x) Mental health practice;

(y) Nail technology;

(z) Nursing;

(aa) Nursing home administration;

(bb) Occupational therapy;

(cc) Optometry;

(dd) Osteopathy;

(ee) Perfusion;

(ff) Pharmacy;

(gg) Physical therapy;

(hh) Podiatry;

(ii) Psychology;

(jj) Radon detection, measurement, and mitigation;

(kk) Respiratory care;

(ll) Veterinary medicine and surgery;

(mm) Public water system operation; and

(nn) Constructing or decommissioning water wells and installing water well pumps and pumping equipment.

(2) No individual shall hold himself or herself out as any of the following until such individual has obtained a credential under the Uniform Credentialing Act for that purpose:

(a) Registered environmental health specialist;

(b) Certified marriage and family therapist;

(c) Certified professional counselor; or

(d) Social worker.

(3) No business shall operate for the provision of any of the following services unless such business has obtained a credential under the Uniform Credentialing Act:

(a) Body art;

(b) Cosmetology;

(c) Emergency medical services;

(d) Esthetics;

(e) Funeral directing and embalming;

(f) Massage therapy; or

(g) Nail technology.

Source: Laws 1927, c. 167, § 2, p. 455; C.S.1929, § 71-201; Laws 1935, c. 142, § 27, p. 529; C.S.Supp.,1941, § 71-201; R.S.1943, § 71-102; Laws 1957, c. 298, § 5, p. 1076; Laws 1961, c. 337, § 3, p. 1051; Laws 1971, LB 587, § 1; Laws 1978, LB 406, § 1; Laws 1980, LB 94, § 2; Laws 1984, LB 481, § 6; Laws 1985, LB 129, § 1; Laws 1986, LB 277, § 3; Laws 1986, LB 286, § 24; Laws 1986, LB 355, § 9; Laws 1986, LB 579, § 16; Laws 1988, LB 557, § 13; Laws

1988, LB 1100, § 5; Laws 1989, LB 342, § 4; Laws 1993, LB 669, § 3; Laws 1995, LB 406, § 11; Laws 1996, LB 1044, § 372; Laws 2001, LB 270, § 2; Laws 2004, LB 1083, § 104; R.S.Supp.,2006, § 71-102; Laws 2007, LB236, § 2; Laws 2007, LB247, § 59; Laws 2007, LB296, § 297; Laws 2007, LB463, § 21; Laws 2009, LB195, § 6.

38-157 Professional and Occupational Credentialing Cash Fund; created; use; investment.

(1) The Professional and Occupational Credentialing Cash Fund is created. Except as provided in section 71-17,113, the fund shall consist of all fees, gifts, grants, and other money, excluding fines and civil penalties, received or collected by the department under sections 38-151 to 38-156.

(2) The department shall use the fund for the administration and enforcement of such laws regulating the individuals and businesses listed in section 38-121 except for a percentage of the fees credited to the Nebraska Regulation of Health Professions Fund pursuant to section 71-6228. Transfers may be made from the Professional and Occupational Credentialing Cash Fund to the General Fund at the direction of the Legislature.

(3) Any money in the Professional and Occupational Credentialing 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 1927, c. 167, § 62, p. 471; C.S.1929, § 71-702; R.S.1943, § 71-163; Laws 1986, LB 926, § 37; Laws 1988, LB 1100, § 27; Laws 1994, LB 1210, § 47; Laws 2003, LB 242, § 30; Laws 2005, LB 146, § 10; R.S.Supp.,2006, § 71-163; Laws 2007, LB463, § 57; Laws 2009, First Spec. Sess., LB3, § 19.
Effective date November 21, 2009.

Cross References

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

38-167 Boards; designated; change in name; effect.

(1) Boards shall be designated as follows:

(a) Board of Advanced Practice Registered Nurses;

(b) Board of Alcohol and Drug Counseling;

(c) Board of Athletic Training;

(d) Board of Audiology and Speech-Language Pathology;

(e) Board of Chiropractic;

(f) Board of Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art;

(g) Board of Dentistry;

(h) Board of Emergency Medical Services;

(i) Board of Registered Environmental Health Specialists;

(j) Board of Funeral Directing and Embalming;

(k) Board of Hearing Instrument Specialists;

(l) Board of Massage Therapy;

(m) Board of Medical Nutrition Therapy;

(n) Board of Medical Radiography;

(o) Board of Medicine and Surgery;

(p) Board of Mental Health Practice;

(q) Board of Nursing;

(r) Board of Nursing Home Administration;

(s) Board of Occupational Therapy Practice;

(t) Board of Optometry;

(u) Board of Pharmacy;

(v) Board of Physical Therapy;

(w) Board of Podiatry;

(x) Board of Psychology;

(y) Board of Respiratory Care Practice;

(z) Board of Veterinary Medicine and Surgery; and

(aa) Water Well Standards and Contractors' Licensing Board.

(2) Any change made by the Legislature of the names of boards listed in this section shall not change the membership of such boards or affect the validity of any action taken by or the status of any action pending before any of such boards. Any such board newly named by the Legislature shall be the direct and only successor to the board as previously named.

Source: Laws 1927, c. 167, § 12, p. 457; C.S.1929, § 71-302; Laws 1935, c. 142, § 30, p. 530; C.S.Supp.,1941, § 71-302; Laws 1943, c. 150, § 4, p. 540; R.S.1943, § 71-112; Laws 1957, c. 298, § 8, p. 1078; Laws 1961, c. 337, § 6, p. 1053; Laws 1978, LB 406, § 4; Laws 1979, LB 427, § 5; Laws 1981, LB 451, § 3; Laws 1984, LB 481, § 9; Laws 1985, LB 129, § 5; Laws 1986, LB 277, § 5; Laws 1986, LB 286, § 32; Laws 1986, LB 579, § 24; Laws 1986, LB 355, § 11; Laws 1988, LB 1100, § 8; Laws 1988, LB 557, § 16; Laws 1989, LB 342, § 8; Laws 1993, LB 187, § 5; Laws 1993, LB 669, § 6; Laws 1995, LB 406, § 14; Laws 1999, LB 828, § 14; Laws 2000, LB 833, § 1; Laws 2001, LB 270, § 5; Laws 2002, LB 1021, § 7; Laws 2004, LB 1083, § 107; R.S.Supp.,2006, § 71-112; Laws 2007, LB236, § 5; Laws 2007, LB463, § 67; Laws 2009, LB195, § 7.

38-1,140 Consultation with licensed veterinarian; zoological park or garden; conduct authorized.

Any person who holds a valid credential in the State of Nebraska in a health care profession or occupation regulated under the Uniform Credentialing Act may consult with a licensed veterinarian or perform collaborative animal health care tasks on an animal under the care of such veterinarian if all such tasks are performed under the immediate supervision of such veterinarian. Engaging in such conduct is hereby authorized and shall not be considered a part of the credential holder's scope of practice or a violation of the credential holder's scope of practice.

Source: Laws 2008, LB928, § 3; Laws 2009, LB463, § 1.

ARTICLE 5

AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY PRACTICE ACT

Section
38-507. Practice of audiology, defined.
38-511. Practice of audiology or speech-language pathology; act, how construed.
38-512. Sale of hearing instruments; audiologist; applicability of act.
38-524. Audiology or speech-language pathology assistant; acts prohibited.

38-507 Practice of audiology, defined.

Practice of audiology means the application of evidence-based practice in clinical decisionmaking for the prevention, assessment, habilitation, rehabilitation, and maintenance of persons with hearing, auditory function, and vestibular function impairments and related impairments, including (1) cerumen removal from the cartilaginous outer one-third portion of the external auditory canal when the presence of cerumen may affect the accuracy of hearing evaluations or impressions of the ear canal for amplification devices and (2) evaluation, selection, fitting, and dispensing of hearing instruments, external processors of implantable hearing instruments, and assistive technology devices as part of a comprehensive audiological rehabilitation program. Practice of audiology does not include the practice of medical diagnosis, medical treatment, or surgery.

Source: Laws 2007, LB247, § 67; Laws 2007, LB463, § 192; Laws 2009, LB195, § 8.

38-511 Practice of audiology or speech-language pathology; act, how construed.

Nothing in the Audiology and Speech-Language Pathology Practice Act shall be construed to prevent or restrict:

(1) The practice of audiology or speech-language pathology or the use of the official title of such practice by a person employed as a speech-language pathologist or audiologist by the federal government;

(2) A physician from engaging in the practice of medicine and surgery or any individual from carrying out any properly delegated responsibilities within the normal practice of medicine and surgery under the supervision of a physician;

(3) A person licensed as a hearing instrument specialist in this state from engaging in the fitting, selling, and servicing of hearing instruments or performing such other duties as defined in the Hearing Instrument Specialists Practice Act;

(4) The practice of audiology or speech-language pathology or the use of the official title of such practice by a person who holds a valid and current credential as a speech-language pathologist or audiologist issued by the State Department of Education, if such person performs speech-language pathology or audiology services solely as a part of his or her duties within an agency, institution, or organization for which no fee is paid directly or indirectly by the recipient of such service and under the jurisdiction of the State Department of Education, but such person may elect to be within the jurisdiction of the Audiology and Speech-Language Pathology Practice Act;

(5) The clinical practice in audiology or speech-language pathology required for students enrolled in an accredited college or university pursuing a major in

audiology or speech-language pathology, if such clinical practices are supervised by a person licensed to practice audiology or speech-language pathology and if the student is designated by a title such as student clinician or other title clearly indicating the training status; or

(6) The utilization of a speech aide or other personnel employed by a public school, educational service unit, or other private or public educational institution working under the direct supervision of a credentialed speech-language pathologist.

Source: Laws 1978, LB 406, § 14; Laws 1985, LB 129, § 15; Laws 1990, LB 828, § 1; Laws 2001, LB 209, § 11; R.S.1943, (2003), § 71-1,187; Laws 2007, LB247, § 28; Laws 2007, LB463, § 196; Laws 2009, LB195, § 9.

Cross References

Hearing Instrument Specialists Practice Act, see section 38-1501.

38-512 Sale of hearing instruments; audiologist; applicability of act.

Any audiologist who engages in the sale of hearing instruments shall not be exempt from the Hearing Instrument Specialists Practice Act.

Source: Laws 1978, LB 406, § 23; R.S.1943, (2003), § 71-1,196; Laws 2007, LB463, § 197; Laws 2009, LB195, § 10.

Cross References

Hearing Instrument Specialists Practice Act, see section 38-1501.

38-524 Audiology or speech-language pathology assistant; acts prohibited.

An audiology or speech-language pathology assistant shall not:

(1) Evaluate or diagnose any type of communication disorder;

(2) Evaluate or diagnose any type of dysphagia;

(3) Interpret evaluation results or treatment progress;

(4) Consult or counsel, independent of the licensed audiologist or speech-language pathologist, with a patient, a patient's family, or staff regarding the nature or degree of communication disorders or dysphagia;

(5) Plan patient treatment programs;

(6) Represent himself or herself as an audiologist or speech-language pathologist or as a provider of speech, language, swallowing, or hearing treatment or assessment services;

(7) Independently initiate, modify, or terminate any treatment program; or

(8) Fit or dispense hearing instruments.

Source: Laws 1985, LB 129, § 29; Laws 1988, LB 1100, § 75; R.S.1943, (2003), § 71-1,195.07; Laws 2007, LB247, § 35; Laws 2007, LB463, § 209; Laws 2009, LB195, § 11.

ARTICLE 12

EMERGENCY MEDICAL SERVICES PRACTICE ACT

Section
38-1215. Board; members; terms; meetings; removal.
38-1217. Rules and regulations.
38-1218. Licensure classification.

Section
38-1219. Department; additional rules and regulations.
38-1221. License; requirements; term.
38-1224. Duties and activities authorized; limitations.
38-1232. Individual liability.

38-1215 Board; members; terms; meetings; removal.

(1) The board shall have seventeen members appointed by the Governor with the approval of a majority of the Legislature. The appointees may begin to serve immediately following appointment and prior to approval by the Legislature.

(2)(a) Seven members of the board shall be active out-of-hospital emergency care providers at the time of and for the duration of their appointment, and each shall have at least five years of experience in his or her level of licensure at the time of his or her appointment or reappointment. Of the seven members who are out-of-hospital emergency care providers, two shall be first responders or emergency medical responders, two shall be emergency medical technicians, one shall be an emergency medical technician-intermediate or an advanced emergency medical technician, and two shall be emergency medical technicians-paramedic or paramedics.

(b) Three of the members shall be qualified physicians actively involved in emergency medical care. At least one of the physician members shall be a board-certified emergency physician.

(c) Five members shall be appointed to include one member who is a representative of an approved training agency, one member who is a physician assistant with at least five years of experience and active in out-of-hospital emergency medical care education, one member who is a registered nurse with at least five years of experience and active in out-of-hospital emergency medical care education, and two public members who meet the requirements of section 38-165 and who have an expressed interest in the provision of out-of-hospital emergency medical care.

(d) The remaining two members shall have any of the qualifications listed in subdivision (a), (b), or (c) of this subsection.

(e) In addition to any other criteria for appointment, among the members of the board there shall be at least one member who is a volunteer emergency medical care provider, at least one member who is a paid emergency medical care provider, at least one member who is a firefighter, at least one member who is a law enforcement officer, and at least one member who is active in the Critical Incident Stress Management Program. If a person appointed to the board is qualified to serve as a member in more than one capacity, all qualifications of such person shall be taken into consideration to determine whether or not the diversity in qualifications required in this subsection has been met.

(f) At least five members of the board shall be appointed from each congressional district, and at least one of such members shall be a physician member described in subdivision (b) of this subsection.

(3) Members shall serve five-year terms beginning on December 1 and may serve for any number of such terms. The terms of the members of the board appointed prior to December 1, 2008, shall be extended by two years and until December 1 of such year. Each member shall hold office until the expiration of his or her term. Any vacancy in membership, other than by expiration of a

term, shall be filled within ninety days by the Governor by appointment as provided in subsection (2) of this section.

(4) Special meetings of the board may be called by the department or upon the written request of any six members of the board explaining the reason for such meeting. The place of the meetings shall be set by the department.

(5) The Governor upon recommendation of the department shall have power to remove from office at any time any member of the board for physical or mental incapacity to carry out the duties of a board member, for continued neglect of duty, for incompetency, for acting beyond the individual member's scope of authority, for malfeasance in office, for any cause for which a professional credential may be suspended or revoked pursuant to the Uniform Credentialing Act, or for a lack of license required by the Emergency Medical Services Practice Act.

(6) Except as provided in subsection (5) of this section and notwithstanding subsection (2) of this section, a member of the board who changes his or her licensure classification after appointment or has a licensure classification which is terminated under section 38-1217 when such licensure classification was a qualification for appointment shall be permitted to continue to serve as a member of the board until the expiration of his or her term.

Source: Laws 1997, LB 138, § 5; Laws 1998, LB 1073, § 146; Laws 2004, LB 821, § 18; R.S.Supp.,2006, § 71-5176; Laws 2007, LB463, § 499; Laws 2009, LB195, § 12.

Cross References

Critical Incident Stress Management Program, see section 71-7104.

38-1217 Rules and regulations.

The board shall adopt rules and regulations necessary to:

(1)(a) For licenses issued prior to September 1, 2010, create the following licensure classifications of out-of-hospital emergency care providers: (i) First responder; (ii) emergency medical technician; (iii) emergency medical technician-intermediate; and (iv) emergency medical technician-paramedic; and (b) for licenses issued on or after September 1, 2010, create the following licensure classifications of out-of-hospital emergency care providers: (i) Emergency medical responder; (ii) emergency medical technician; (iii) advanced emergency medical technician; and (iv) paramedic. The rules and regulations creating the classifications shall include the practices and procedures authorized for each classification, training and testing requirements, renewal and reinstatement requirements, and other criteria and qualifications for each classification determined to be necessary for protection of public health and safety. A person holding a license issued prior to September 1, 2010, shall be authorized to practice in accordance with the laws, rules, and regulations governing the license for the term of the license;

(2) Provide for temporary licensure of an out-of-hospital emergency care provider who has completed the educational requirements for a licensure classification enumerated in subdivision (1)(b) of this section but has not completed the testing requirements for licensure under such subdivision. Temporary licensure shall be valid for one year or until a license is issued under such subdivision and shall not be subject to renewal. The rules and regulations shall include qualifications and training necessary for issuance of a temporary

license, the practices and procedures authorized for a temporary licensee, and supervision required for a temporary licensee;

(3) Set standards for the licensure of basic life support services and advanced life support services. The rules and regulations providing for licensure shall include standards and requirements for: Vehicles, equipment, maintenance, sanitation, inspections, personnel, training, medical direction, records maintenance, practices and procedures to be provided by employees or members of each classification of service, and other criteria for licensure established by the board;

(4) Authorize emergency medical services to provide differing practices and procedures depending upon the qualifications of out-of-hospital emergency care providers available at the time of service delivery. No emergency medical service shall be licensed to provide practices or procedures without the use of personnel licensed to provide the practices or procedures;

(5) Authorize out-of-hospital emergency care providers to perform any practice or procedure which they are authorized to perform with an emergency medical service other than the service with which they are affiliated when requested by the other service and when the patient for whom they are to render services is in danger of loss of life;

(6) Provide for the approval of training agencies and establish minimum standards for services provided by training agencies;

(7) Provide for the minimum qualifications of a physician medical director in addition to the licensure required by section 38-1212;

(8) Provide for the use of physician medical directors, qualified physician surrogates, model protocols, standing orders, operating procedures, and guidelines which may be necessary or appropriate to carry out the purposes of the Emergency Medical Services Practice Act. The model protocols, standing orders, operating procedures, and guidelines may be modified by the physician medical director for use by any out-of-hospital emergency care provider or emergency medical service before or after adoption;

(9) Establish criteria for approval of organizations issuing cardiopulmonary resuscitation certification which shall include criteria for instructors, establishment of certification periods and minimum curricula, and other aspects of training and certification;

(10) Establish renewal and reinstatement requirements for out-of-hospital emergency care providers and emergency medical services and establish continuing competency requirements. Continuing education is sufficient to meet continuing competency requirements. The requirements may also include, but not be limited to, one or more of the continuing competency activities listed in section 38-145 which a licensed person may select as an alternative to continuing education. The reinstatement requirements for out-of-hospital emergency care providers shall allow reinstatement at the same or any lower level of licensure for which the out-of-hospital emergency care provider is determined to be qualified;

(11) Establish criteria for deployment and use of automated external defibrillators as necessary for the protection of the public health and safety;

(12) Create licensure, renewal, and reinstatement requirements for emergency medical service instructors. The rules and regulations shall include the practices and procedures for licensure, renewal, and reinstatement;

(13) Establish criteria for emergency medical technicians-intermediate, advanced emergency medical technicians, emergency medical technicians-paramedic, or paramedics performing activities within their scope of practice at a hospital or health clinic under subsection (3) of section 38-1224. Such criteria shall include, but not be limited to: (a) Requirements for the orientation of registered nurses, physician assistants, and physicians involved in the supervision of such personnel; (b) supervisory and training requirements for the physician medical director or other person in charge of the medical staff at such hospital or health clinic; and (c) a requirement that such activities shall only be performed at the discretion of, and with the approval of, the governing authority of such hospital or health clinic. For purposes of this subdivision, health clinic has the definition found in section 71-416 and hospital has the definition found in section 71-419; and

(14) Establish criteria and requirements for emergency medical technicians-intermediate to renew licenses issued prior to September 1, 2010, and continue to practice after such classification has otherwise terminated under subdivision (1) of this section. The rules and regulations shall include the qualifications necessary to renew emergency medical technicians-intermediate licenses after September 1, 2010, the practices and procedures authorized for persons holding and renewing such licenses, and the renewal and reinstatement requirements for holders of such licenses.

Source: Laws 1997, LB 138, § 7; Laws 1999, LB 498, § 2; Laws 2001, LB 238, § 1; Laws 2002, LB 1021, § 87; Laws 2002, LB 1033, § 1; R.S.1943, (2003), § 71-5178; Laws 2007, LB463, § 501; Laws 2009, LB195, § 13.

38-1218 Licensure classification.

(1) The Legislature adopts all parts of the United States Department of Transportation curricula, including appendices, and skills as the training requirements and permitted practices and procedures for the licensure classifications listed in subdivision (1)(a) of section 38-1217 until modified by the board by rule and regulation. The Legislature adopts the United States Department of Transportation National Emergency Medical Services Education Standards and the National Emergency Medical Services Scope of Practice for the licensure classifications listed in subdivision (1)(b) of section 38-1217 until modified by the board by rule and regulation. The board may approve curricula for the licensure classifications listed in subdivision (1) of section 38-1217.

(2) The department and the board shall consider the following factors, in addition to other factors required or permitted by the Emergency Medical Services Practice Act, when adopting rules and regulations for a licensure classification:

(a) Whether the initial training required for licensure in the classification is sufficient to enable the out-of-hospital emergency care provider to perform the practices and procedures authorized for the classification in a manner which is beneficial to the patient and protects public health and safety;

(b) Whether the practices and procedures to be authorized are necessary to the efficient and effective delivery of out-of-hospital emergency medical care;

(c) Whether morbidity can be reduced or recovery enhanced by the use of the practices and procedures to be authorized for the classification; and

(d) Whether continuing competency requirements are sufficient to maintain the skills authorized for the classification.

Source: Laws 1997, LB 138, § 8; Laws 2002, LB 1021, § 88; R.S.1943, (2003), § 71-5179; Laws 2007, LB463, § 502; Laws 2009, LB195, § 14.

38-1219 Department; additional rules and regulations.

The department, with the recommendation of the board, shall adopt and promulgate rules and regulations necessary to:

(1) Administer the Emergency Medical Services Practice Act;

(2) Provide for curricula which will allow out-of-hospital emergency care providers and users of automated external defibrillators as defined in section 71-51,102 to be trained for the delivery of practices and procedures in units of limited subject matter which will encourage continued development of abilities and use of such abilities through additional authorized practices and procedures;

(3) Establish procedures and requirements for applications for licensure, renewal, and reinstatement in any of the licensure classifications created pursuant to the Emergency Medical Services Practice Act, including provisions for issuing an emergency medical responder license to a licensee renewing his or her first responder license after September 1, 2010, and for issuing a paramedic license to a licensee renewing his or her emergency medical technician-paramedic license after September 1, 2010; and

(4) Provide for the inspection, review, and termination of approval of training agencies. All training for licensure shall be provided through an approved training agency.

Source: Laws 2007, LB463, § 503; Laws 2009, LB195, § 15.

38-1221 License; requirements; term.

(1) To be eligible for a license under the Emergency Medical Services Practice Act, an individual shall have attained the age of eighteen years and met the requirements established in accordance with subdivision (1), (2), or (14) of section 38-1217.

(2) All licenses issued under the act other than temporary licenses shall expire the second year after issuance.

(3) An individual holding a certificate under the Emergency Medical Services Act on December 1, 2008, shall be deemed to be holding a license under the Uniform Credentialing Act and the Emergency Medical Services Practice Act on such date. The certificate holder may continue to practice under such certificate as a license in accordance with the Uniform Credentialing Act until the certificate would have expired under its terms.

Source: Laws 2007, LB463, § 505; Laws 2009, LB195, § 16.

Cross References

Uniform Credentialing Act, see section 38-101.

38-1224 Duties and activities authorized; limitations.

(1) An out-of-hospital emergency care provider other than a first responder or an emergency medical responder as classified under section 38-1217 may not

assume the duties incident to the title or practice the skills of an out-of-hospital emergency care provider unless he or she is employed by or serving as a volunteer member of an emergency medical service licensed by the department.

(2) An out-of-hospital emergency care provider may only practice the skills he or she is authorized to employ and which are covered by the license issued to such provider pursuant to the Emergency Medical Services Practice Act.

(3) An emergency medical technician-intermediate, an emergency medical technician-paramedic, an advanced emergency medical technician, or a paramedic may volunteer or be employed at a hospital as defined in section 71-419 or a health clinic as defined in section 71-416 to perform activities within his or her scope of practice within such hospital or health clinic under the supervision of a registered nurse, a physician assistant, or a physician. Such activities shall be performed in a manner established in rules and regulations adopted and promulgated by the department, with the recommendation of the board.

Source: Laws 1997, LB 138, § 13; Laws 1998, LB 1073, § 147; Laws 2002, LB 1033, § 2; R.S.1943, (2003), § 71-5184; Laws 2007, LB463, § 508; Laws 2009, LB195, § 17.

38-1232 Individual liability.

(1) No out-of-hospital emergency care provider, physician assistant, registered nurse, or licensed practical nurse who provides public emergency care shall be liable in any civil action to respond in damages as a result of his or her acts of commission or omission arising out of and in the course of his or her rendering in good faith any such care. Nothing in this subsection shall be deemed to grant any such immunity for liability arising out of the operation of any motor vehicle, aircraft, or boat or while such person was impaired by alcoholic liquor or any controlled substance enumerated in section 28-405 in connection with such care, nor shall immunity apply to any person causing damage or injury by his or her willful, wanton, or grossly negligent act of commission or omission.

(2) No qualified physician or qualified physician surrogate who gives orders, either orally or by communication equipment, to any out-of-hospital emergency care provider at the scene of an emergency, no out-of-hospital emergency care provider following such orders within the limits of his or her licensure, and no out-of-hospital emergency care provider trainee in an approved training program following such orders, shall be liable civilly or criminally by reason of having issued or followed such orders but shall be subject to the rules of law applicable to negligence.

(3) No physician medical director shall incur any liability by reason of his or her use of any unmodified protocol, standing order, operating procedure, or guideline provided by the board pursuant to subdivision (8) of section 38-1217.

Source: Laws 1997, LB 138, § 23; R.S.1943, (2003), § 71-5194; Laws 2007, LB463, § 516; Laws 2009, LB195, § 18.

ARTICLE 15

HEARING INSTRUMENT SPECIALISTS PRACTICE ACT

Section
38-1501. Act, how cited.
38-1502. Definitions, where found.

Section
38-1503. Board, defined.
38-1504. Hearing instrument, defined.
38-1505. Practice of fitting hearing instruments, defined.
38-1506. Sell, sale, or dispense, defined.
38-1507. Temporary license, defined.
38-1508. Board membership; qualifications.
38-1509. Sale or fitting of hearing instruments; license required.
38-1510. Applicability of act.
38-1511. Sale; conditions.
38-1512. License; examination; conditions.
38-1513. Temporary license; issuance; supervision; renewal.
38-1514. Qualifying examination; contents; purpose.
38-1515. Applicant for licensure; continuing competency requirements.
38-1516. Applicant for licensure; reciprocity; continuing competency requirements.
38-1517. Licensee; disciplinary action; additional grounds.
38-1518. Fees.

38-1501 Act, how cited.

Sections 38-1501 to 38-1518 shall be known and may be cited as the Hearing Instrument Specialists Practice Act.

Source: Laws 2007, LB463, § 565; Laws 2009, LB195, § 19.

38-1502 Definitions, where found.

For purposes of the Hearing Instrument Specialists Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1503 to 38-1507 apply.

Source: Laws 1969, c. 767, § 1, p. 2903; Laws 1986, LB 701, § 1; Laws 1987, LB 473, § 50; Laws 1988, LB 1100, § 148; Laws 1996, LB 1044, § 681; R.S.1943, (2003), § 71-4701; Laws 2007, LB296, § 589; Laws 2007, LB463, § 566; Laws 2009, LB195, § 20.

38-1503 Board, defined.

Board means the Board of Hearing Instrument Specialists.

Source: Laws 2007, LB463, § 567; Laws 2009, LB195, § 21.

38-1504 Hearing instrument, defined.

Hearing instrument means any wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments, or accessories, including earmold, but excluding batteries and cords.

Source: Laws 2007, LB463, § 568; Laws 2009, LB195, § 22.

38-1505 Practice of fitting hearing instruments, defined.

Practice of fitting hearing instruments means the measurement of human hearing by means of an audiometer or by other means approved by the board solely for the purpose of making selections, adaptations, or sale of hearing instruments. The term also includes the making of impressions for earmolds. A dispenser, at the request of a physician or a member of related professions, may

make audiograms for the professional's use in consultation with the hard-of-hearing.

Source: Laws 2007, LB463, § 569; Laws 2009, LB195, § 23.

38-1506 Sell, sale, or dispense, defined.

Sell, sale, or dispense means any transfer of title or of the right to use by lease, bailment, or any other contract, excluding (1) wholesale transactions with distributors or dispensers and (2) distribution of hearing instruments by nonprofit service organizations at no cost to the recipient for the hearing instrument.

Source: Laws 2007, LB463, § 570; Laws 2009, LB195, § 24.

38-1507 Temporary license, defined.

Temporary license means a hearing instrument specialist license issued while the applicant is in training to become a licensed hearing instrument specialist.

Source: Laws 2007, LB463, § 571; Laws 2009, LB195, § 25.

38-1508 Board membership; qualifications.

The board shall consist of five professional members and one public member appointed pursuant to section 38-158. The members shall meet the requirements of sections 38-164 and 38-165. The professional members shall consist of three licensed hearing instrument specialists, one otolaryngologist, and one audiologist until one licensed hearing instrument specialist vacates his or her office or his or her term expires, whichever occurs first, at which time the professional members of the board shall consist of three licensed hearing instrument specialists, at least one of whom does not hold a license as an audiologist, one otolaryngologist, and one audiologist. At the expiration of the four-year terms of the members serving on December 1, 2008, successors shall be appointed for five-year terms.

Source: Laws 1969, c. 767, § 15, p. 2914; Laws 1981, LB 204, § 130; Laws 1986, LB 701, § 12; Laws 1988, LB 1100, § 160; Laws 1992, LB 1019, § 81; Laws 1993, LB 375, § 6; Laws 1994, LB 1223, § 52; Laws 1999, LB 828, § 173; R.S.1943, (2003), § 71-4715; Laws 2007, LB463, § 572; Laws 2009, LB195, § 26.

38-1509 Sale or fitting of hearing instruments; license required.

(1) No person shall engage in the sale of or practice of fitting hearing instruments or display a sign or in any other way advertise or represent himself or herself as a person who practices the fitting and sale or dispensing of hearing instruments unless he or she holds an unsuspended, unrevoked hearing instrument specialist license issued by the department as provided in the Hearing Instrument Specialists Practice Act. A hearing instrument specialist license shall confer upon the holder the right to select, fit, and sell hearing instruments. A person holding a license issued under the act prior to August 30, 2009, may continue to practice under such license until it expires under the terms of the license.

(2) A licensed audiologist who maintains a practice pursuant to licensure as an audiologist in which hearing instruments are regularly dispensed or who

intends to maintain such a practice shall also be licensed as a hearing instrument specialist pursuant to subsection (4) of section 38-1512.

(3) Nothing in the act shall prohibit a corporation, partnership, limited liability company, trust, association, or other like organization maintaining an established business address from engaging in the business of selling or offering for sale hearing instruments at retail without a license if it employs only properly licensed natural persons in the direct sale and fitting of such products.

(4) Nothing in the act shall prohibit the holder of a hearing instrument specialist license from the fitting and sale of wearable instruments or devices designed for or offered for the purpose of conservation or protection of hearing.

Source: Laws 1969, c. 767, § 2, p. 2904; Laws 1986, LB 701, § 2; Laws 1988, LB 1100, § 149; Laws 1992, LB 1019, § 79; Laws 1993, LB 121, § 438; R.S.1943, (2003), § 71-4702; Laws 2007, LB247, § 52; Laws 2007, LB247, § 70; Laws 2007, LB463, § 573; Laws 2009, LB195, § 27.

38-1510 Applicability of act.

(1) The Hearing Instrument Specialists Practice Act is not intended to prevent any person from engaging in the practice of measuring human hearing for the purpose of selection of hearing instruments if such person or organization employing such person does not sell hearing instruments or the accessories thereto.

(2) The act shall not apply to a person who is a physician licensed to practice in this state, except that such physician shall not delegate the authority to fit and dispense hearing instruments unless the person to whom the authority is delegated is licensed as a hearing instrument specialist under the act.

Source: Laws 1969, c. 767, § 4, p. 2905; Laws 1986, LB 701, § 4; Laws 1988, LB 1100, § 150; R.S.1943, (2003), § 71-4704; Laws 2007, LB463, § 574; Laws 2009, LB195, § 28.

38-1511 Sale; conditions.

(1) Any person who practices the fitting and sale of hearing instruments shall deliver to each person supplied with a hearing instrument a receipt which shall contain the licensee's signature and show his or her business address and the number of his or her certificate, together with specifications as to the make and model of the hearing instrument furnished, and clearly stating the full terms of sale. If a hearing instrument which is not new is sold, the receipt and the container thereof shall be clearly marked as used or reconditioned, whichever is applicable, with terms of guarantee, if any.

(2) Such receipt shall bear in no smaller type than the largest used in the body copy portion the following: The purchaser has been advised at the outset of his or her relationship with the hearing instrument specialist that any examination or representation made by a licensed hearing instrument specialist in connection with the fitting and selling of this hearing instrument is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and therefor must not be regarded as medical opinion or advice.

Source: Laws 1969, c. 767, § 3, p. 2905; Laws 1986, LB 701, § 3; R.S.1943, (2003), § 71-4703; Laws 2007, LB463, § 575; Laws 2009, LB195, § 29.

38-1512 License; examination; conditions.

(1) Any person may obtain a hearing instrument specialist license under the Hearing Instrument Specialists Practice Act by successfully passing a qualifying examination if the applicant:

(a) Is at least twenty-one years of age; and

(b) Has an education equivalent to a four-year course in an accredited high school.

(2) The qualifying examination shall consist of written and practical tests. The examination shall not be conducted in such a manner that college training is required in order to pass. Nothing in this examination shall imply that the applicant is required to possess the degree of medical competence normally expected of physicians.

(3) The department shall give examinations approved by the board. A minimum of two examinations shall be offered each calendar year.

(4) The department shall issue a hearing instrument specialist license without examination to a licensed audiologist who maintains a practice pursuant to licensure as an audiologist in which hearing instruments are regularly dispensed or who intends to maintain such a practice upon application to the department, proof of licensure as an audiologist, and payment of a twenty-five-dollar fee.

Source: Laws 1969, c. 767, § 7, p. 2907; Laws 1986, LB 701, § 6; Laws 1987, LB 473, § 53; Laws 1988, LB 1100, § 153; R.S.1943, (2003), § 71-4707; Laws 2007, LB247, § 53; Laws 2007, LB247, § 71; Laws 2007, LB463, § 576; Laws 2009, LB195, § 30.

Cross References

Uniform Credentialing Act, see section 38-101.

38-1513 Temporary license; issuance; supervision; renewal.

(1) The department, with the recommendation of the board, shall issue a temporary license to any person who has met the requirements for licensure as a hearing instrument specialist pursuant to subsection (1) of section 38-1512. Previous experience or a waiting period shall not be required to obtain a temporary license.

(2) Any person who desires a temporary license shall make application to the department. The temporary license shall be issued for a period of one year. A person holding a valid license as a hearing instrument specialist shall be responsible for the supervision and training of such applicant and shall maintain adequate personal contact with him or her.

(3) If a person who holds a temporary license under this section has not successfully passed the licensing examination within twelve months of the date of issuance of the temporary license, the temporary license may be renewed or reissued for a twelve-month period. In no case may a temporary license be renewed or reissued more than once. A renewal or reissuance may take place any time after the expiration of the first twelve-month period.

Source: Laws 1969, c. 767, § 8, p. 2907; Laws 1973, LB 515, § 22; Laws 1986, LB 701, § 7; Laws 1987, LB 473, § 55; Laws 1988, LB

1100, § 154; Laws 1991, LB 456, § 36; Laws 1997, LB 752, § 185; Laws 2003, LB 242, § 125; R.S.1943, (2003), § 71-4708; Laws 2007, LB463, § 577; Laws 2009, LB195, § 31.

38-1514 Qualifying examination; contents; purpose.

The qualifying examination provided in section 38-1512 shall be designed to demonstrate the applicant's adequate technical qualifications by:

(1) Tests of knowledge in the following areas as they pertain to the fitting and sale of hearing instruments:

(a) Basic physics of sound;

(b) The anatomy and physiology of the ear; and

(c) The function of hearing instruments; and

(2) Practical tests of proficiency in the following techniques as they pertain to the fitting of hearing instruments:

(a) Pure tone audiometry, including air conduction testing and bone conduction testing;

(b) Live voice or recorded voice speech audiometry;

(c) Masking when indicated;

(d) Recording and evaluation of audiograms and speech audiometry to determine proper selection and adaptation of a hearing instrument; and

(e) Taking earmold impressions.

Source: Laws 1969, c. 767, § 9, p. 2908; Laws 1986, LB 701, § 8; R.S.1943, (2003), § 71-4709; Laws 2007, LB463, § 578; Laws 2009, LB195, § 32.

38-1515 Applicant for licensure; continuing competency requirements.

An applicant for licensure as a hearing instrument specialist who has met the education and examination requirements in section 38-1512, who passed the examination more than three years prior to the time of application for licensure, and who is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

Source: Laws 2007, LB463, § 579; Laws 2009, LB195, § 33.

38-1516 Applicant for licensure; reciprocity; continuing competency requirements.

An applicant for licensure as a hearing instrument specialist who has met the standards set by the board pursuant to section 38-126 for a license based on licensure in another jurisdiction but is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

Source: Laws 2007, LB463, § 580; Laws 2009, LB195, § 34.

38-1517 Licensee; disciplinary action; additional grounds.

In addition to the grounds for disciplinary action found in sections 38-178 and 38-179, a credential issued under the Hearing Instrument Specialists Practice Act may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it in accordance with section 38-196 when the applicant or credential holder is found guilty of any of the following acts or offenses:

(1) Fitting and selling a hearing instrument to a child under the age of sixteen who has not been examined and cleared for hearing instrument use within a six-month period by an otolaryngologist without a signed waiver by the legal guardian. This subdivision shall not apply to the replacement with an identical model of any hearing instrument within one year of its purchase;

(2) Any other condition or acts which violate the Trade Practice Rules for the Hearing Aid Industry of the Federal Trade Commission or the Food and Drug Administration; or

(3) Violation of any provision of the Hearing Instrument Specialists Practice Act.

Source: Laws 1969, c. 767, § 12, p. 2909; Laws 1986, LB 701, § 10; Laws 1988, LB 1100, § 157; Laws 1991, LB 456, § 37; Laws 1994, LB 1223, § 51; R.S.1943, (2003), § 71-4712; Laws 2007, LB463, § 581; Laws 2009, LB195, § 35.

38-1518 Fees.

The department shall establish and collect fees for credentialing activities under the Hearing Instrument Specialists Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 1988, LB 1100, § 159; Laws 1992, LB 1019, § 80; Laws 2003, LB 242, § 127; R.S.1943, (2003), § 71-4714.01; Laws 2007, LB463, § 582; Laws 2009, LB195, § 36.

ARTICLE 19

MEDICAL RADIOGRAPHY PRACTICE ACT

Section
38-1901. Act, how cited.
38-1902. Definitions, where found.
38-1908. Medical radiography, defined.
38-1908.02. Patient care and management; defined.
38-1918. Educational programs; testing; requirements.

38-1901 Act, how cited.

Sections 38-1901 to 38-1920 shall be known and may be cited as the Medical Radiography Practice Act.

Source: Laws 2007, LB463, § 639; Laws 2008, LB928, § 5; Laws 2010, LB849, § 1.
Operative date April 14, 2010.

38-1902 Definitions, where found.

For purposes of the Medical Radiography Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1903 to 38-1913 apply.

Source: Laws 2007, LB463, § 640; Laws 2008, LB928, § 6; Laws 2010, LB849, § 2.
Operative date April 14, 2010.

38-1908 Medical radiography, defined.

Medical radiography means the application of radiation to humans for diagnostic purposes, including, but not limited to, utilizing proper:

(1) Radiation protection for the patient, the radiographer, and others;

(2) Radiation generating equipment operation and quality control;

(3) Image production and evaluation;

(4) Radiographic procedures;

(5) Processing of films;

(6) Positioning of patients;

(7) Performance methods to achieve optimum radiographic technique with a minimum of radiation exposure; and

(8) Patient care and management as it relates to the practice of medical radiography.

Source: Laws 2007, LB463, § 646; Laws 2010, LB849, § 3.
Operative date April 14, 2010.

38-1908.02 Patient care and management; defined.

Patient care and management, as it relates to the practice of medical radiography, includes, but is not limited to:

(1) Infection control;

(2) Patient transfer and movement;

(3) Assisting patients with medical equipment;

(4) Routine monitoring;

(5) Medical emergencies;

(6) Proper use of contrast media; and

(7) Patient safety and protection, including minimizing and monitoring patient radiation exposure through utilizing proper professional standards and protocols, including the principle of as low as reasonably achievable.

Source: Laws 2010, LB849, § 4.
Operative date April 14, 2010.

38-1918 Educational programs; testing; requirements.

(1)(a) The educational program for medical radiographers shall consist of twenty-four months of instruction in radiography approved by the board which includes, but is not limited to:

(i) Radiation protection for the patient, the radiographer, and others;

(ii) Radiation generating equipment operation and quality control;

(iii) Image production and evaluation;

(iv) Radiographic procedures;

(v) Processing of films;

(vi) Positioning of patients;

(vii) Performance methods to achieve optimum radiographic technique with a minimum of radiation exposure; and

(viii) Patient care and management as it relates to the practice of medical radiography.

(b) The board shall recognize equivalent courses of instruction successfully completed by individuals who are applying for licensure as medical radiographers when determining if the requirements of section 38-1915 have been met.

(2) The examination for limited radiographers shall include, but not be limited to:

(a) Radiation protection, radiation generating equipment operation and quality control, image production and evaluation, radiographic procedures, and patient care and management; and

(b) The anatomy of, and positioning for, specific regions of the human anatomy. The anatomical regions shall include at least one of the following:

(i) Chest;

(ii) Extremities;

(iii) Skull and sinus;

(iv) Spine; or

(v) Ankle and foot.

(3) The examination for limited radiographers in bone density shall include, but not be limited to, basic concepts of bone densitometry, equipment operation and quality control, radiation safety, and dual X-ray absorptiometry (DXA) scanning of the finger, heel, forearm, lumbar spine, and proximal femur.

(4) The department, with the recommendation of the board, shall adopt and promulgate rules and regulations regarding the examinations required in sections 38-1915 and 38-1916. Such rules and regulations shall provide for (a) the administration of examinations based upon national standards, such as the Examination in Radiography from the American Registry of Radiologic Technologists for medical radiographers, the Examination for the Limited Scope of Practice in Radiography or the Bone Densitometry Equipment Operator Examination from the American Registry of Radiologic Technologists for limited radiographers, or equivalent examinations that, as determined by the board, meet the standards for educational and psychological testing as recommended by the American Psychological Association, the American Educational Research Association, and the National Council on Measurement in Education, (b) procedures to be followed for examinations, (c) the method of grading and the passing grades for such examinations, (d) security protection for questions and answers, and (e) for medical radiographers, the contents of such examination based on the course requirements for medical radiographers prescribed in subsection (1) of this section. Any costs incurred in determining the extent to which examinations meet the examining standards of this subsection shall be paid by the individual or organization proposing the use of such examination.

(5) No applicant for a license as a limited radiographer may take the examination for licensure, or for licensure for any specific anatomical region, more than three times without first waiting a period of one year after the last

unsuccessful attempt of the examination and submitting proof to the department of completion of continuing competency activities as required by the board for each subsequent attempt.

Source: Laws 1987, LB 390, § 24; Laws 1990, LB 1064, § 21; Laws 1995, LB 406, § 47; Laws 1996, LB 1044, § 656; Laws 2000, LB 1115, § 74; Laws 2002, LB 1021, § 76; Laws 2003, LB 242, § 115; Laws 2006, LB 994, § 105; R.S.Supp.,2006, § 71-3515.02; Laws 2007, LB463, § 656; Laws 2010, LB849, § 5.
Operative date April 14, 2010.

ARTICLE 20

MEDICINE AND SURGERY PRACTICE ACT

Section
38-2001. Act, how cited.
38-2008. Approved program, defined.
38-2009. Repealed. Laws 2009, LB 195, § 111.
38-2014. Physician assistant, defined.
38-2015. Proficiency examination, defined.
38-2017. Supervising physician, defined.
38-2018. Supervision, defined.
38-2021. Unprofessional conduct, defined.
38-2037. Additional grounds for disciplinary action.
38-2047. Physician assistants; services performed; supervision requirements.
38-2049. Physician assistants; licenses; temporary licenses; issuance.
38-2050. Physician assistants; supervision; supervising physician; requirements; agreement.
38-2051. Repealed. Laws 2009, LB 195, § 111.
38-2055. Physician assistants; prescribe drugs and devices; restrictions.
38-2062. Anatomic pathology service; unprofessional conduct.

38-2001 Act, how cited.

Sections 38-2001 to 38-2062 shall be known and may be cited as the Medicine and Surgery Practice Act.

Source: Laws 2007, LB463, § 659; Laws 2009, LB394, § 1.

38-2008 Approved program, defined.

Approved program means a program for the education of physician assistants which is approved by the Accreditation Review Commission on Education for the Physician Assistant or its predecessor or successor agency and which the board formally approves.

Source: Laws 2007, LB463, § 666; Laws 2009, LB195, § 37.

38-2009 Repealed. Laws 2009, LB 195, § 111.

38-2014 Physician assistant, defined.

Physician assistant means any person who graduates from an approved program, who has passed a proficiency examination, and whom the department, with the recommendation of the board, approves to perform medical services under the supervision of a physician.

Source: Laws 1973, LB 101, § 2; R.S.Supp.,1973, § 85-179.05; Laws 1985, LB 132, § 2; Laws 1993, LB 316, § 1; Laws 1996, LB 1044, § 436; Laws 1996, LB 1108, § 8; Laws 1999, LB 828, § 92;

Laws 2001, LB 209, § 8; R.S.1943, (2003), § 71-1,107.16; Laws 2007, LB296, § 338; Laws 2007, LB463, § 672; Laws 2009, LB195, § 38.

38-2015 Proficiency examination, defined.

Proficiency examination means the Physician Assistant National Certifying Examination administered by the National Commission on Certification of Physician Assistants.

Source: Laws 2007, LB463, § 673; Laws 2009, LB195, § 39.

38-2017 Supervising physician, defined.

Supervising physician means a licensed physician who supervises a physician assistant.

Source: Laws 2007, LB463, § 675; Laws 2009, LB195, § 40.

38-2018 Supervision, defined.

Supervision means the ready availability of the supervising physician for consultation and direction of the activities of the physician assistant. Contact with the supervising physician by telecommunication shall be sufficient to show ready availability.

Source: Laws 2007, LB463, § 676; Laws 2009, LB195, § 41.

38-2021 Unprofessional conduct, defined.

Unprofessional conduct means any departure from or failure to conform to the standards of acceptable and prevailing practice of medicine and surgery or the ethics of the profession, regardless of whether a person, patient, or entity is injured, or conduct that is likely to deceive or defraud the public or is detrimental to the public interest, including, but not limited to:

(1) Performance by a physician of an abortion as defined in subdivision (1) of section 28-326 under circumstances when he or she will not be available for a period of at least forty-eight hours for postoperative care unless such postoperative care is delegated to and accepted by another physician;

(2) Performing an abortion upon a minor without having satisfied the notice requirements of sections 71-6901 to 71-6908;

(3) The intentional and knowing performance of a partial-birth abortion as defined in subdivision (7) of section 28-326, unless such procedure is necessary to save the life of the mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself; and

(4) Performance by a physician of an abortion in violation of the Pain-Capable Unborn Child Protection Act.

Source: Laws 2007, LB463, § 679; Laws 2010, LB594, § 16; Laws 2010, LB1103, § 12.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB594, section 16, with LB1103, section 12, to reflect all amendments.

Note: Changes made by LB594 became effective July 15, 2010. Changes made by LB1103 became operative October 15, 2010.

Cross References

Pain-Capable Unborn Child Protection Act, see section 28-3,102.

38-2037 Additional grounds for disciplinary action.

In addition to the grounds for disciplinary action found in sections 38-178 and 38-179, a license to practice medicine and surgery or osteopathic medicine and surgery or a license to practice as a physician assistant may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it in accordance with section 38-196 when the applicant or licensee fails to comply with the provisions of section 71-603.01, 71-604, 71-605, or 71-606 relating to the signing of birth and death certificates.

Source: Laws 2007, LB463, § 695; Laws 2009, LB195, § 42.

38-2047 Physician assistants; services performed; supervision requirements.

(1) A physician assistant may perform medical services that (a) are delegated by and provided under the supervision of a licensed physician, (b) are appropriate to the level of competence of the physician assistant, (c) form a component of the supervising physician's scope of practice, and (d) are not otherwise prohibited by law.

(2) A physician assistant shall be considered an agent of his or her supervising physician in the performance of practice-related activities delegated by the supervising physician, including, but not limited to, ordering diagnostic, therapeutic, and other medical services.

(3) Each physician assistant and his or her supervising physician shall be responsible to ensure that (a) the scope of practice of the physician assistant is identified, (b) the delegation of medical tasks is appropriate to the level of competence of the physician assistant, (c) the relationship of and access to the supervising physician is defined, and (d) a process for evaluation of the performance of the physician assistant is established.

(4) A physician assistant may pronounce death and may complete and sign death certificates and any other forms if such acts are within the scope of practice of the physician assistant, are delegated by his or her supervising physician, and are not otherwise prohibited by law.

(5) In order for a physician assistant to practice in a hospital, (a) his or her supervising physician shall be a member of the medical staff of the hospital, (b) the physician assistant shall be approved by the governing board of the hospital, and (c) the physician assistant shall comply with applicable hospital policies, including, but not limited to, reasonable requirements that the physician assistant and the supervising physician maintain professional liability insurance with such coverage and limits as established by the governing board of the hospital.

(6) For physician assistants with less than two years of experience, the department, with the recommendation of the board, shall adopt and promulgate rules and regulations establishing minimum requirements for the personal presence of the supervising physician, stated in hours or percentage of practice time, and may provide different minimum requirements for the personal presence of the supervising physician based on the geographic location of the supervising physician's primary and other practice sites and other factors the board deems relevant.

(7) A physician assistant may render services in a setting geographically remote from the supervising physician, except that a physician assistant with less than two years of experience shall comply with standards of supervision

established in rules and regulations adopted and promulgated under the Medicine and Surgery Practice Act. The board may consider an application for waiver of the standards and may waive the standards upon a showing of good cause by the supervising physician. The department may adopt and promulgate rules and regulations establishing minimum requirements for such waivers.

Source: Laws 1973, LB 101, § 3; R.S.Supp.,1973, § 85-179.06; Laws 1985, LB 132, § 3; Laws 1993, LB 316, § 2; Laws 1996, LB 1108, § 9; R.S.1943, (2003), § 71-1,107.17; Laws 2007, LB463, § 705; Laws 2009, LB195, § 43.

Cross References

Liability limitations:
Malpractice, Nebraska Hospital-Medical Liability Act, see section 44-2801 et seq.
Rendering emergency aid, see section 25-21,186.

38-2049 Physician assistants; licenses; temporary licenses; issuance.

(1) The department, with the recommendation of the board, shall issue licenses to persons who are graduates of an approved program and have passed a proficiency examination.

(2) The department, with the recommendation of the board, shall issue temporary licenses to persons who have successfully completed an approved program but who have not yet passed a proficiency examination. Any temporary license issued pursuant to this subsection shall be issued for a period not to exceed one year and under such conditions as determined by the department, with the recommendation of the board. The temporary license may be extended by the department, with the recommendation of the board.

(3) Physician assistants approved by the board prior to April 16, 1985, shall not be required to complete the proficiency examination.

Source: Laws 1973, LB 101, § 5; R.S.Supp.,1973, § 85-179.08; Laws 1985, LB 132, § 5; Laws 1996, LB 1108, § 10; R.S.1943, (2003), § 71-1,107.19; Laws 2007, LB463, § 707; Laws 2009, LB195, § 44.

Cross References

Uniform Credentialing Act, see section 38-101.

38-2050 Physician assistants; supervision; supervising physician; requirements; agreement.

(1) To be a supervising physician, a person shall:

(a) Be licensed to practice medicine and surgery under the Uniform Credentialing Act;

(b) Have no restriction imposed by the board on his or her ability to supervise a physician assistant; and

(c) Maintain an agreement with the physician assistant as provided in subsection (2) of this section.

(2)(a) An agreement between a supervising physician and a physician assistant shall (i) provide that the supervising physician will exercise supervision over the physician assistant in accordance with the Medicine and Surgery Practice Act and the rules and regulations adopted and promulgated under the act relating to such agreements, (ii) define the scope of practice of the physician assistant, (iii) provide that the supervising physician will retain professional and

legal responsibility for medical services rendered by the physician assistant pursuant to such agreement, and (iv) be signed by the supervising physician and the physician assistant.

(b) The supervising physician shall keep the agreement on file at his or her primary practice site, shall keep a copy of the agreement on file at each practice site where the physician assistant provides medical services, and shall make the agreement available to the board and the department upon request.

(3) Supervision of a physician assistant by a supervising physician shall be continuous but shall not require the physical presence of the supervising physician at the time and place that the services are rendered.

(4) A supervising physician may supervise no more than four physician assistants at any one time. The board may consider an application for waiver of this limit and may waive the limit upon a showing that the supervising physician meets the minimum requirements for the waiver. The department may adopt and promulgate rules and regulations establishing minimum requirements for such waivers.

Source: Laws 1973, LB 101, § 6; R.S.Supp.,1973, § 85-179.09; Laws 1985, LB 132, § 6; Laws 1993, LB 316, § 3; R.S.1943, (2003), § 71-1,107.20; Laws 2007, LB463, § 708; Laws 2009, LB195, § 45.

Cross References

Uniform Credentialing Act, see section 38-101.

38-2051 Repealed. Laws 2009, LB 195, § 111.

38-2055 Physician assistants; prescribe drugs and devices; restrictions.

A physician assistant may prescribe drugs and devices as delegated to do so by a supervising physician. Any limitation placed by the supervising physician on the prescribing authority of the physician assistant shall be recorded on the physician assistant's scope of practice agreement established pursuant to rules and regulations adopted and promulgated under the Medicine and Surgery Practice Act. All prescriptions and prescription container labels shall bear the name of the physician assistant and, if required for purposes of reimbursement, the name of the supervising physician. A physician assistant to whom has been delegated the authority to prescribe controlled substances shall obtain a federal Drug Enforcement Administration registration number.

Source: Laws 1985, LB 132, § 15; Laws 1992, LB 1019, § 41; Laws 1999, LB 379, § 4; Laws 1999, LB 828, § 94; Laws 2005, LB 175, § 1; R.S.Supp.,2006, § 71-1,107.30; Laws 2007, LB463, § 713; Laws 2009, LB195, § 46.

Cross References

Schedules of controlled substances, see section 28-405.

38-2062 Anatomic pathology service; unprofessional conduct.

(1) It shall be unprofessional conduct for any physician who orders but does not supervise or perform a component of an anatomic pathology service to fail to disclose in any bill for such service presented to a patient, entity, or person:

(a) The name and address of the physician or laboratory that provided the anatomic service; and

(b) The actual amount paid or to be paid for each anatomic pathology service provided to the patient by the physician or laboratory that performed the service.

(2) For purposes of this section, anatomic pathology service means:

(a) Blood-banking services performed by pathologists;

(b) Cytopathology, which means the microscopic examination of cells from the following: Fluids; aspirates; washings; brushings; or smears, including the Pap test examination performed by a physician or under the supervision of a physician;

(c) Hematology, which means the microscopic evaluation of bone marrow aspirates and biopsies performed by a physician or under the supervision of a physician and peripheral blood smears when the attending or treating physician or technologist requests that a blood smear be reviewed by the pathologist;

(d) Histopathology or surgical pathology, which means the gross and microscopic examination and histologic processing of organ tissue performed by a physician or under the supervision of a physician; and

(e) Subcellular pathology and molecular pathology.

(3) For purposes of this section, anatomic pathology service does not include the initial collection or packaging of the specimen for transport.

Source: Laws 2009, LB394, § 2.

ARTICLE 26

OPTOMETRY PRACTICE ACT

Section
38-2605. Practice of optometry, defined.
38-2617. Use of pharmaceutical agents or dispensing of contact lens containing ocular pharmaceutical agent by licensed optometrist; standard of care.

38-2605 Practice of optometry, defined.

(1) The practice of optometry means one or a combination of the following:

(a) The examination of the human eye to diagnose, treat, or refer for consultation or treatment any abnormal condition of the human eye, ocular adnexa, or visual system;

(b) The employment of instruments, devices, pharmaceutical agents, and procedures intended for the purpose of investigating, examining, diagnosing, treating, managing, or correcting visual defects or abnormal conditions of the human eye, ocular adnexa, or visual system;

(c) The prescribing and application of lenses, devices containing lenses, prisms, contact lenses, ophthalmic devices, orthoptics, vision training, pharmaceutical agents, and prosthetic devices to correct, relieve, or treat defects or abnormal conditions of the human eye, ocular adnexa, or visual system;

(d) The dispensing and sale of a contact lens, including a cosmetic or plano contact lens or a contact lens containing an ocular pharmaceutical agent which an optometrist is authorized by law to prescribe and which is classified by the federal Food and Drug Administration as a drug;

(e) The ordering of procedures and laboratory tests rational to the diagnosis or treatment of conditions or diseases of the human eye, ocular adnexa, or visual system; and

(f) The removal of superficial eyelid, conjunctival, and corneal foreign bodies.

(2) The practice of optometry does not include the use of surgery, laser surgery, oral therapeutic agents used in the treatment of glaucoma, oral steroids, or oral immunosuppressive agents or the treatment of infantile/congenital glaucoma, which means the condition is present at birth.

Source: Laws 1927, c. 167, § 111, p. 487; C.S.1929, § 71-1601; R.S.1943, § 71-1,133; Laws 1979, LB 9, § 1; Laws 1986, LB 131, § 1; Laws 1987, LB 116, § 1; Laws 1993, LB 429, § 2; Laws 1998, LB 369, § 1; R.S.1943, (2003), § 71-1,133; Laws 2007, LB236, § 20; Laws 2007, LB463, § 877; Laws 2010, LB849, § 6.
Operative date July 15, 2010.

38-2617 Use of pharmaceutical agents or dispensing of contact lens containing ocular pharmaceutical agent by licensed optometrist; standard of care.

(1) A licensed optometrist who administers or prescribes pharmaceutical agents for examination or for treatment shall provide the same standard of care to patients as that provided by a physician licensed in this state to practice medicine and surgery utilizing the same pharmaceutical agents for examination or treatment.

(2) An optometrist who dispenses a contact lens containing an ocular pharmaceutical agent which is classified by the federal Food and Drug Administration as a drug shall comply with the rules and regulations of the board relating to packaging, labeling, storage, drug utilization review, and record keeping. The board shall adopt and promulgate rules and regulations relating to packaging, labeling, storage, drug utilization review, and record keeping for such contact lenses.

Source: Laws 1993, LB 429, § 3; Laws 1998, LB 369, § 8; R.S.1943, (2003), § 71-1,135.06; Laws 2007, LB236, § 25; Laws 2007, LB463, § 890; Laws 2010, LB849, § 7.
Operative date July 15, 2010.

ARTICLE 28

PHARMACY PRACTICE ACT

Section
38-2801. Act, how cited.
38-2802. Definitions, where found.
38-2805.01. Accrediting body, defined.
38-2826. Labeling, defined.
38-2826.01. Long-term care facility, defined.
38-2826.02. Medical gas, defined.
38-2826.03. Medical gas device, defined.
38-2827. Repealed. Laws 2009, LB 604, § 12.
38-2841. Prescription drug or device or legend drug or device, defined.
38-2850. Pharmacy; practice; persons excepted.
38-2867. Pharmacy; scope of practice; prohibited acts; violation; penalty.
38-2869. Prospective drug utilization review; counseling; requirements.
38-2871. Prescription information; transfer; requirements.
38-2873. Delegated dispensing permit; requirements.
38-2881. Delegated dispensing permit; formularies.
38-2886. Delegated dispensing permit; workers; training; requirements; documentation.
38-2888. Delegated dispensing permit; licensed health care professionals; training required.

Section
38-2889. Delegated dispensing permit; advisory committees; authorized.
38-2893. Pharmacy Technician Registry; created; contents.
38-2894. Pharmacy technician; registration; disciplinary measures; procedure; Licensee Assistance Program; participation.

38-2801 Act, how cited.

Sections 38-2801 to 38-28,103 shall be known and may be cited as the Pharmacy Practice Act.

Source: Laws 2007, LB247, § 79; Laws 2007, LB463, § 897; Laws 2009, LB195, § 47; Laws 2009, LB604, § 1.

38-2802 Definitions, where found.

For purposes of the Pharmacy Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2803 to 38-2848 apply.

Source: Laws 2007, LB463, § 898; Laws 2009, LB195, § 48; Laws 2009, LB604, § 2.

38-2805.01 Accrediting body, defined.

Accrediting body means an entity recognized by the Centers for Medicare and Medicaid Services to provide accrediting services for the Medicare Part B Home Medical Equipment Services Benefit.

Source: Laws 2009, LB604, § 3.

38-2826 Labeling, defined.

Labeling means the process of preparing and affixing a label to any drug container or device container, exclusive of the labeling by a manufacturer, packager, or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by federal and state law or regulation. Compliance with labeling requirements under federal law for devices described in subsection (2) of section 38-2841, medical gases, and medical gas devices constitutes compliance with state law and regulations for purposes of this section.

Source: Laws 2007, LB463, § 922; Laws 2009, LB604, § 6; Laws 2010, LB849, § 8.
Operative date July 15, 2010.

38-2826.01 Long-term care facility, defined.

Long-term care facility means an intermediate care facility, an intermediate care facility for the mentally retarded, a long-term care hospital, a mental health center, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act.

Source: Laws 2009, LB195, § 49.

Cross References

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

38-2826.02 Medical gas, defined.

Medical gas means oxygen in liquid or gaseous form intended for human consumption.

Source: Laws 2009, LB604, § 4.

38-2826.03 Medical gas device, defined.

Medical gas device means a medical device associated with the administration of medical gas.

Source: Laws 2009, LB604, § 5.

38-2827 Repealed. Laws 2009, LB 604, § 12.

38-2841 Prescription drug or device or legend drug or device, defined.

(1) Prescription drug or device or legend drug or device means:

(a) A drug or device which is required under federal law to be labeled with one of the following statements prior to being dispensed or delivered:

(i) Caution: Federal law prohibits dispensing without prescription;

(ii) Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian; or

(iii) ''Rx Only''; or

(b) A drug or device which is required by any applicable federal or state law to be dispensed pursuant only to a prescription or chart order or which is restricted to use by practitioners only.

(2) Prescription drug or device or legend drug or device does not include a type of device, including supplies and device components, which carries the federal Food and Drug Administration legend ''Caution: Federal law restricts this device to sale by or on the order of a licensed health care practitioner'' or an alternative legend approved by the federal Food and Drug Administration which it recognizes, in published guidance, as conveying essentially the same message.

Source: Laws 2007, LB463, § 937; Laws 2010, LB849, § 9.
Operative date July 15, 2010.

38-2850 Pharmacy; practice; persons excepted.

As authorized by the Uniform Credentialing Act, the practice of pharmacy may be engaged in by a pharmacist, a pharmacist intern, or a practitioner with a pharmacy license. The practice of pharmacy shall not be construed to include:

(1) Persons who sell, offer, or expose for sale completely denatured alcohol or concentrated lye, insecticides, and fungicides in original packages;

(2) Practitioners, other than veterinarians, certified nurse midwives, certified registered nurse anesthetists, and nurse practitioners, who dispense drugs or devices as an incident to the practice of their profession, except that if such practitioner regularly engages in dispensing such drugs or devices to his or her patients for which such patients are charged, such practitioner shall obtain a pharmacy license;

(3) Persons who sell, offer, or expose for sale nonprescription drugs or proprietary medicines, the sale of which is not in itself a violation of the Nebraska Liquor Control Act;

(4) Medical representatives, detail persons, or persons known by some name of like import, but only to the extent of permitting the relating of pharmaceutical information to health care professionals;

(5) Licensed veterinarians practicing within the scope of their profession;

(6) Certified nurse midwives, certified registered nurse anesthetists, and nurse practitioners who dispense sample medications which are provided by the manufacturer and are dispensed at no charge to the patient;

(7) Hospitals engaged in the compounding and dispensing of drugs and devices pursuant to chart orders for persons registered as patients and within the confines of the hospital, except that if a hospital engages in such compounding and dispensing for persons not registered as patients and within the confines of the hospital, such hospital shall obtain a pharmacy license or delegated dispensing permit;

(8) Optometrists who prescribe or dispense eyeglasses or contact lenses to their own patients, including contact lenses that contain and deliver ocular pharmaceutical agents as authorized under the Optometry Practice Act, and ophthalmologists who prescribe or dispense eyeglasses or contact lenses to their own patients, including contact lenses that contain and deliver ocular pharmaceutical agents;

(9) Registered nurses employed by a hospital who administer pursuant to a chart order, or procure for such purpose, single doses of drugs or devices from original drug or device containers or properly labeled prepackaged drug or device containers to persons registered as patients and within the confines of the hospital;

(10) Persons employed by a facility where dispensed drugs and devices are delivered from a pharmacy for pickup by a patient or caregiver and no dispensing or storage of drugs or devices occurs;

(11) Persons who sell or purchase medical products, compounds, vaccines, or serums used in the prevention or cure of animal diseases and maintenance of animal health if such medical products, compounds, vaccines, or serums are not sold or purchased under a direct, specific, written medical order of a licensed veterinarian;

(12) A pharmacy or a person accredited by an accrediting body which or who, pursuant to a medical order, (a) administers, dispenses, or distributes medical gas or medical gas devices to patients or ultimate users or (b) purchases or receives medical gas or medical gas devices for administration, dispensing, or distribution to patients or ultimate users; and

(13) A business or a person accredited by an accrediting body which or who, pursuant to a medical order, (a) sells, delivers, or distributes devices described in subsection (2) of section 38-2841 to patients or ultimate users or (b) purchases or receives such devices with intent to sell, deliver, or distribute to patients or ultimate users.

Source: Laws 1927, c. 167, § 121, p. 490; C.S.1929, § 71-1802; R.S.1943, § 71-1,143; Laws 1961, c. 339, § 2, p. 1062; Laws 1971, LB 350, § 2; Laws 1983, LB 476, § 7; Laws 1994, LB 900, § 3; Laws 1996, LB 414, § 7; Laws 1996, LB 1108, § 15; Laws 2000, LB 1115, § 18; Laws 2001, LB 398, § 29; Laws 2005, LB 256, § 30;

R.S.Supp.,2006, § 71-1,143; Laws 2007, LB463, § 946; Laws 2009, LB604, § 7; Laws 2010, LB849, § 10.
Operative date July 15, 2010.

Cross References

Nebraska Liquor Control Act, see section 53-101.
Optometry Practice Act, see section 38-2601.

38-2867 Pharmacy; scope of practice; prohibited acts; violation; penalty.

(1) Except as provided for pharmacy technicians in sections 38-2890 to 38-2897, for persons described in subdivision (12) or (13) of section 38-2850, and for individuals authorized to dispense under a delegated dispensing permit, no person other than a licensed pharmacist, a pharmacist intern, or a practitioner with a pharmacy license shall provide pharmaceutical care, compound and dispense drugs or devices, or dispense pursuant to a medical order. Notwithstanding any other provision of law to the contrary, a pharmacist or pharmacist intern may dispense drugs or devices pursuant to a medical order of a practitioner authorized to prescribe in another state if such practitioner could be authorized to prescribe such drugs or devices in this state.

(2) Except as provided for pharmacy technicians in sections 38-2890 to 38-2897, for persons described in subdivision (12) or (13) of section 38-2850, and for individuals authorized to dispense under a delegated dispensing permit, it shall be unlawful for any person to permit or direct a person who is not a pharmacist intern, a licensed pharmacist, or a practitioner with a pharmacy license to provide pharmaceutical care, compound and dispense drugs or devices, or dispense pursuant to a medical order.

(3) It shall be unlawful for any person to coerce or attempt to coerce a pharmacist to enter into a delegated dispensing agreement or to supervise any pharmacy technician for any purpose or in any manner contrary to the professional judgment of the pharmacist. Violation of this subsection by a health care professional regulated pursuant to the Uniform Credentialing Act shall be considered an act of unprofessional conduct. A violation of this subsection by a facility shall be prima facie evidence in an action against the license of the facility pursuant to the Health Care Facility Licensure Act. Any pharmacist subjected to coercion or attempted coercion pursuant to this subsection has a cause of action against the person and may recover his or her damages and reasonable attorney's fees.

(4) Violation of this section by an unlicensed person shall be a Class III misdemeanor.

Source: Laws 1927, c. 167, § 127, p. 493; C.S.1929, § 71-1808; R.S.1943, § 71-1,147; Laws 1961, c. 339, § 3, p. 1063; Laws 1971, LB 350, § 5; Laws 1983, LB 476, § 15; Laws 1993, LB 536, § 50; Laws 1994, LB 900, § 4; Laws 1996, LB 1108, § 16; Laws 1999, LB 594, § 44; Laws 2001, LB 398, § 34; R.S.1943, (2003), § 71-1,147; Laws 2007, LB236, § 30; Laws 2007, LB247, § 81; Laws 2007, LB463, § 963; Laws 2009, LB604, § 8; Laws 2010, LB849, § 11.
Operative date July 15, 2010.

Cross References

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

38-2869 Prospective drug utilization review; counseling; requirements.

(1)(a) Prior to the dispensing or the delivery of a drug or device pursuant to a medical order to a patient or caregiver, a pharmacist shall in all care settings conduct a prospective drug utilization review. Such prospective drug utilization review shall involve monitoring the patient-specific medical history described in subdivision (b) of this subsection and available to the pharmacist at the practice site for:

(i) Therapeutic duplication;

(ii) Drug-disease contraindications;

(iii) Drug-drug interactions;

(iv) Incorrect drug dosage or duration of drug treatment;

(v) Drug-allergy interactions; and

(vi) Clinical abuse or misuse.

(b) A pharmacist conducting a prospective drug utilization review shall ensure that a reasonable effort is made to obtain from the patient, his or her caregiver, or his or her practitioner and to record and maintain records of the following information to facilitate such review:

(i) The name, address, telephone number, date of birth, and gender of the patient;

(ii) The patient's history of significant disease, known allergies, and drug reactions and a comprehensive list of relevant drugs and devices used by the patient; and

(iii) Any comments of the pharmacist relevant to the patient's drug therapy.

(c) The assessment of data on drug use in any prospective drug utilization review shall be based on predetermined standards, approved by the board.

(2)(a) Prior to the dispensing or delivery of a drug or device pursuant to a prescription, the pharmacist shall ensure that a verbal offer to counsel the patient or caregiver is made. The counseling of the patient or caregiver by the pharmacist shall be on elements which, in the exercise of the pharmacist's professional judgment, the pharmacist deems significant for the patient. Such elements may include, but need not be limited to, the following:

(i) The name and description of the prescribed drug or device;

(ii) The route of administration, dosage form, dose, and duration of therapy;

(iii) Special directions and precautions for preparation, administration, and use by the patient or caregiver;

(iv) Common side effects, adverse effects or interactions, and therapeutic contraindications that may be encountered, including avoidance, and the action required if such effects, interactions, or contraindications occur;

(v) Techniques for self-monitoring drug therapy;

(vi) Proper storage;

(vii) Prescription refill information; and

(viii) Action to be taken in the event of a missed dose.

(b) The patient counseling provided for in this subsection shall be provided in person whenever practical or by the utilization of telephone service which is available at no cost to the patient or caregiver.

(c) Patient counseling shall be appropriate to the individual patient and shall be provided to the patient or caregiver.

(d) Written information may be provided to the patient or caregiver to supplement the patient counseling provided for in this subsection but shall not be used as a substitute for such patient counseling.

(e) This subsection shall not be construed to require a pharmacist to provide patient counseling when:

(i) The patient or caregiver refuses patient counseling;

(ii) The pharmacist, in his or her professional judgment, determines that patient counseling may be detrimental to the patient's care or to the relationship between the patient and his or her practitioner;

(iii) The patient is a patient or resident of a health care facility or health care service licensed under the Health Care Facility Licensure Act to whom prescription drugs or devices are administered by a licensed or certified staff member or consultant or a certified physician's assistant;

(iv) The practitioner authorized to prescribe drugs or devices specifies that there shall be no patient counseling unless he or she is contacted prior to such patient counseling. The prescribing practitioner shall specify such prohibition in an oral prescription or in writing on the face of a written prescription, including any prescription which is received by facsimile or electronic transmission. The pharmacist shall note ''Contact Before Counseling'' on the face of the prescription if such is communicated orally by the prescribing practitioner;

(v) A medical gas or a medical gas device is administered, dispensed, or distributed by a person described in subdivision (12) of section 38-2850; or

(vi) A device described in subsection (2) of section 38-2841 is sold, distributed, or delivered by a business or person described in subdivision (13) of section 38-2850.

Source: Laws 1993, LB 536, § 55; Laws 1998, LB 1073, § 63; Laws 2000, LB 819, § 92; Laws 2001, LB 398, § 45; Laws 2005, LB 382, § 8; R.S.Supp.,2006, § 71-1,147.35; Laws 2007, LB247, § 26; Laws 2007, LB463, § 965; Laws 2009, LB604, § 9; Laws 2010, LB849, § 12.
Operative date July 15, 2010.

Cross References

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

38-2871 Prescription information; transfer; requirements.

Original prescription information for any controlled substances listed in Schedule III, IV, or V of section 28-405 and other prescription drugs or devices not listed in section 28-405 may be transferred between pharmacies for the purpose of refill dispensing on a one-time basis, except that pharmacies electronically accessing a real-time, on-line data base may transfer up to the maximum refills permitted by law and as authorized by the prescribing practitioner on the prescription. Transfers are subject to the following:

(1) The transfer is communicated directly between two pharmacists or pharmacist interns except when the pharmacies can use a real-time, on-line data base;

(2) The transferring pharmacist or pharmacist intern indicates void on the record of the prescription;

(3) The transferring pharmacist or pharmacist intern indicates on the record of the prescription the name, the address, and, if a controlled substance, the Drug Enforcement Administration number of the pharmacy to which the information was transferred, the name of the pharmacist or pharmacist intern receiving the information, the date of transfer, and the name of the transferring pharmacist or pharmacist intern;

(4) The receiving pharmacist or pharmacist intern indicates on the record of the transferred prescription that the prescription is transferred;

(5) The transferred prescription includes the following information:

(a) The date of issuance of the original prescription;

(b) The original number of refills authorized;

(c) The date of original dispensing;

(d) The number of valid refills remaining;

(e) The date and location of last refill; and

(f) The name, the address, and, if a controlled substance, the Drug Enforcement Administration number of the pharmacy from which the transfer was made, the name of the pharmacist or pharmacist intern transferring the information, the original prescription number, and the date of transfer; and

(6) Both the original and transferred prescriptions must be maintained by the transferring and receiving pharmacy for a period of five years from the date of transfer.

Source: Laws 2001, LB 398, § 36; R.S.1943, (2003), § 71-1,146.02; Laws 2007, LB463, § 967; Laws 2009, LB195, § 50.

38-2873 Delegated dispensing permit; requirements.

(1) Any person who has entered into a delegated dispensing agreement pursuant to section 38-2872 may apply to the department for a delegated dispensing permit. An applicant shall apply at least thirty days prior to the anticipated date for commencing delegated dispensing activities. Each applicant shall (a) file an application as prescribed by the department and a copy of the delegated dispensing agreement and (b) pay any fees required by the department. A hospital applying for a delegated dispensing permit shall not be required to pay an application fee if it has a pharmacy license under the Health Care Facility Licensure Act.

(2) The department shall issue or renew a delegated dispensing permit to an applicant if the department, with the recommendation of the board, determines that:

(a) The application and delegated dispensing agreement comply with the Pharmacy Practice Act;

(b) The public health and welfare is protected and public convenience and necessity is promoted by the issuance of such permit. If the applicant is a hospital, public health clinic, or dialysis drug or device distributor, the department shall find that the public health and welfare is protected and public convenience and necessity is promoted. For any other applicant, the department may, in its discretion, require the submission of documentation to demonstrate that the public health and welfare is protected and public conven-

ience and necessity is promoted by the issuance of the delegated dispensing permit; and

(c) The applicant has complied with any inspection requirements pursuant to section 38-2874.

(3) In addition to the requirements of subsection (2) of this section, a public health clinic (a) shall apply for a separate delegated dispensing permit for each clinic maintained on separate premises even though such clinic is operated under the same management as another clinic and (b) shall not apply for a separate delegated dispensing permit to operate an ancillary facility. For purposes of this subsection, ancillary facility means a delegated dispensing site which offers intermittent services, which is staffed by personnel from a public health clinic for which a delegated dispensing permit has been issued, and at which no legend drugs or devices are stored.

(4) A delegated dispensing permit shall not be transferable. Such permit shall expire annually on July 1 unless renewed by the department. The department, with the recommendation of the board, may adopt and promulgate rules and regulations to reinstate expired permits upon payment of a late fee.

Source: Laws 2001, LB 398, § 48; R.S.1943, (2003), § 71-1,147.63; Laws 2007, LB463, § 969; Laws 2009, LB604, § 10.

Cross References

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

38-2881 Delegated dispensing permit; formularies.

(1) With the recommendation of the board, the director shall approve a formulary to be used by individuals dispensing pursuant to a delegated dispensing permit. A formulary shall consist of a list of drugs or devices appropriate to delegated dispensing activities authorized by the delegated dispensing permit. Except as otherwise provided in this section, if the board finds that a formulary would be unnecessary to protect the public health and welfare and promote public convenience and necessity, the board shall recommend that no formulary be approved.

(2)(a) With the recommendation of the board, the director shall approve the formulary to be used by public health clinics dispensing pursuant to a delegated dispensing permit.

(b) The formulary for a public health clinic shall consist of a list of drugs and devices for contraception, sexually transmitted diseases, and vaginal infections which may be dispensed and stored, patient instruction requirements which shall include directions on the use of drugs and devices, potential side effects and drug interactions, criteria for contacting the on-call pharmacist, and accompanying written patient information.

(c) In no event shall the director exclude any of the provisions for patient instruction approved by the board.

(d) Drugs and devices with the following characteristics shall not be eligible to be included in the formulary:

(i) Controlled substances;

(ii) Drugs with significant dietary interactions;

(iii) Drugs with significant drug-drug interactions; and

(iv) Drugs or devices with complex counseling profiles.

(3)(a) With the recommendation of the board, the director shall approve a formulary to be used by dialysis drug or device distributors.

(b) The formulary for a dialysis drug or device distributor shall consist of a list of drugs, solutions, supplies, and devices for the treatment of chronic kidney failure which may be dispensed and stored.

(c) In no event shall the director approve for inclusion in the formulary any drug or device not approved by the board.

(d) Controlled substances shall not be eligible to be included in the formulary.

Source: Laws 1994, LB 900, § 18; Laws 1996, LB 1044, § 467; Laws 1998, LB 1073, § 72; Laws 2001, LB 398, § 56; R.S.1943, (2003), § 71-1,147.48; Laws 2007, LB296, § 352; Laws 2007, LB463, § 977; Laws 2009, LB154, § 4.

38-2886 Delegated dispensing permit; workers; training; requirements; documentation.

(1) A delegating pharmacist shall conduct the training of public health clinic workers. The training shall be approved in advance by the board.

(2) A delegating pharmacist shall conduct training of dialysis drug or device distributor workers. The training shall be based upon the standards approved by the board.

(3) The public health clinic, the dialysis drug or device distributor, and the delegating pharmacist shall be responsible to assure that approved training has occurred and is documented.

Source: Laws 1994, LB 900, § 25; Laws 1998, LB 1073, § 78; Laws 2001, LB 398, § 60; R.S.1943, (2003), § 71-1,147.55; Laws 2007, LB463, § 982; Laws 2009, LB154, § 5.

38-2888 Delegated dispensing permit; licensed health care professionals; training required.

A delegating pharmacist shall conduct the training of all licensed health care professionals specified in subdivision (1) of section 38-2884 and who are dispensing pursuant to the delegated dispensing permit of a public health clinic. The training shall be approved in advance by the board.

Source: Laws 1994, LB 900, § 27; Laws 1996, LB 1108, § 20; Laws 1998, LB 1073, § 80; Laws 2000, LB 1115, § 20; Laws 2001, LB 398, § 62; R.S.1943, (2003), § 71-1,147.57; Laws 2007, LB463, § 984; Laws 2009, LB154, § 6.

38-2889 Delegated dispensing permit; advisory committees; authorized.

The board may appoint formulary advisory committees as deemed necessary for the determination of formularies for delegated dispensing permittees.

Source: Laws 1994, LB 900, § 29; Laws 1996, LB 1044, § 469; Laws 1998, LB 1073, § 82; Laws 2001, LB 398, § 63; R.S.1943, (2003), § 71-1,147.59; Laws 2007, LB296, § 354; Laws 2007, LB463, § 985; Laws 2009, LB154, § 7.

38-2893 Pharmacy Technician Registry; created; contents.

(1) The Pharmacy Technician Registry is created. The department shall list each pharmacy technician registration in the registry. A listing in the registry shall be valid for the term of the registration and upon renewal unless such listing is refused renewal or is removed as provided in section 38-2894.

(2) The registry shall contain the following information on each individual who meets the conditions set out in section 38-2890: (a) The individual's full name; (b) information necessary to identify the individual; and (c) any other information as the department may require by rule and regulation.

Source: Laws 2007, LB236, § 34; R.S.Supp.,2007, § 71-1,147.68; Laws 2009, LB288, § 2.

38-2894 Pharmacy technician; registration; disciplinary measures; procedure; Licensee Assistance Program; participation.

(1) A registration to practice as a pharmacy technician may be denied, refused renewal, removed, or suspended or have other disciplinary measures taken against it by the department, with the recommendation of the board, for failure to meet the requirements of or for violation of any of the provisions of subdivisions (1) through (17) and (19) through (24) of section 38-178 and sections 38-2890 to 38-2897 or the rules and regulations adopted under such sections.

(2) If the department proposes to deny, refuse renewal of, or remove or suspend a registration, it shall send the applicant or registrant a notice setting forth the action to be taken and the reasons for the determination. The denial, refusal to renew, removal, or suspension shall become final thirty days after mailing the notice unless the applicant or registrant gives written notice to the department of his or her desire for an informal conference or for a formal hearing.

(3) Notice may be served by any method specified in section 25-505.01, or the department may permit substitute or constructive service as provided in section 25-517.02 when service cannot be made with reasonable diligence by any of the methods specified in section 25-505.01.

(4) Pharmacy technicians may participate in the Licensee Assistance Program described in section 38-175.

Source: Laws 2007, LB236, § 35; R.S.Supp.,2007, § 71-1,147.69; Laws 2007, LB247, § 83; Laws 2009, LB288, § 3.

ARTICLE 33

VETERINARY MEDICINE AND SURGERY PRACTICE ACT

Section
38-3301. Act, how cited.
38-3302. Definitions, where found.
38-3307.01. Health care therapy, defined.
38-3309.01. Licensed animal therapist, defined.
38-3314. Unlicensed assistant, defined.
38-3321. Veterinarian; veterinary technician; animal therapist; license; required; exceptions.
38-3331. Civil penalty; recovery; lien.
38-3332. Animal therapist; license; application; qualifications.
38-3333. Animal therapist; health care therapy; conditions; letter of referral; liability.
38-3334. Animal therapist; additional disciplinary grounds.

38-3301 Act, how cited.

Sections 38-3301 to 38-3334 shall be known and may be cited as the Veterinary Medicine and Surgery Practice Act.

Source: Laws 1967, c. 439, § 1, p. 1353; Laws 1988, LB 1100, § 54; Laws 2000, LB 833, § 3; R.S.1943, (2003), § 71-1,153; Laws 2007, LB463, § 1083; Laws 2009, LB463, § 2.

38-3302 Definitions, where found.

For purposes of the Veterinary Medicine and Surgery Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-3303 to 38-3318 apply.

Source: Laws 2007, LB463, § 1084; Laws 2009, LB463, § 3.

38-3307.01 Health care therapy, defined.

Health care therapy means health care activities that require the exercise of judgment for which licensure is required under the Uniform Credentialing Act.

Source: Laws 2009, LB463, § 4.

38-3309.01 Licensed animal therapist, defined.

Licensed animal therapist means an individual who (1) has and maintains an undisciplined license under the Uniform Credentialing Act for a health care profession other than veterinary medicine and surgery, (2) has met the standards for additional training regarding the performance of that health care profession on animals as required by rules and regulations adopted and promulgated by the department upon the recommendation of the board, and (3) is licensed as an animal therapist by the department.

Source: Laws 2009, LB463, § 5.

38-3314 Unlicensed assistant, defined.

Unlicensed assistant means an individual who is not a licensed veterinarian, a licensed veterinary technician, or a licensed animal therapist and who is working in veterinary medicine.

Source: Laws 2007, LB463, § 1096; Laws 2009, LB463, § 6.

38-3321 Veterinarian; veterinary technician; animal therapist; license; required; exceptions.

No person may practice veterinary medicine and surgery in the state who is not a licensed veterinarian, no person may perform delegated animal health care tasks in the state who is not a licensed veterinary technician or an unlicensed assistant performing such tasks within the limits established under subdivision (2) of section 38-3326, and no person may perform health care therapy on animals in the state who is not a licensed animal therapist. The Veterinary Medicine and Surgery Practice Act shall not be construed to prohibit:

(1) An employee of the federal, state, or local government from performing his or her official duties;

(2) A person who is a student in a veterinary school from performing duties or actions assigned by his or her instructors or from working under the direct supervision of a licensed veterinarian;

(3) A person who is a student in an approved veterinary technician program from performing duties or actions assigned by his or her instructors or from working under the direct supervision of a licensed veterinarian or a licensed veterinary technician;

(4) Any merchant or manufacturer from selling feed or feeds whether medicated or nonmedicated;

(5) A veterinarian regularly licensed in another state from consulting with a licensed veterinarian in this state;

(6) Any merchant or manufacturer from selling from his or her established place of business medicines, appliances, or other products used in the prevention or treatment of animal diseases or any merchant or manufacturer's representative from conducting educational meetings to explain the use of his or her products or from investigating and advising on problems developing from the use of his or her products;

(7) An owner of livestock or a bona fide farm or ranch employee from performing any act of vaccination, surgery, pregnancy testing, or the administration of drugs in the treatment of domestic animals under his or her custody or ownership nor the exchange of services between persons or bona fide employees who are principally farm or ranch operators or employees in the performance of these acts;

(8) A member of the faculty of a veterinary school or veterinary science department from performing his or her regular functions, or a person lecturing or giving instructions or demonstrations at a veterinary school or veterinary science department or in connection with a continuing competency activity;

(9) Any person from selling or applying any pesticide, insecticide, or herbicide;

(10) Any person from engaging in bona fide scientific research which reasonably requires experimentation involving animals;

(11) Any person from treating or in any manner caring for domestic chickens, turkeys, or waterfowl, which are specifically exempted from the Veterinary Medicine and Surgery Practice Act;

(12) Any person from performing dehorning or castrating livestock, not to include equidae.

For purposes of the Veterinary Medicine and Surgery Practice Act, castration shall be limited to the removal or destruction of male testes; or

(13) Any person who holds a valid credential in the State of Nebraska in a health care profession or occupation regulated under the Uniform Credentialing Act from consulting with a licensed veterinarian or performing collaborative animal health care tasks on an animal under the care of such veterinarian if all such tasks are performed under the immediate supervision of such veterinarian.

Source: Laws 1967, c. 439, § 3, p. 1354; Laws 1986, LB 926, § 47; Laws 1988, LB 1100, § 56; Laws 2002, LB 1021, § 23; Laws 2004, LB

1005, § 18; Laws 2005, LB 301, § 11; R.S.Supp.,2006, § 71-1,155; Laws 2007, LB463, § 1103; Laws 2008, LB928, § 13; Laws 2009, LB463, § 7.

38-3331 Civil penalty; recovery; lien.

(1) In addition to the remedies authorized in section 38-140 or 38-1,124, a person who engages in the practice of veterinary medicine and surgery without being licensed or otherwise authorized to do so under the Veterinary Medicine and Surgery Practice Act shall be subject to a civil penalty of not less than one thousand dollars nor more than five thousand dollars for the first offense and not less than five thousand dollars nor more than ten thousand dollars for the second or subsequent offense. If a violation continues after notification, this constitutes a separate offense.

(2) The civil penalties shall be assessed in a civil action brought for such purpose by the Attorney General in the district court of the county in which the violation occurred.

(3) Any civil penalty assessed and unpaid under this section shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in 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 department may also collect in such action attorney's fees and costs incurred in the collection of the civil penalty. The department shall, within thirty days after receipt, transmit any collected civil penalty to the State Treasurer to be disposed of in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2009, LB463, § 8.

38-3332 Animal therapist; license; application; qualifications.

Each applicant for a license as an animal therapist in this state shall present to the department:

(1) Proof that the applicant holds and maintains an undisciplined license under the Uniform Credentialing Act for a health care profession other than veterinary medicine and surgery;

(2) Proof that the applicant has met the standards for additional training regarding the performance of that health care profession on animals as required by rules and regulations adopted and promulgated by the department upon the recommendation of the board; and

(3) Such other information and proof as the department, with the recommendation of the board, may require by rule and regulation.

Source: Laws 2009, LB463, § 9.

38-3333 Animal therapist; health care therapy; conditions; letter of referral; liability.

(1) A licensed animal therapist may perform health care therapy on an animal only if:

(a) The health care therapy is consistent with the licensed animal therapist's training required for the license referred to under subdivision (1) of section 38-3332;

(b) The owner of the animal presents to the licensed animal therapist a prior letter of referral for health care therapy that includes a veterinary medical diagnosis and evaluation completed by a licensed veterinarian who has a veterinarian-client-patient relationship with the owner and the animal and has made the diagnosis and evaluation within ninety days immediately preceding the date of the initiation of the health care therapy; and

(c) The licensed animal therapist provides health care therapy reports at least monthly to the referring veterinarian, except that a report is not required for any month in which health care therapy was not provided.

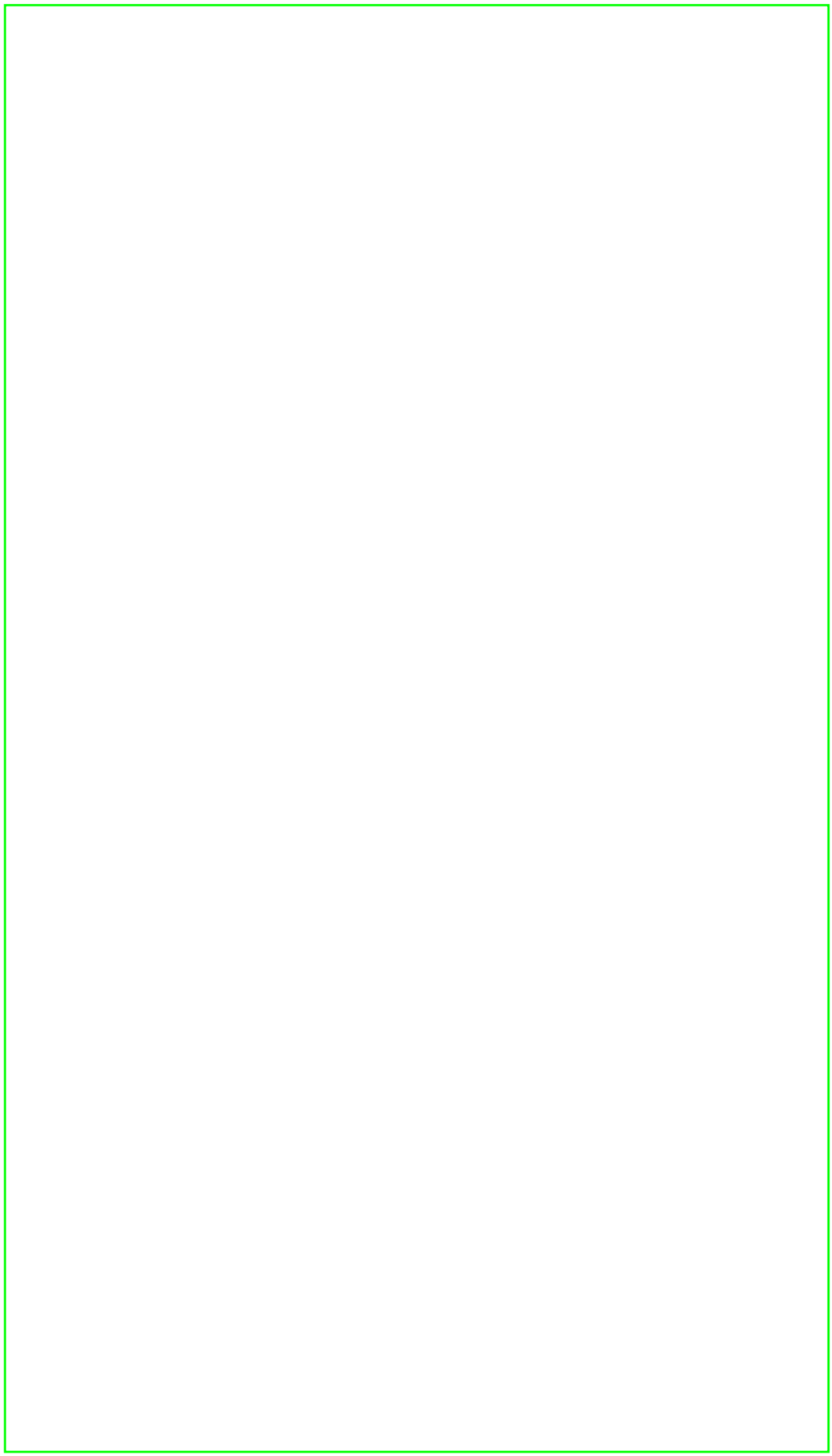
(2) A licensed veterinarian who prepares a letter of referral for health care therapy by a licensed animal therapist shall not be liable for damages caused to the animal as a result of the health care therapy performed by the licensed animal therapist.

Source: Laws 2009, LB463, § 10.

38-3334 Animal therapist; additional disciplinary grounds.

In addition to the grounds for disciplinary action found in sections 38-178 and 38-179, a license to practice as a licensed animal therapist may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it in accordance with section 38-196 when the applicant or licensee is subjected to disciplinary measures with regard to his or her license referred to under subdivision (1) of section 38-3332.

Source: Laws 2009, LB463, § 11.



CHAPTER 39
HIGHWAYS AND BRIDGES

Article.
2. Signs. 39-204 to 39-210.
13. State Highways.
(j) Miscellaneous. 39-1365.01.
(l) State Recreation Roads. 39-1390.

ARTICLE 2
SIGNS

Section
39-204. Informational signs; erection; conform with rules and regulations; minimum service requirements.
39-205. Informational signs; business signs; posted by department; costs and fees; disposition; notice of available space.
39-210. Sign panels; qualification of activities; minimum requirements; violation; effect.

39-204 Informational signs; erection; conform with rules and regulations; minimum service requirements.

(1) Signs, displays, and devices giving specific information of interest to the traveling public shall be erected by or at the direction of the Department of Roads and maintained within the right-of-way at appropriate distances from interchanges on the National System of Interstate and Defense Highways and from roads of the state primary system as shall conform with the rules and regulations adopted and promulgated by the department to carry out this section and section 39-205. Such rules and regulations shall be consistent with national standards promulgated from time to time by the appropriate authority of the federal government pursuant to 23 U.S.C. 131(f).

(2) For purposes of this section, specific information of interest to the traveling public shall mean only information about camping, lodging, food, attractions, and motor fuel and associated services, including trade names.

(3) The minimum service that is required to be available for each type of service shall include:

(a) Motor fuel services including:

(i) Vehicle services, which shall include fuel, oil, and water;

(ii) Restroom facilities and drinking water;

(iii) Continuous operation of such services for at least sixteen hours per day, seven days per week, for freeways and expressways and continuous operation of such services for at least twelve hours per day, seven days per week, for conventional roads; and

(iv) Telephone services;

(b) Attraction services including:

(i) An attraction of regional significance with the primary purpose of providing amusement, historical, cultural, or leisure activity to the public;

(ii) Restroom facilities and drinking water; and

(iii) Adequate parking accommodations;

(c) Food services including:

(i) Licensing or approval of such services, when required;

(ii) Continuous operation of such services to serve at least two meals per day, six days per week;

(iii) Modern sanitary facilities; and

(iv) Telephone services;

(d) Lodging services including:

(i) Licensing or approval of such services, when required;

(ii) Adequate sleeping accommodations; and

(iii) Telephone services; and

(e) Camping services including:

(i) Licensing or approval of such services, when required;

(ii) Adequate parking accommodations; and

(iii) Modern sanitary facilities and drinking water.

Source: Laws 1975, LB 213, § 9; Laws 1987, LB 741, § 1; R.S.1943, (1988), § 39-634.01; Laws 1993, LB 370, § 22; Laws 2010, LB926, § 1.
Effective date July 15, 2010.

39-205 Informational signs; business signs; posted by department; costs and fees; disposition; notice of available space.

(1) Applicants for business signs shall furnish business signs to the Department of Roads and shall pay to the department an annual fee for posting each business sign and the actual cost of material for, fabrication of, and erecting the specific information sign panels where specific information sign panels have not been installed.

(2) Upon receipt of the business signs and the annual fee, the department shall post or cause to be posted the business signs where specific information sign panels have been installed. The applicant shall not be required to remove any advertising device to qualify for a business sign except any advertising device which was unlawfully erected or in violation of section 39-202, 39-203, 39-204, 39-205, 39-206, 39-215, 39-216, or 39-220, any rule or regulation of the department, or any federal rule or regulation relating to informational signs. The specific information sign panels and business signs shall conform to the requirements of the Federal Beautification Act and the Manual on Uniform Traffic Control Devices adopted pursuant to section 60-6,118.

(3) All revenue received for the posting or erecting of business signs or specific information sign panels pursuant to this section shall be deposited in the Highway Cash Fund, except that any revenue received from the annual fee and for posting or erecting such signs in excess of the state's costs shall be deposited in the General Fund.

(4) For purposes of this section, unless the context otherwise requires:

(a) Business sign means a sign displaying a commercial brand, symbol, trademark, or name, or combination thereof, designating a motorist service. Business signs shall be mounted on a rectangular information panel; and

(b) Specific information sign panel means a rectangular sign panel with:

(i) The word gas, food, attraction, lodging, or camping;

(ii) Directional information; and

(iii) One or more business signs.

(5) The department shall provide notice of space available for business signs on any specific information sign panel at least ninety days prior to accepting or approving the posting of any business sign.

Source: Laws 1975, LB 213, § 10; Laws 1987, LB 741, § 2; R.S.1943, (1988), § 39-634.02; Laws 1993, LB 370, § 23; Laws 1995, LB 264, § 4; Laws 2010, LB926, § 2.
Effective date July 15, 2010.

39-210 Sign panels; qualification of activities; minimum requirements; violation; effect.

To qualify to appear on a tourist-oriented directional sign panel, an activity shall be licensed and approved by the state and local agencies if required by law and be open to the public at least eight hours per day, five days per week, including Saturdays or Sundays, during the normal season of the activity, except that if the activity is a winery, the winery shall be open at least twenty hours per week. The activity, before qualifying to appear on a sign panel, shall provide to the Department of Roads assurance of its conformity with all applicable laws relating to discrimination based on race, creed, color, sex, national origin, ancestry, political affiliation, or religion. If the activity violates any of such laws, it shall lose its eligibility to appear on a tourist-oriented directional sign panel. In addition, the qualifying activity shall be required to remove any advertising device which was unlawfully erected or which is in violation of section 39-202, 39-203, 39-204, 39-205, 39-206, 39-215, 39-216, or 39-220, any rule or regulation of the department, or any federal rule or regulation relating to tourist-oriented directional sign panels. The tourist-oriented directional sign panels shall conform to the requirements of the Federal Beautification Act and the Manual on Uniform Traffic Control Devices as adopted pursuant to section 60-6,118.

Source: Laws 1993, LB 108, § 4; Laws 1995, LB 264, § 5; Laws 2010, LB926, § 3.
Effective date July 15, 2010.

ARTICLE 13

STATE HIGHWAYS

(j) MISCELLANEOUS

Section
39-1365.01. State highway system; plans; department; duties; priorities.

(l) STATE RECREATION ROADS

39-1390. State Recreation Road Fund; created; use; preferences; maintenance; investment.

(j) MISCELLANEOUS

39-1365.01 State highway system; plans; department; duties; priorities.

The Department of Roads shall be responsible for developing a specific and long-range state highway system plan. The department shall annually formulate plans to meet the state highway system needs of all facets of the state and shall assign priorities for such needs. The department shall, on or before December 1 of each year, present such plans to the Legislature. The plans shall be referred to the appropriate standing committees of the Legislature for review. The department shall consider the preservation of the existing state highway system asset as its primary priority except as may otherwise be provided in state or federal law. In establishing secondary priorities, the department shall consider a variety of factors, including, but not limited to, current and projected traffic volume, safety requirements, economic development needs, current and projected demographic trends, and enhancement of the quality of life for all Nebraska citizens. The state highway system plan shall include the designation of those portions of the state highway system which shall be expressways.

Source: Laws 1988, LB 632, § 24; Laws 2010, LB821, § 1.
Effective date July 15, 2010.

(l) STATE RECREATION ROADS

39-1390 State Recreation Road Fund; created; use; preferences; maintenance; investment.

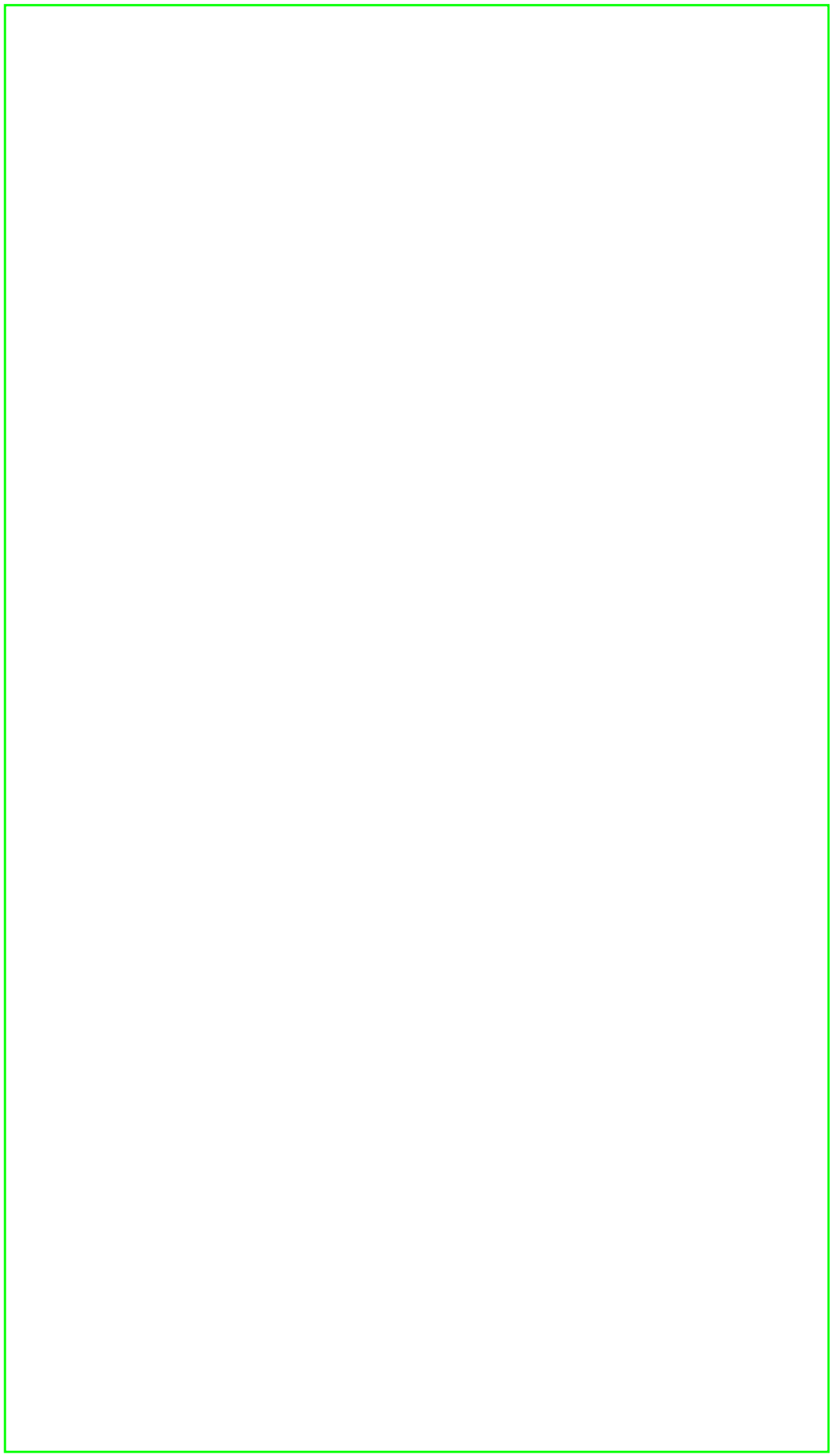
The State Recreation Road Fund is created. The money in the fund shall be transferred by the State Treasurer, on the first day of each month, to the Department of Roads and shall be expended by the Director-State Engineer with the approval of the Governor for construction and maintenance of dustless-surface roads to be designated as state recreation roads as provided in this section, except that transfers may be made from the fund to the General Fund at the direction of the Legislature through June 30, 2011. Except as to roads under contract as of March 15, 1972, those roads, excluding state highways, giving direct and immediate access to or located within state parks, state recreation areas, or other recreational or historical areas, shall be eligible for designation as state recreation roads. Such eligibility shall be determined by the Game and Parks Commission and certified to the Director-State Engineer, who shall, after receiving such certification, be authorized to commence construction on such recreation roads as funds are available. In addition, those roads, excluding state highways, giving direct and immediate access to a state veteran cemetery are state recreation roads. After construction of such roads they shall be shown on the map provided by section 39-1311. Preference in construction shall be based on existing or potential traffic use by other than local residents. Unless the State Highway Commission otherwise recommends, such roads upon completion of construction shall be incorporated into the state highway system. If such a road is not incorporated into the state highway system, the Department of Roads and the county within which such road is located shall enter into a maintenance agreement establishing the responsibility for maintenance of the road, the maintenance standards to be met, and the responsibility for maintenance costs. Any money in the State Recreation Road 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. 348, § 2, p. 1119; Laws 1965, c. 501, § 1, p. 1595; Laws 1965, c. 225, § 1, p. 649; Laws 1969, c. 584, § 42, p. 2369; Laws 1972, LB 1131, § 1; Laws 1995, LB 7, § 36; Laws 2003, LB 408, § 1; Laws 2009, First Spec. Sess., LB3, § 20; Laws 2010, LB749, § 1.
Effective date July 15, 2010.

Cross References

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



CHAPTER 40
HOMESTEADS

Section
40-102. Homestead; selection of property.
40-105. Homestead; selection.

40-102 Homestead; selection of property.

(1) If the claimant is married, the homestead may be selected from the separate property of the husband or with the consent of the wife from her separate property.

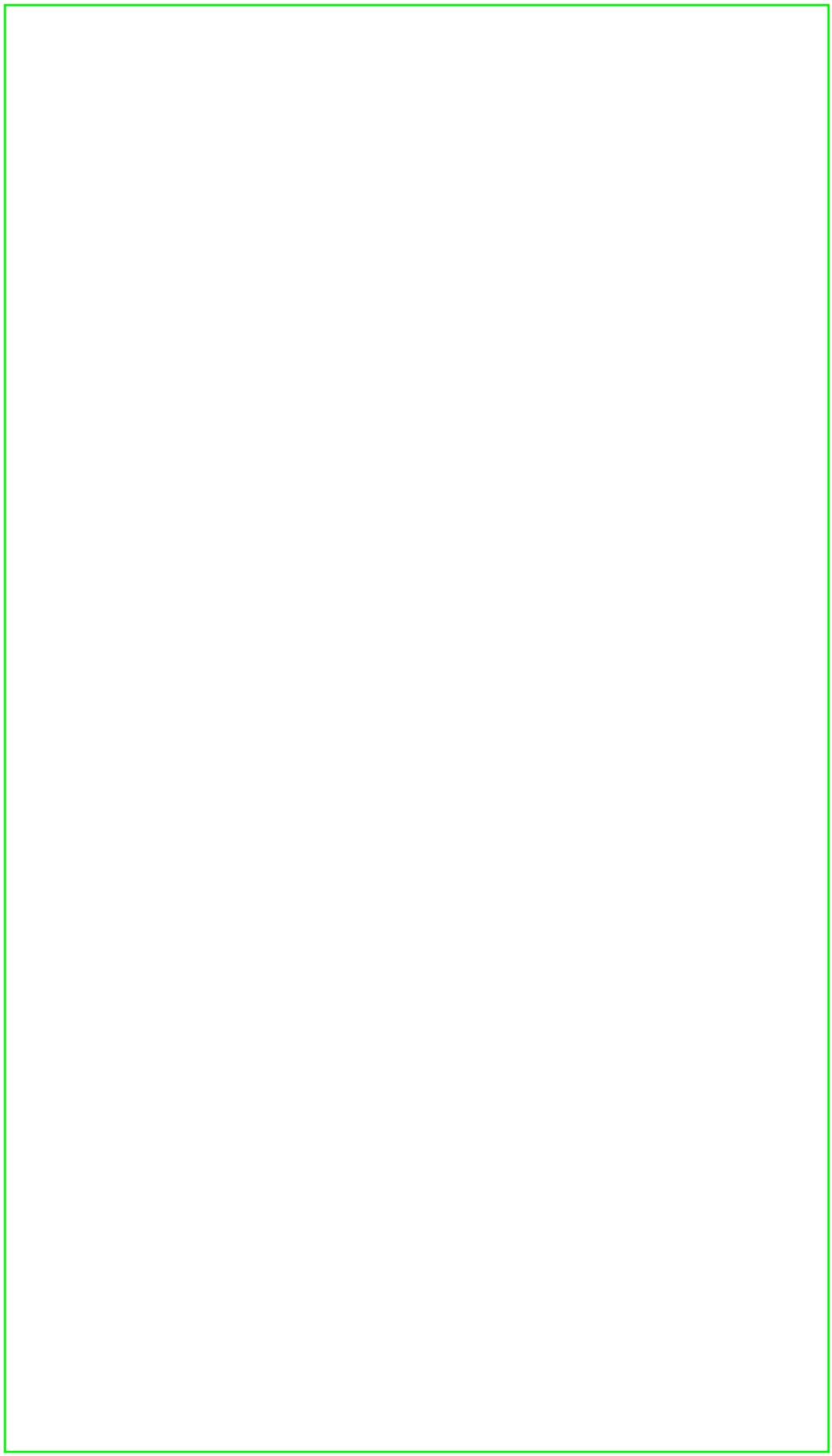
(2) When the claimant is not married, but is the head of a family within the meaning of section 40-115 or is age sixty-five or older, the homestead may be selected from any of his or her property.

Source: Laws 1879, § 2, p. 58; R.S.1913, § 3077; C.S.1922, § 2817; C.S.1929, § 40-102; R.S.1943, § 40-102; Laws 2010, LB907, § 1.
Effective date July 15, 2010.

40-105 Homestead; selection.

When an execution for the enforcement of a judgment obtained in a case not within the classes enumerated in section 40-103 is levied upon the lands or tenements of a head of a family or an unmarried person age sixty-five or older, such person may at any time prior to confirmation of sale apply to the district court in the county in which the homestead is situated for an order to determine whether or not such lands or tenements, or any part thereof, are exempt as a homestead and, if so, the value thereof.

Source: Laws 1879, § 5, p. 58; R.S.1913, § 3080; C.S.1922, § 2820; C.S.1929, § 40-105; R.S.1943, § 40-105; Laws 1947, c. 153, § 1, p. 420; Laws 2010, LB907, § 2.
Effective date July 15, 2010.



CHAPTER 42
HUSBAND AND WIFE

Article.
3. Divorce, Alimony, and Child Support.
(d) Domestic Relations Actions. 42-358.02 to 42-369.
9. Domestic Violence.
(a) Protection from Domestic Abuse Act. 42-917.

ARTICLE 3
DIVORCE, ALIMONY, AND CHILD SUPPORT

(d) DOMESTIC RELATIONS ACTIONS

Section
42-358.02. Delinquent child support payments, spousal support payments, and medical support payments; interest; rate; report; Title IV-D Division; duties.
42-364. Action involving child support, child custody, parenting time, visitation, or other access; parenting plan; legal custody and physical custody determination; rights of parents; child support; termination of parental rights; court; duties; modification proceedings; use of school records as evidence.
42-369. Support or alimony; presumption; items includable; payments; disbursement; enforcement; health insurance.

(d) DOMESTIC RELATIONS ACTIONS

42-358.02 Delinquent child support payments, spousal support payments, and medical support payments; interest; rate; report; Title IV-D Division; duties.

(1) All delinquent child support payments, spousal support payments, and medical support payments shall draw interest at the rate specified in section 45-103 in effect on the date of the most recent order or decree. Such interest shall be computed as simple interest.

(2) All child support payments, spousal support payments, and medical support payments shall become delinquent the day after they are due and owing, except that no obligor whose support payments are automatically withheld from his or her paycheck shall be regarded or reported as being delinquent or in arrears if (a) any delinquency or arrearage is solely caused by a disparity between the schedule of the obligor's regular pay dates and the scheduled date the support payment is due, (b) the total amount of support payments to be withheld from the paychecks of the obligor and the amount ordered by the support order are the same on an annual basis, and (c) the automatic deductions for support payments are continuous and occurring. Interest shall not accrue until thirty days after such payments are delinquent.

(3) The court shall order the determination of the amount of interest due, and such interest shall be payable in the same manner as the support payments upon which the interest accrues subject to subsection (2) of this section or unless it is waived by agreement of the parties. The Title IV-D Division of the Department of Health and Human Services shall compute interest and identify

delinquencies pursuant to this section on the payments received by the State Disbursement Unit pursuant to section 42-369. The Title IV-D Division shall provide the case information in electronic format, and upon request in print format, to the judge presiding over domestic relations cases and to the county attorney or authorized attorney.

(4) Support order payments shall be credited in the following manner:

(a) First, to the payments due for the current month in the following order: Child support payments, then spousal support payments, and lastly medical support payments;

(b) Second, toward any payment arrearage owing, in the following order: Child support payment arrearage, then spousal support payment arrearage, and lastly medical support payment arrearage; and

(c) Third, toward the interest on any payment arrearage, in the following order: Child support payment arrearage interest, then spousal support payment arrearage interest, and lastly medical support payment arrearage interest.

(5) Interest which may have accrued prior to September 6, 1991, shall not be affected or altered by changes to this section which take effect on such date. All delinquent support order payments and all decrees entered prior to such date shall draw interest at the effective rate as prescribed by this section commencing as of such date.

Source: Laws 1975, LB 212, § 4; Laws 1981, LB 167, § 31; Laws 1983, LB 371, § 2; Laws 1984, LB 845, § 26; Laws 1985, Second Spec. Sess., LB 7, § 11; Laws 1987, LB 569, § 1; Laws 1991, LB 457, § 2; Laws 1997, LB 18, § 1; Laws 2000, LB 972, § 11; Laws 2005, LB 396, § 2; Laws 2007, LB296, § 58; Laws 2009, LB288, § 4.

42-364 Action involving child support, child custody, parenting time, visitation, or other access; parenting plan; legal custody and physical custody determination; rights of parents; child support; termination of parental rights; court; duties; modification proceedings; use of school records as evidence.

(1)(a) In an action under Chapter 42 involving child support, child custody, parenting time, visitation, or other access, the parties and their counsel, if represented, shall develop a parenting plan as provided in the Parenting Act. If the parties and counsel do not develop a parenting plan, the complaint shall so indicate as provided in section 42-353 and before July 1, 2010, the case may be referred to mediation, specialized alternative dispute resolution, or other alternative dispute resolution process and on or after such date the case shall be referred to mediation or specialized alternative dispute resolution as provided in the Parenting Act. For good cause shown and (i) when both parents agree and such parental agreement is bona fide and not asserted to avoid the purposes of the Parenting Act, or (ii) when mediation or specialized alternative dispute resolution is not possible without undue delay or hardship to either parent, the mediation or specialized alternative dispute resolution requirement may be waived by the court. In such a case where waiver of the mediation or specialized alternative dispute resolution is sought, the court shall hold an evidentiary hearing and the burden of proof for the party or parties seeking waiver is by clear and convincing evidence.

(b) The decree in an action involving the custody of a minor child shall include the determination of legal custody and physical custody based upon the best interests of the child, as defined in the Parenting Act, and child support. Such determinations shall be made by incorporation into the decree of (i) a parenting plan developed by the parties, if approved by the court, or (ii) a parenting plan developed by the court based upon evidence produced after a hearing in open court if no parenting plan is developed by the parties or the plan developed by the parties is not approved by the court. The decree shall conform to the Parenting Act.

(c) The social security number of each parent and the minor child shall be furnished to the clerk of the district court but shall not be disclosed or considered a public record.

(2) In determining legal custody or physical custody, the court shall not give preference to either parent based on the sex of the parent and, except as provided in section 43-2933, no presumption shall exist that either parent is more fit or suitable than the other. Custody shall be determined on the basis of the best interests of the child, as defined in the Parenting Act. Unless parental rights are terminated, both parents shall continue to have the rights stated in section 42-381.

(3) Custody of a minor child may be placed with both parents on a joint legal custody or joint physical custody basis, or both, (a) when both parents agree to such an arrangement in the parenting plan and the court determines that such an arrangement is in the best interests of the child or (b) if the court specifically finds, after a hearing in open court, that joint physical custody or joint legal custody, or both, is in the best interests of the minor child regardless of any parental agreement or consent.

(4) In determining the amount of child support to be paid by a parent, the court shall consider the earning capacity of each parent and the guidelines provided by the Supreme Court pursuant to section 42-364.16 for the establishment of child support obligations. Upon application, hearing, and presentation of evidence of an abusive disregard of the use of child support money or cash medical support paid by one party to the other, the court may require the party receiving such payment to file a verified report with the court, as often as the court requires, stating the manner in which child support money or cash medical support is used. Child support money or cash medical support paid to the party having custody of the minor child shall be the property of such party except as provided in section 43-512.07. The clerk of the district court shall maintain a record, separate from all other judgment dockets, of all decrees and orders in which the payment of child support, cash medical support, or spousal support has been ordered, whether ordered by a district court, county court, separate juvenile court, or county court sitting as a juvenile court. Orders for child support or cash medical support in cases in which a party has applied for services under Title IV-D of the federal Social Security Act, as amended, shall be reviewed as provided in sections 43-512.12 to 43-512.18.

(5) Whenever termination of parental rights is placed in issue:

(a) The court shall transfer jurisdiction to a juvenile court established pursuant to the Nebraska Juvenile Code unless a showing is made that the county court or district court is a more appropriate forum. In making such determination, the court may consider such factors as cost to the parties, undue delay, congestion of dockets, and relative resources available for investigative and

supervisory assistance. A determination that the county court or district court is a more appropriate forum shall not be a final order for the purpose of enabling an appeal. If no such transfer is made, the court shall appoint an attorney as guardian ad litem to protect the interests of any minor child. The court may terminate the parental rights of one or both parents after notice and hearing when the court finds such action to be in the best interests of the minor child, as defined in the Parenting Act, and it appears by the evidence that one or more of the grounds for termination of parental rights stated in section 43-292 exist; and

(b) The court shall inform a parent who does not have legal counsel of the parent's right to retain counsel and of the parent's right to retain legal counsel at county expense if such parent is unable to afford legal counsel. If such parent is unable to afford legal counsel and requests the court to appoint legal counsel, the court shall immediately appoint an attorney to represent the parent in the termination proceedings. The court shall order the county to pay the attorney's fees and all reasonable expenses incurred by the attorney in protecting the rights of the parent. At such hearing, the guardian ad litem shall take all action necessary to protect the interests of the minor child. The court shall fix the fees and expenses of the guardian ad litem and tax the same as costs but may order the county to pay on finding the responsible party indigent and unable to pay.

(6) Modification proceedings relating to support, custody, parenting time, visitation, other access, or removal of children from the jurisdiction of the court shall be commenced by filing a complaint to modify. Modification of a parenting plan is governed by the Parenting Act. Proceedings to modify a parenting plan shall be commenced by filing a complaint to modify. Such actions may be referred to mediation, specialized alternative dispute resolution, or other alternative dispute resolution process before July 1, 2010, and on and after such date shall be referred to mediation or specialized alternative dispute resolution as provided in the Parenting Act. For good cause shown and (a) when both parents agree and such parental agreement is bona fide and not asserted to avoid the purposes of the Parenting Act, or (b) when mediation or specialized alternative dispute resolution is not possible without undue delay or hardship to either parent, the mediation or specialized alternative dispute resolution requirement may be waived by the court. In such a case where waiver of the mediation or specialized alternative dispute resolution is sought, the court shall hold an evidentiary hearing and the burden of proof for the party or parties seeking waiver is by clear and convincing evidence. Service of process and other procedure shall comply with the requirements for a dissolution action.

(7) In any proceeding under this section relating to custody of a child of school age, certified copies of school records relating to attendance and academic progress of such child are admissible in evidence.

Source: Laws 1983, LB 138, § 1; Laws 1985, LB 612, § 1; Laws 1985, Second Spec. Sess., LB 7, § 16; Laws 1991, LB 457, § 3; Laws 1991, LB 715, § 1; Laws 1993, LB 629, § 21; Laws 1994, LB 490, § 1; Laws 1996, LB 1296, § 15; Laws 1997, LB 752, § 96; Laws 2004, LB 1207, § 25; Laws 2006, LB 1113, § 35; Laws 2007, LB554, § 32; Laws 2008, LB1014, § 32; Laws 2009, LB288, § 5; Laws 2010, LB901, § 1.
Operative date July 1, 2010.

Cross References

Nebraska Juvenile Code, see section 43-2,129.
Parenting Act, see section 43-2920.
Violation of custody, penalty, see section 28-316.

42-369 Support or alimony; presumption; items includable; payments; disbursement; enforcement; health insurance.

(1) All orders, decrees, or judgments for temporary or permanent support payments, including child, spousal, or medical support, and all orders, decrees, or judgments for alimony or modification of support payments or alimony shall direct the payment of such sums to be made commencing on the first day of each month for the use of the persons for whom the support payments or alimony have been awarded. Such payments shall be made to the clerk of the district court (a) when the order, decree, or judgment is for spousal support, alimony, or maintenance support and the order, decree, or judgment does not also provide for child support, and (b) when the payment constitutes child care or day care expenses, unless payments under subdivision (1)(a) or (1)(b) of this section are ordered to be made directly to the obligee. All other support order payments shall be made to the State Disbursement Unit. In all cases in which income withholding has been implemented pursuant to the Income Withholding for Child Support Act or sections 42-364.01 to 42-364.14, support order payments shall be made to the State Disbursement Unit. The court may order such payment to be in cash or guaranteed funds.

(2)(a) If the party against whom an order, decree, or judgment for child support is entered or the custodial party has health insurance available to him or her through an employer, organization, or other health insurance entity which may extend to cover any children affected by the order, decree, or judgment and the health care coverage is accessible to the children and is available to the responsible party at reasonable cost, the court shall require health care coverage to be provided. Health care coverage is accessible if the covered children can obtain services from a plan provider with reasonable effort by the custodial party. When the administrative agency, court, or other tribunal determines that the only health care coverage option available through the noncustodial party is a plan that limits service coverage to providers within a defined geographic area, the administrative agency, court, or other tribunal shall determine whether the child lives within the plan's service area. If the child does not live within the plan's service area, the administrative agency, court, or other tribunal shall determine whether the plan has a reciprocal agreement that permits the child to receive coverage at no greater cost than if the child resided in the plan's service area. The administrative agency, court, or other tribunal shall also determine if primary care is available within thirty minutes or thirty miles of the child's residence. For the purpose of determining the accessibility of health care coverage, the administrative agency, court, or other tribunal may determine and include in an order that longer travel times are permissible if residents, in part or all of the service area, customarily travel distances farther than thirty minutes or thirty miles. If primary care services are not available within these constraints, the health care coverage is presumed inaccessible. If health care coverage is not available or is inaccessible and one or more of the parties are receiving Title IV-D services, then cash medical support shall be ordered. Cash medical support or the cost of private health insurance is considered reasonable in cost if the cost to the party responsible for providing medical support does not exceed three percent of his or her gross

income. In applying the three-percent standard, the cost is the cost of adding the children to existing health care coverage or the difference between self-only and family health care coverage. Cash medical support payments shall not be ordered if, at the time that the order is issued or modified, the responsible party's income is or such expense would reduce the responsible party's net income below the basic subsistence limitation provided in Nebraska Court Rule section 4-218. If such rule does not describe a basic subsistence limitation, the responsible party's net income shall not be reduced below nine hundred three dollars net monthly income for one person or below the poverty guidelines updated annually in the Federal Register by the United States Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).

(b) For purposes of this section:

(i) Health care coverage has the same meaning as in section 44-3,144; and

(ii) Cash medical support means an amount ordered to be paid toward the cost of health insurance provided by a public entity or by another parent through employment or otherwise or for other medical costs not covered by insurance.

(3) A support order, decree, or judgment may include the providing of necessary shelter, food, clothing, care, medical support as defined in section 43-512, medical attention, expenses of confinement, education expenses, funeral expenses, and any other expense the court may deem reasonable and necessary.

(4) Orders, decrees, and judgments for temporary or permanent support or alimony shall be filed with the clerk of the district court and have the force and effect of judgments when entered. The clerk and the State Disbursement Unit shall disburse all payments received as directed by the court and as provided in sections 42-358.02 and 43-512.07. Records shall be kept of all funds received and disbursed by the clerk and the unit and shall be open to inspection by the parties and their attorneys.

(5) Unless otherwise specified by the court, an equal and proportionate share of any child support awarded shall be presumed to be payable on behalf of each child subject to the order, decree, or judgment for purposes of an assignment under section 43-512.07.

Source: Laws 1972, LB 820, § 23; Laws 1983, LB 371, § 11; Laws 1991, LB 457, § 4; Laws 1993, LB 435, § 1; Laws 2000, LB 972, § 15; Laws 2007, LB554, § 35; Laws 2009, LB288, § 6.

Cross References

Income Withholding for Child Support Act, see section 43-1701.

ARTICLE 9

DOMESTIC VIOLENCE

(a) PROTECTION FROM DOMESTIC ABUSE ACT

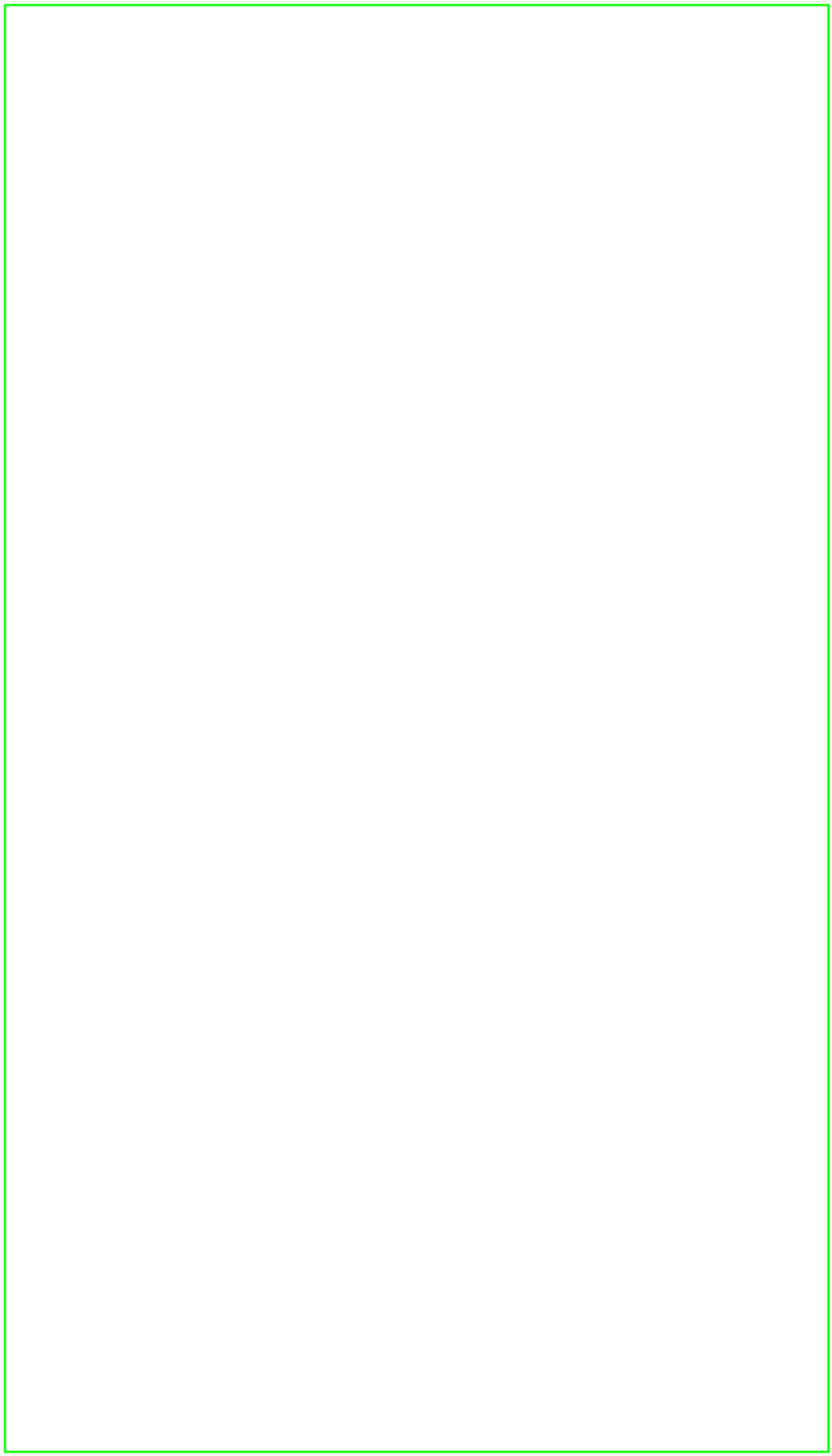
Section
42-917. Delivery of services; cooperation; coordination of programs.

(a) PROTECTION FROM DOMESTIC ABUSE ACT

42-917 Delivery of services; cooperation; coordination of programs.

The delivery of all services provided for under the Protection from Domestic Abuse Act shall be done in cooperation with existing public, private, state, and local programs whenever possible to avoid duplication of services. Special effort shall be taken to coordinate programs with the Department of Labor, the State Department of Education, the Department of Health and Human Services, and other appropriate agencies, community service agencies, and private sources.

Source: Laws 1978, LB 623, § 17; Laws 1980, LB 684, § 17; Laws 1995, LB 275, § 2; Laws 1996, LB 1044, § 104; Laws 2004, LB 1083, § 90; Laws 2007, LB296, § 61; Laws 2009, LB154, § 8.



CHAPTER 43
INFANTS AND JUVENILES

Article.
1. Adoption Procedures.
   (a) General Provisions. 43-103.
   (b) Wards and Children with Special Needs. 43-117.
2. Juvenile Code.
   (b) General Provisions. 43-245, 43-246.
   (c) Law Enforcement Procedures. 43-248 to 43-250.
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   (f) Adjudication Procedures. 43-278.
   (g) Disposition. 43-283.01 to 43-292.
   (h) Postdispositional Procedures. 43-2,102 to 43-2,106.01.
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12. Uniform Child Custody Jurisdiction and Enforcement Act. 43-1230.
13. Foster Care.
   (a) Foster Care Review Act. 43-1302, 43-1314.02.
17. Income Withholding for Child Support Act. 43-1701 to 43-1727.
20. Missing Children Identification Act. 43-2007.
21. Age of Majority. 43-2101.
24. Juvenile Services. 43-2404.02.
29. Parenting Act. 43-2923, 43-2937.
30. Access to Information and Records. 43-3001.
33. Support Enforcement.
   (c) Bank Match System. 43-3330.
37. Court Appointed Special Advocate Act. 43-3713.
40. Children's Behavioral Health. 43-4001.

ARTICLE 1
ADOPTION PROCEDURES

(a) GENERAL PROVISIONS

Section
43-103. Petition; hearing; notice.

(b) WARDS AND CHILDREN WITH SPECIAL NEEDS

43-117. Adoptive parents; assistance; medical assessment of child.

(a) GENERAL PROVISIONS

43-103 Petition; hearing; notice.

Except as otherwise provided in the Nebraska Indian Child Welfare Act, upon the filing of a petition for adoption the court shall fix a time for hearing the same. The hearing shall be held not less than four weeks nor more than eight weeks after the filing of such petition unless any party for good cause shown requests a continuance of the hearing or all parties agree to a continuance. The

court may require notice of the hearing to be given to the child, if over fourteen years of age, to the natural parent or parents of the child, and to such other interested persons as the judge may, in the exercise of discretion, deem advisable, in the manner provided for service of a summons in a civil action. If the judge directs notice by publication, such notice shall be published three successive weeks in a legal newspaper of general circulation in such county.

Source: Laws 1943, c. 104, § 3, p. 349; R.S.1943, § 43-103; Laws 1983, LB 447, § 50; Laws 1985, LB 255, § 19; Laws 2009, LB35, § 27.

Cross References

Juveniles in need of assistance under Nebraska Juvenile Code, notice requirements, see section 43-297.
Nebraska Indian Child Welfare Act, see section 43-1501.

(b) WARDS AND CHILDREN WITH SPECIAL NEEDS

43-117 Adoptive parents; assistance; medical assessment of child.

(1) The Department of Health and Human Services may make payments as needed, after the legal completion of an adoption, on behalf of a child who immediately preceding the adoption was (a) a ward of the department with special needs or (b) the subject of a state-subsidized guardianship. Such payments to adoptive parents may include maintenance costs, medical and surgical expenses, and other costs incidental to the care of the child. Payments for maintenance and medical care shall terminate on or before the child's twentieth birthday.

(2) The Department of Health and Human Services shall pay the treatment costs for the care of an adopted minor child which are the result of an illness or condition if within three years after the decree of adoption is entered the child is diagnosed as having a physical or mental illness or condition which predates the adoption and the child was adopted through the department, the department did not inform the adopting parents of such condition prior to the adoption, and the condition is of such nature as to require medical, psychological, or psychiatric treatment and is more extensive than ordinary childhood illness.

(3) The Department of Health and Human Services shall conduct a medical assessment of the mental and physical needs of any child to be adopted through the department.

Source: Laws 1971, LB 425, § 1; Laws 1996, LB 1044, § 114; Laws 1997, LB 788, § 1; Laws 2009, LB91, § 1.

ARTICLE 2

JUVENILE CODE

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(b) GENERAL PROVISIONS

43-245 Terms, defined.

For purposes of the Nebraska Juvenile Code, unless the context otherwise requires:

(1) Age of majority means nineteen years of age;

(2) Approved center means a center that has applied for and received approval from the Director of the Office of Dispute Resolution under section 25-2909;

(3) Civil citation means a noncriminal notice which cannot result in a criminal record and is described in section 43-248.02;

(4) Cost or costs means (a) the sum or equivalent expended, paid, or charged for goods or services, or expenses incurred, or (b) the contracted or negotiated price;

(5) Criminal street gang means a group of three or more people with a common identifying name, sign, or symbol whose group identity or purposes include engaging in illegal activities;

(6) Criminal street gang member means a person who willingly or voluntarily becomes and remains a member of a criminal street gang;

(7) Juvenile means any person under the age of eighteen;

(8) Juvenile court means the separate juvenile court where it has been established pursuant to sections 43-2,111 to 43-2,127 and the county court sitting as a juvenile court in all other counties. Nothing in the Nebraska Juvenile Code shall be construed to deprive the district courts of their habeas corpus, common-law, or chancery jurisdiction or the county courts and district courts of jurisdiction of domestic relations matters as defined in section 25-2740;

(9) Juvenile detention facility has the same meaning as in section 83-4,125;

(10) Mediator for juvenile offender and victim mediation means a person who (a) has completed at least thirty hours of training in conflict resolution techniques, neutrality, agreement writing, and ethics set forth in section 25-2913, (b) has an additional eight hours of juvenile offender and victim mediation training, and (c) meets the apprenticeship requirements set forth in section 25-2913;

(11) Mental health facility means a treatment facility as defined in section 71-914 or a government, private, or state hospital which treats mental illness;

(12) Nonoffender means a juvenile who is subject to the jurisdiction of the juvenile court for reasons other than legally prohibited conduct, including, but not limited to, juveniles described in subdivision (3)(a) of section 43-247;

(13) Nonsecure detention means detention characterized by the absence of restrictive hardware, construction, and procedure. Nonsecure detention services may include a range of placement and supervision options, such as home detention, electronic monitoring, day reporting, drug court, tracking and monitoring supervision, staff secure and temporary holdover facilities, and group homes;

(14) Parent means one or both parents or a stepparent when such stepparent is married to the custodial parent as of the filing of the petition;

(15) Parties means the juvenile as described in section 43-247 and his or her parent, guardian, or custodian;

(16) Except in proceedings under the Nebraska Indian Child Welfare Act, relative means father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece;

(17) Seal a record means that a record shall not be available to the public except upon the order of a court upon good cause shown;

(18) Secure detention means detention in a highly structured, residential, hardware-secured facility designed to restrict a juvenile's movement;

(19) Status offender means a juvenile who has been charged with or adjudicated for conduct which would not be a crime if committed by an adult, including, but not limited to, juveniles charged under subdivision (3)(b) of section 43-247 and sections 53-180.01 and 53-180.02; and

(20) Traffic offense means any nonfelonious act in violation of a law or ordinance regulating vehicular or pedestrian travel, whether designated a misdemeanor or a traffic infraction.

Source: Laws 1981, LB 346, § 1; Laws 1985, LB 447, § 11; Laws 1987, LB 638, § 1; Laws 1989, LB 182, § 9; Laws 1996, LB 1296, § 20; Laws 1997, LB 622, § 62; Laws 1998, LB 1041, § 20; Laws 1998, LB 1073, § 11; Laws 2000, LB 1167, § 11; Laws 2004, LB 1083, § 91; Laws 2009, LB63, § 28; Laws 2010, LB800, § 12.
Effective date July 15, 2010.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

43-246 Code, how construed.

Acknowledging the responsibility of the juvenile court to act to preserve the public peace and security, the Nebraska Juvenile Code shall be construed to effectuate the following:

(1) To assure the rights of all juveniles to care and protection and a safe and stable living environment and to development of their capacities for a healthy personality, physical well-being, and useful citizenship and to protect the public interest;

(2) To provide for the intervention of the juvenile court in the interest of any juvenile who is within the provisions of the Nebraska Juvenile Code, with due regard to parental rights and capacities and the availability of nonjudicial resources;

(3) To remove juveniles who are within the Nebraska Juvenile Code from the criminal justice system whenever possible and to reduce the possibility of their committing future law violations through the provision of social and rehabilitative services to such juveniles and their families;

(4) To offer selected juveniles the opportunity to take direct personal responsibility for their individual actions by reconciling with the victims through juvenile offender and victim mediation and fulfilling the terms of the resulting agreement which may require restitution and community service;

(5) To achieve the purposes of subdivisions (1) through (3) of this section in the juvenile's own home whenever possible, separating the juvenile from his or her parent when necessary for his or her welfare, the juvenile's health and safety being of paramount concern, or in the interest of public safety and, when temporary separation is necessary, to consider the developmental needs of the individual juvenile in all placements, to consider relatives as a preferred potential placement resource, and to make reasonable efforts to preserve and reunify the family if required under section 43-283.01;

(6) To promote adoption, guardianship, or other permanent arrangements for children in the custody of the Department of Health and Human Services who are unable to return home;

(7) To provide a judicial procedure through which these purposes and goals are accomplished and enforced in which the parties are assured a fair hearing and their constitutional and other legal rights are recognized and enforced;

(8) To assure compliance, in cases involving Indian children, with the Nebraska Indian Child Welfare Act; and

(9) To make any temporary placement of a juvenile in the least restrictive environment consistent with the best interests of the juvenile and the safety of the community.

Source: Laws 1981, LB 346, § 2; Laws 1982, LB 787, § 1; Laws 1985, LB 255, § 31; Laws 1985, LB 447, § 12; Laws 1996, LB 1001, § 2; Laws 1998, LB 1041, § 21; Laws 1998, LB 1073, § 12; Laws 2010, LB800, § 13.
Effective date July 15, 2010.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

(c) LAW ENFORCEMENT PROCEDURES

43-248 Temporary custody of juvenile without warrant; when.

A peace officer may take a juvenile into temporary custody without a warrant or order of the court and proceed as provided in section 43-250 when:

(1) A juvenile has violated a state law or municipal ordinance and the officer has reasonable grounds to believe such juvenile committed such violation;

(2) A juvenile is seriously endangered in his or her surroundings and immediate removal appears to be necessary for the juvenile's protection;

(3) The officer believes the juvenile to be mentally ill and dangerous as defined in section 71-908 and that the harm described in that section is likely to occur before proceedings may be instituted before the juvenile court;

(4) The officer has reasonable grounds to believe that the juvenile has run away from his or her parent, guardian, or custodian;

(5) A probation officer has reasonable cause to believe that a juvenile is in violation of probation and that the juvenile will attempt to leave the jurisdiction or place lives or property in danger; or

(6) The officer has reasonable grounds to believe the juvenile is truant from school.

Source: Laws 1981, LB 346, § 4; Laws 1997, LB 622, § 64; Laws 2004, LB 1083, § 93; Laws 2010, LB800, § 14.
Effective date July 15, 2010.

43-248.02 Juvenile offender civil citation pilot program; peace officer issue civil citation; contents; advisement; peace officer; duties; juvenile report to juvenile assessment center; failure to comply; effect.

A juvenile offender civil citation pilot program as provided in this section and section 43-248.03 may be undertaken by the peace officers and county and city

attorneys of a county containing a city of the metropolitan class. The pilot program shall be according to the following procedures:

(1) A peace officer, upon making contact with a juvenile whom the peace officer has reasonable grounds to believe has committed a misdemeanor offense, other than an offense involving a firearm, sexual assault, or domestic violence, may issue the juvenile a civil citation;

(2) The civil citation shall include: The juvenile's name, address, school of attendance, and contact information; contact information for the juvenile's parents or guardian; a description of the misdemeanor offense believed to have been committed; the juvenile assessment center where the juvenile cited is to appear within seventy-two hours after the issuance of the civil citation; and a warning that failure to appear in accordance with the command of the civil citation or failure to provide the information necessary for the peace officer to complete the civil citation will result in the juvenile being taken into temporary custody as provided in sections 43-248 and 43-250;

(3) At the time of issuance of a civil citation by the peace officer, the peace officer shall advise the juvenile that the juvenile has the option to refuse the civil citation and be taken directly into temporary custody as provided in sections 43-248 and 43-250. The option to refuse the civil citation may be exercised at any time prior to compliance with any services required pursuant to subdivision (5) of this section;

(4) Upon issuing a civil citation, the peace officer shall provide or send a copy of the civil citation to the appropriate county attorney, the juvenile assessment center, and the parents or guardian of the juvenile;

(5) The juvenile shall report to the juvenile assessment center as instructed by the citation. The juvenile assessment center may require the juvenile to participate in community service or other available services appropriate to the needs of the juvenile identified by the juvenile assessment center which may include family counseling, urinalysis monitoring, or substance abuse and mental health treatment services; and

(6) If the juvenile fails to comply with any services required pursuant to subdivision (5) of this section or if the juvenile is issued a third or subsequent civil citation, a peace officer shall take the juvenile into temporary custody as provided in sections 43-248 and 43-250.

Source: Laws 2010, LB800, § 10.
Effective date July 15, 2010.

43-248.03 Civil citation form.

To achieve uniformity, the Supreme Court shall prescribe the form of a civil citation which conforms to the requirements for a civil citation in section 43-248.02 and such other matter as the court deems appropriate. The civil citation shall not include a place for the cited juvenile's social security number.

Source: Laws 2010, LB800, § 11.
Effective date July 15, 2010.

43-250 Temporary custody; disposition; custody requirements.

(1) A peace officer who takes a juvenile into temporary custody under section 29-401 or subdivision (1), (4), or (5) of section 43-248 shall immediately take

reasonable measures to notify the juvenile's parent, guardian, custodian, or relative and shall proceed as follows:

(a) The peace officer may release a juvenile taken into temporary custody under section 29-401 or subdivision (1) or (4) of section 43-248;

(b) The peace officer may require a juvenile taken into temporary custody under section 29-401 or subdivision (1) or (4) of section 43-248 to appear before the court of the county in which such juvenile was taken into custody at a time and place specified in the written notice prepared in triplicate by the peace officer or at the call of the court. The notice shall also contain a concise statement of the reasons such juvenile was taken into custody. The peace officer shall deliver one copy of the notice to such juvenile and require such juvenile or his or her parent, guardian, other custodian, or relative, or both, to sign a written promise that such signer will appear at the time and place designated in the notice. Upon the execution of the promise to appear, the peace officer shall immediately release such juvenile. The peace officer shall, as soon as practicable, file one copy of the notice with the county attorney or city attorney and, when required by the court, also file a copy of the notice with the court or the officer appointed by the court for such purpose; or

(c) The peace officer may retain temporary custody of a juvenile taken into temporary custody under section 29-401 or subdivision (1), (4), or (5) of section 43-248 and deliver the juvenile, if necessary, to the probation officer and communicate all relevant available information regarding such juvenile to the probation officer. The probation officer shall determine the need for detention of the juvenile as provided in section 43-260.01. Upon determining that the juvenile should be placed in a secure or nonsecure placement and securing placement in such secure or nonsecure setting by the probation officer, the peace officer shall implement the probation officer's decision to release or to detain and place the juvenile. When secure detention of a juvenile is necessary, such detention shall occur within a juvenile detention facility except:

(i) When a juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, is taken into temporary custody within a metropolitan statistical area and where no juvenile detention facility is reasonably available, the juvenile may be delivered, for temporary custody not to exceed six hours, to a secure area of a jail or other facility intended or used for the detention of adults solely for the purposes of identifying the juvenile and ascertaining his or her health and well-being and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party;

(ii) When a juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, is taken into temporary custody outside of a metropolitan statistical area and where no juvenile detention facility is reasonably available, the juvenile may be delivered, for temporary custody not to exceed twenty-four hours excluding nonjudicial days and while awaiting an initial court appearance, to a secure area of a jail or other facility intended or used for the detention of adults solely for the purposes of identifying the juvenile and ascertaining his or her health and well-being and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party;

(iii) Whenever a juvenile is held in a secure area of any jail or other facility intended or used for the detention of adults, there shall be no verbal, visual, or

physical contact between the juvenile and any incarcerated adult and there shall be adequate staff to supervise and monitor the juvenile's activities at all times. This subdivision shall not apply to a juvenile charged with a felony as an adult in county or district court if he or she is sixteen years of age or older;

(iv) If a juvenile is under sixteen years of age or is a juvenile as described in subdivision (3) of section 43-247, he or she shall not be placed within a secure area of a jail or other facility intended or used for the detention of adults;

(v) If, within the time limits specified in subdivision (1)(c)(i) or (1)(c)(ii) of this section, a felony charge is filed against the juvenile as an adult in county or district court, he or she may be securely held in a jail or other facility intended or used for the detention of adults beyond the specified time limits;

(vi) A status offender or nonoffender taken into temporary custody shall not be held in a secure area of a jail or other facility intended or used for the detention of adults. Until January 1, 2013, a status offender accused of violating a valid court order may be securely detained in a juvenile detention facility longer than twenty-four hours if he or she is afforded a detention hearing before a court within twenty-four hours, excluding nonjudicial days, and if, prior to a dispositional commitment to secure placement, a public agency, other than a court or law enforcement agency, is afforded an opportunity to review the juvenile's behavior and possible alternatives to secure placement and has submitted a written report to the court; and

(vii) A juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, may be held in a secure area of a jail or other facility intended or used for the detention of adults for up to six hours before and six hours after any court appearance.

(2) When a juvenile is taken into temporary custody pursuant to subdivision (2) of section 43-248, the peace officer shall deliver the custody of such juvenile to the Department of Health and Human Services which shall make a temporary placement of the juvenile in the least restrictive environment consistent with the best interests of the juvenile as determined by the department. The department shall supervise such placement and, if necessary, consent to any necessary emergency medical, psychological, or psychiatric treatment for such juvenile. The department shall have no other authority with regard to such temporary custody until or unless there is an order by the court placing the juvenile in the custody of the department. If the peace officer delivers temporary custody of the juvenile pursuant to this subsection, the peace officer shall make a full written report to the county attorney within twenty-four hours of taking such juvenile into temporary custody. If a court order of temporary custody is not issued within forty-eight hours of taking the juvenile into custody, the temporary custody by the department shall terminate and the juvenile shall be returned to the custody of his or her parent, guardian, custodian, or relative.

(3) If the peace officer takes the juvenile into temporary custody pursuant to subdivision (3) of section 43-248, the peace officer may place the juvenile at a mental health facility for evaluation and emergency treatment or may deliver the juvenile to the Department of Health and Human Services as provided in subsection (2) of this section. At the time of the admission or turning the juvenile over to the department, the peace officer responsible for taking the juvenile into custody shall execute a written certificate as prescribed by the Department of Health and Human Services which will indicate that the peace officer believes the juvenile to be mentally ill and dangerous, a summary of the

subject's behavior supporting such allegations, and that the harm described in section 71-908 is likely to occur before proceedings before a juvenile court may be invoked to obtain custody of the juvenile. A copy of the certificate shall be forwarded to the county attorney. The peace officer shall notify the juvenile's parents, guardian, custodian, or relative of the juvenile's placement.

(4) When a juvenile is taken into temporary custody pursuant to subdivision (6) of section 43-248, the peace officer shall deliver the juvenile to the enrolled school of such juvenile.

(5) A juvenile taken into custody pursuant to a legal warrant of arrest shall be delivered to a probation officer who shall determine the need for detention of the juvenile as provided in section 43-260.01. If detention is not required, the juvenile may be released without bond if such release is in the best interests of the juvenile, the safety of the community is not at risk, and the court that issued the warrant is notified that the juvenile had been taken into custody and was released.

(6) In determining the appropriate temporary placement of a juvenile under this section, the peace officer shall select the placement which is least restrictive of the juvenile's freedom so long as such placement is compatible with the best interests of the juvenile and the safety of the community.

Source: Laws 1981, LB 346, § 6; Laws 1982, LB 787, § 4; Laws 1985, LB 447, § 14; Laws 1988, LB 790, § 24; Laws 1996, LB 1044, § 128; Laws 1997, LB 622, § 65; Laws 1998, LB 1073, § 13; Laws 2000, LB 1167, § 12; Laws 2001, LB 451, § 5; Laws 2003, LB 43, § 12; Laws 2004, LB 1083, § 94; Laws 2009, LB63, § 29; Laws 2010, LB771, § 18; Laws 2010, LB800, § 15.
Effective date July 15, 2010.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB771, section 18, with LB800, section 15, to reflect all amendments.

(d) PREADJUDICATION PROCEDURES

43-253 Temporary custody; investigation; release; when.

(1) Upon delivery to the probation officer of a juvenile who has been taken into temporary custody under section 29-401, 43-248, or 43-250, the probation officer shall immediately investigate the situation of the juvenile and the nature and circumstances of the events surrounding his or her being taken into custody. Such investigation may be by informal means when appropriate.

(2) The probation officer's decision to release the juvenile from custody or place the juvenile in secure or nonsecure detention shall be based upon the results of the standardized juvenile detention screening instrument described in section 43-260.01.

(3) No juvenile who has been taken into temporary custody under subdivision (1)(c) of section 43-250 shall be detained in any secure detention facility for longer than twenty-four hours, excluding nonjudicial days, after having been taken into custody unless such juvenile has appeared personally before a court of competent jurisdiction for a hearing to determine if continued detention is necessary. If continued secure detention is ordered, such detention shall be in a juvenile detention facility, except that a juvenile charged with a felony as an adult in county or district court may be held in an adult jail as set forth in subdivision (1)(c)(v) of section 43-250.

(4) When the probation officer deems it to be in the best interests of the juvenile, the probation officer shall immediately release such juvenile to the custody of his or her parent. If the juvenile has both a custodial and a noncustodial parent and the probation officer deems that release of the juvenile to the custodial parent is not in the best interests of the juvenile, the probation officer shall, if it is deemed to be in the best interests of the juvenile, attempt to contact the noncustodial parent, if any, of the juvenile and to release the juvenile to such noncustodial parent. If such release is not possible or not deemed to be in the best interests of the juvenile, the probation officer may release the juvenile to the custody of a legal guardian, a responsible relative, or another responsible person.

(5) The court may admit such juvenile to bail by bond in such amount and on such conditions and security as the court, in its sole discretion, shall determine, or the court may proceed as provided in section 43-254. In no case shall the court or probation officer release such juvenile if it appears that further detention or placement of such juvenile is a matter of immediate and urgent necessity for the protection of such juvenile or the person or property of another or if it appears that such juvenile is likely to flee the jurisdiction of the court.

Source: Laws 1981, LB 346, § 9; Laws 1982, LB 787, § 6; Laws 1994, LB 451, § 2; Laws 1998, LB 1073, § 15; Laws 2000, LB 1167, § 15; Laws 2001, LB 451, § 6; Laws 2010, LB800, § 16.
Effective date July 15, 2010.

Cross References

Clerk magistrate, authority to determine temporary custody of juvenile, see section 24-519.

43-254 Placement or detention pending adjudication; restrictions; assessment of costs.

Pending the adjudication of any case, if it appears that the need for placement or further detention exists, the juvenile may be (1) placed or detained a reasonable period of time on order of the court in the temporary custody of either the person having charge of the juvenile or some other suitable person, (2) kept in some suitable place provided by the city or county authorities, (3) placed in any proper and accredited charitable institution, (4) placed in a state institution, except any adult correctional facility, when proper facilities are available and the only local facility is a city or county jail, at the expense of the committing county on a per diem basis as determined from time to time by the head of the particular institution, or (5) placed in the temporary care and custody of the Department of Health and Human Services when it does not appear that there is any need for secure detention. The court may assess the cost of such placement or detention in whole or in part to the parent of the juvenile as provided in section 43-290.

If a juvenile has been removed from his or her parent, guardian, or custodian pursuant to subdivision (2) of section 43-248, the court may enter an order continuing detention or placement upon a written determination that continuation of the juvenile in his or her home would be contrary to the health, safety, or welfare of such juvenile and that reasonable efforts were made to preserve

and reunify the family if required under subsections (1) through (4) of section 43-283.01.

Source: Laws 1981, LB 346, § 10; Laws 1985, LB 447, § 16; Laws 1987, LB 635, § 1; Laws 1987, LB 638, § 2; Laws 1996, LB 1044, § 129; Laws 1998, LB 1041, § 23; Laws 2000, LB 1167, § 16; Laws 2010, LB800, § 17.
Effective date July 15, 2010.

43-254.01 Temporary mental health placement; evaluation; procedure.

(1) Any time a juvenile is temporarily placed at a mental health facility pursuant to subsection (3) of section 43-250 or by a court as a juvenile who is mentally ill and dangerous, a mental health professional as defined in section 71-906 shall evaluate the mental condition of the juvenile as soon as reasonably possible but not later than thirty-six hours after the juvenile's admission, unless the juvenile was evaluated by a mental health professional immediately prior to the juvenile being placed in temporary custody and the temporary custody is based upon the conclusions of that evaluation. The mental health professional who performed the evaluation prior to the temporary custody or immediately after the temporary custody shall, without delay, convey the results of his or her evaluation to the county attorney.

(2) If it is the judgment of the mental health professional that the juvenile is not mentally ill and dangerous or that the harm described in section 71-908 is not likely to occur before the matter may be heard by a juvenile court, the mental health professional shall immediately notify the county attorney of that conclusion and the county attorney shall either proceed to hearing before the court within twenty-four hours or order the immediate release of the juvenile from temporary custody. Such release shall not prevent the county attorney from proceeding on the petition if he or she so chooses.

(3) A juvenile taken into temporary protective custody under subsection (3) of section 43-250 shall have the opportunity to proceed to adjudication hearing within seven days unless the matter is continued. Continuances shall be liberally granted at the request of the juvenile, his or her guardian ad litem, attorney, parents, or guardian. Continuances may be granted to permit the juvenile an opportunity to obtain voluntary treatment.

Source: Laws 1997, LB 622, § 67; Laws 2004, LB 1083, § 95; Laws 2010, LB800, § 18.
Effective date July 15, 2010.

43-256 Continued placement or detention; probable cause hearing; release requirements; exceptions.

When the court enters an order continuing placement or detention pursuant to section 43-253, upon request of the juvenile, or his or her parent, guardian, or attorney, the court shall hold a hearing within forty-eight hours, at which hearing the burden of proof shall be upon the state to show probable cause that such juvenile is within the jurisdiction of the court. Strict rules of evidence shall not apply at the probable cause hearing. The juvenile shall be released if probable cause is not shown. At the option of the court, it may hold the adjudication hearing provided in section 43-279 as soon as possible instead of the probable cause hearing if held within a reasonable period of time. This section and section 43-255 shall not apply to a juvenile (1) who has escaped

from a commitment or (2) who has been taken into custody for his or her own protection as provided in subdivision (2) of section 43-248 in which case the juvenile shall be held on order of the court with jurisdiction for a reasonable period of time.

Source: Laws 1981, LB 346, § 12; Laws 1982, LB 787, § 8; Laws 1998, LB 1073, § 17; Laws 2006, LB 1113, § 38; Laws 2010, LB800, § 19.
Effective date July 15, 2010.

43-258 Preadjudication physical and mental evaluation; placement; restrictions; reports; costs.

(1) Pending the adjudication of any case under the Nebraska Juvenile Code, the court may order the juvenile examined by a physician, surgeon, psychiatrist, duly authorized community mental health service program, or psychologist to aid the court in determining (a) a material allegation in the petition relating to the juvenile's physical or mental condition, (b) the juvenile's competence to participate in the proceedings, (c) the juvenile's responsibility for his or her acts, or (d) whether or not to provide emergency medical treatment.

(2) Pending the adjudication of any case under the Nebraska Juvenile Code and after a showing of probable cause that the juvenile is within the court's jurisdiction, for the purposes of subsection (1) of this section, the court may order such juvenile to be placed in one of the facilities or institutions of the State of Nebraska. Such juvenile shall not be placed in an adult correctional facility, the secure youth confinement facility operated by the Department of Correctional Services, or a youth rehabilitation and treatment center. Any placement for evaluation may be made on a residential or nonresidential basis for a period not to exceed thirty days except as provided by section 43-415. The head of any facility or institution shall make a complete evaluation of the juvenile, including any authorized area of inquiry requested by the court. Any temporary placement of a juvenile made under this section shall be in the least restrictive environment consistent with the best interests of the juvenile and the safety of the community.

(3) Upon completion of the evaluation, the juvenile shall be returned to the court together with a written report of the results of the evaluation. Such report shall include an assessment of the basic needs of the juvenile and recommendations for continuous and long-term care and shall be made to effectuate the purposes in subdivision (1) of section 43-246. The juvenile shall appear before the court for a hearing on the report of the evaluation results within ten days after the court receives the evaluation.

(4) In order to encourage the use of the procedure provided in this section, all costs incurred during the period the juvenile is being evaluated at a state facility or program funded by the Office of Juvenile Services shall be the responsibility of the state unless otherwise ordered by the court pursuant to section 43-290. The county in which the case is pending shall be liable only for the cost of delivering the juvenile to the facility or institution and the cost of returning him or her to the court for disposition.

Source: Laws 1981, LB 346, § 14; Laws 1982, LB 787, § 9; Laws 1985, LB 447, § 17; Laws 1987, LB 638, § 3; Laws 1994, LB 988, § 20;

Laws 1996, LB 1155, § 9; Laws 1998, LB 1073, § 19; Laws 2010, LB800, § 20.
Effective date July 15, 2010.

43-272.01 Guardian ad litem; appointment; powers and duties; consultation; payment of costs.

(1) A guardian ad litem as provided for in subsections (2) and (3) of section 43-272 shall be appointed when a child is removed from his or her surroundings pursuant to subdivision (2) or (3) of section 43-248, subsection (2) of section 43-250, or section 43-251. If removal has not occurred, a guardian ad litem shall be appointed at the commencement of all cases brought under subdivision (3)(a) or (8) of section 43-247 and section 28-707.

(2) In the course of discharging duties as guardian ad litem, the person so appointed shall consider, but not be limited to, the criteria provided in this subsection. The guardian ad litem:

(a) Is appointed to stand in lieu of a parent for a protected juvenile who is the subject of a juvenile court petition, shall be present at all hearings before the court in such matter unless expressly excused by the court, and may enter into such stipulations and agreements concerning adjudication and disposition deemed by him or her to be in the juvenile's best interests;

(b) Is not appointed to defend the parents or other custodian of the protected juvenile but shall defend the legal and social interests of such juvenile. Social interests shall be defined generally as the usual and reasonable expectations of society for the appropriate parental custody and protection and quality of life for juveniles without regard to the socioeconomic status of the parents or other custodians of the juvenile;

(c) May at any time after the filing of the petition move the court of jurisdiction to provide medical or psychological treatment or evaluation as set out in section 43-258. The guardian ad litem shall have access to all reports resulting from any examination ordered under section 43-258, and such reports shall be used for evaluating the status of the protected juvenile;

(d) Shall make every reasonable effort to become familiar with the needs of the protected juvenile which (i) shall include consultation with the juvenile within two weeks after the appointment and once every six months thereafter and inquiry of the most current caseworker, foster parent, or other custodian and (ii) may include inquiry of others directly involved with the juvenile or who may have information or knowledge about the circumstances which brought the juvenile court action or related cases and the development of the juvenile, including biological parents, physicians, psychologists, teachers, and clergy members;

(e) May present evidence and witnesses and cross-examine witnesses at all evidentiary hearings. In any proceeding under this section relating to a child of school age, certified copies of school records relating to attendance and academic progress of such child are admissible in evidence;

(f) Shall be responsible for making recommendations to the court regarding the temporary and permanent placement of the protected juvenile and shall submit a written report to the court at every dispositional or review hearing, or in the alternative, the court may provide the guardian ad litem with a checklist

that shall be completed and presented to the court at every dispositional or review hearing;

(g) Shall consider such other information as is warranted by the nature and circumstances of a particular case; and

(h) May file a petition in the juvenile court on behalf of the juvenile, including a supplemental petition as provided in section 43-291.

(3) Nothing in this section shall operate to limit the discretion of the juvenile court in protecting the best interests of a juvenile who is the subject of a juvenile court petition.

(4) For purposes of subdivision (2)(d) of this section, the court may order the expense of such consultation, if any, to be paid by the county in which the juvenile court action is brought or the court may, after notice and hearing, assess the cost of such consultation, if any, in whole or in part to the parents of the juvenile. The ability of the parents to pay and the amount of the payment shall be determined by the court by appropriate examination.

Source: Laws 1982, LB 787, § 13; Laws 1985, LB 447, § 21; Laws 1990, LB 1222, § 2; Laws 1992, LB 1184, § 12; Laws 1995, LB 305, § 1; Laws 1997, LB 622, § 68; Laws 2008, LB1014, § 39; Laws 2010, LB800, § 21.
Effective date July 15, 2010.

(e) PROSECUTION

43-276 County attorney; criminal charge, juvenile court petition, pretrial diversion, or mediation; determination; considerations.

In cases coming within subdivision (1) of section 43-247, when there is concurrent jurisdiction, or subdivision (2) or (4) of section 43-247, when the juvenile is under the age of sixteen years, the county attorney shall, in making the determination whether to file a criminal charge, file a juvenile court petition, offer juvenile pretrial diversion, or offer mediation, consider: (1) The type of treatment such juvenile would most likely be amenable to; (2) whether there is evidence that the alleged offense included violence or was committed in an aggressive and premeditated manner; (3) the motivation for the commission of the offense; (4) the age of the juvenile and the ages and circumstances of any others involved in the offense; (5) the previous history of the juvenile, including whether he or she had been convicted of any previous offenses or adjudicated in juvenile court, and, if so, whether such offenses were crimes against the person or relating to property, and other previous history of antisocial behavior, if any, including any patterns of physical violence; (6) the sophistication and maturity of the juvenile as determined by consideration of his or her home, school activities, emotional attitude and desire to be treated as an adult, pattern of living, and whether he or she has had previous contact with law enforcement agencies and courts and the nature thereof; (7) whether there are facilities particularly available to the juvenile court for treatment and rehabilitation of the juvenile; (8) whether the best interests of the juvenile and the security of the public may require that the juvenile continue in secure detention or under supervision for a period extending beyond his or her minority and, if so, the available alternatives best suited to this purpose; (9) whether the victim agrees to participate in mediation; (10) whether there is a juvenile pretrial diversion program established pursuant to sections 43-260.02 to 43-260.07; (11) whether

the juvenile has been convicted of or has acknowledged unauthorized use or possession of a firearm; (12) whether a juvenile court order has been issued for the juvenile pursuant to section 43-2,106.03; (13) whether the juvenile is a criminal street gang member; and (14) such other matters as the county attorney deems relevant to his or her decision.

Source: Laws 1981, LB 346, § 32; Laws 1998, LB 1073, § 22; Laws 2000, LB 1167, § 20; Laws 2003, LB 43, § 14; Laws 2008, LB1014, § 40; Laws 2009, LB63, § 30.

(f) ADJUDICATION PROCEDURES

43-278 Adjudication hearing; held within ninety days after petition is filed; additional reviews; telephonic or videoconference hearing; authorized.

Except as provided in sections 43-254.01 and 43-277.01, all cases filed under subdivision (3) of section 43-247 shall have an adjudication hearing not more than ninety days after a petition is filed. Upon a showing of good cause, the court may continue the case beyond the ninety-day period. The court shall also review every case filed under such subdivision which has been adjudicated or transferred to it for disposition not less than once every six months. All communications, notices, orders, authorizations, and requests authorized or required in the Nebraska Juvenile Code; all nonevidentiary hearings; and any evidentiary hearings approved by the court and by stipulation of all parties may be heard by the court telephonically or by videoconferencing in a manner that ensures the preservation of an accurate record. All of the orders generated by way of a telephonic or videoconference hearing shall be recorded as if the judge were conducting a hearing on the record. Telephonic and videoconference hearings allowed under this section shall not be in conflict with section 24-734.

Source: Laws 1981, LB 346, § 34; Laws 1992, LB 1184, § 13; Laws 1997, LB 622, § 71; Laws 2010, LB800, § 22.
Effective date July 15, 2010.

(g) DISPOSITION

43-283.01 Preserve and reunify the family; reasonable efforts; requirements.

(1) In determining whether reasonable efforts have been made to preserve and reunify the family and in making such reasonable efforts, the juvenile's health and safety are the paramount concern.

(2) Except as provided in subsection (4) of this section, reasonable efforts shall be made to preserve and reunify families prior to the placement of a juvenile in foster care to prevent or eliminate the need for removing the juvenile from the juvenile's home and to make it possible for a juvenile to safely return to the juvenile's home.

(3) If continuation of reasonable efforts to preserve and reunify the family is determined to be inconsistent with the permanency plan determined for the juvenile in accordance with a permanency hearing under section 43-1312, efforts shall be made to place the juvenile in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the juvenile.

(4) Reasonable efforts to preserve and reunify the family are not required if a court of competent jurisdiction has determined that:

(a) The parent of the juvenile has subjected the juvenile or another minor child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse;

(b) The parent of the juvenile has (i) committed first or second degree murder to another child of the parent, (ii) committed voluntary manslaughter to another child of the parent, (iii) aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent, (iv) committed a felony assault which results in serious bodily injury to the juvenile or another minor child of the parent, or (v) been convicted of felony sexual assault of the other parent of the juvenile under section 28-319.01 or 28-320.01 or a comparable crime in another state; or

(c) The parental rights of the parent to a sibling of the juvenile have been terminated involuntarily.

(5) If reasonable efforts to preserve and reunify the family are not required because of a court determination made under subsection (4) of this section, a permanency hearing, as provided in section 43-1312, shall be held for the juvenile within thirty days after the determination, reasonable efforts shall be made to place the juvenile in a timely manner in accordance with the permanency plan, and whatever steps are necessary to finalize the permanent placement of the juvenile shall be made.

(6) Reasonable efforts to place a juvenile for adoption or with a guardian may be made concurrently with reasonable efforts to preserve and reunify the family, but priority shall be given to preserving and reunifying the family as provided in this section.

Source: Laws 1998, LB 1041, § 24; Laws 2009, LB517, § 1.

43-285 Care of juvenile; authority of guardian; placement plan and report; when; standing; State Foster Care Review Board; participation authorized; immunity.

(1) When the court awards a juvenile to the care of the Department of Health and Human Services, an association, or an individual in accordance with the Nebraska Juvenile Code, the juvenile shall, unless otherwise ordered, become a ward and be subject to the guardianship of the department, association, or individual to whose care he or she is committed. Any such association and the department shall have authority, by and with the assent of the court, to determine the care, placement, medical services, psychiatric services, training, and expenditures on behalf of each juvenile committed to it. Such guardianship shall not include the guardianship of any estate of the juvenile.

(2) Following an adjudication hearing at which a juvenile is adjudged to be under subdivision (3) of section 43-247, the court may order the department to prepare and file with the court a proposed plan for the care, placement, services, and permanency which are to be provided to such juvenile and his or her family. The health and safety of the juvenile shall be the paramount concern in the proposed plan. The department shall include in the plan for a juvenile who is sixteen years of age or older and subject to the guardianship of the department a written proposal describing programs and services designed to assist the juvenile in acquiring independent living skills. If any other party, including, but not limited to, the guardian ad litem, parents, county attorney, or custodian, proves by a preponderance of the evidence that the department's

plan is not in the juvenile's best interests, the court shall disapprove the department's plan. The court may modify the plan, order that an alternative plan be developed, or implement another plan that is in the juvenile's best interests. In its order the court shall include a finding regarding the appropriateness of the programs and services described in the proposal designed to assist the juvenile in acquiring independent living skills. Rules of evidence shall not apply at the dispositional hearing when the court considers the plan that has been presented.

(3) Within thirty days after an order awarding a juvenile to the care of the department, an association, or an individual and until the juvenile reaches the age of majority, the department, association, or individual shall file with the court a report stating the location of the juvenile's placement and the needs of the juvenile in order to effectuate the purposes of subdivision (1) of section 43-246. The department, association, or individual shall file a report with the court once every six months or at shorter intervals if ordered by the court or deemed appropriate by the department, association, or individual. The department, association, or individual shall file a report and notice of placement change with the court and shall send copies of the notice to all interested parties at least seven days before the placement of the juvenile is changed from what the court originally considered to be a suitable family home or institution to some other custodial situation in order to effectuate the purposes of subdivision (1) of section 43-246. The court, on its own motion or upon the filing of an objection to the change by an interested party, may order a hearing to review such a change in placement and may order that the change be stayed until the completion of the hearing. Nothing in this section shall prevent the court on an ex parte basis from approving an immediate change in placement upon good cause shown. The department may make an immediate change in placement without court approval only if the juvenile is in a harmful or dangerous situation or when the foster parents request that the juvenile be removed from their home. Approval of the court shall be sought within twenty-four hours after making the change in placement or as soon thereafter as possible. The department shall provide the juvenile's guardian ad litem with a copy of any report filed with the court by the department pursuant to this subsection.

(4) The court shall also hold a permanency hearing if required under section 43-1312.

(5) When the court awards a juvenile to the care of the department, an association, or an individual, then the department, association, or individual shall have standing as a party to file any pleading or motion, to be heard by the court with regard to such filings, and to be granted any review or relief requested in such filings consistent with the Nebraska Juvenile Code.

(6) Whenever a juvenile is in a foster care placement as defined in section 43-1301, the State Foster Care Review Board may participate in proceedings concerning the juvenile as provided in section 43-1313 and notice shall be given as provided in section 43-1314.

(7) Any written findings or recommendations of the State Foster Care Review Board or any designated local foster care review board with regard to a juvenile in a foster care placement submitted to a court having jurisdiction over such juvenile shall be admissible in any proceeding concerning such juvenile if such findings or recommendations have been provided to all other parties of record.

(8) Any member of the State Foster Care Review Board, any of its agents or employees, or any member of any local foster care review board participating in an investigation or making any report pursuant to the Foster Care Review Act or participating in a judicial proceeding pursuant to this section shall be immune from any civil liability that would otherwise be incurred except for false statements negligently made.

Source: Laws 1981, LB 346, § 41; Laws 1982, LB 787, § 17; Laws 1984, LB 845, § 31; Laws 1985, LB 447, § 25; Laws 1989, LB 182, § 12; Laws 1990, LB 1222, § 3; Laws 1992, LB 1184, § 14; Laws 1993, LB 103, § 1; Laws 1996, LB 1044, § 133; Laws 1998, LB 1041, § 26; Laws 2010, LB800, § 23.
Effective date July 15, 2010.

Cross References

Foster Care Review Act, see section 43-1318.

43-287 Impoundment of permit issued under Motor Vehicle Operator's License Act; other powers of court; copy of abstract to Department of Motor Vehicles; fine for excessive absenteeism from school.

(1) When a juvenile is adjudged to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247, the juvenile court may:

(a) If such juvenile has one or more licenses or permits issued under the Motor Vehicle Operator's License Act, impound any such licenses or permits for thirty days; or

(b) If such juvenile does not have a permit or license issued under the Motor Vehicle Operator's License Act, prohibit such juvenile from obtaining any permit or any license pursuant to the act for which such juvenile would otherwise be eligible until thirty days after the date of such order.

(2) A copy of an abstract of the juvenile court's adjudication shall be transmitted to the Director of Motor Vehicles pursuant to sections 60-497.01 to 60-497.04 if a license or permit is impounded or a juvenile is prohibited from obtaining a license or permit under subsection (1) of this section. If a juvenile whose operator's license or permit has been impounded by a juvenile court operates a motor vehicle during any period that he or she is subject to the court order not to operate any motor vehicle or after a period of impoundment but before return of the license or permit, such violation shall be handled in the juvenile court and not as a violation of section 60-4,108.

(3) When a juvenile is adjudged to be a juvenile described in subdivision (3)(a) of section 43-247 for excessive absenteeism from school, the juvenile court may issue the parents or guardians of such juvenile a fine not to exceed five hundred dollars for each offense or order such parents or guardians to complete specified hours of community service. For community service ordered under this subsection, the juvenile court may require that all or part of the service be performed for a public school district or nonpublic school if the court finds that service in the school is appropriate under the circumstances.

Source: Laws 2010, LB800, § 24.
Effective date July 15, 2010.

Cross References

Motor Vehicle Operator's License Act, see section 60-462.

43-287.01 Repealed. Laws 2010, LB 800, § 40.

43-287.02 Repealed. Laws 2010, LB 800, § 40.

43-287.03 Repealed. Laws 2010, LB 800, § 40.

43-287.04 Repealed. Laws 2010, LB 800, § 40.

43-287.05 Repealed. Laws 2010, LB 800, § 40.

43-287.06 Repealed. Laws 2010, LB 800, § 40.

43-292 Termination of parental rights; grounds.

The court may terminate all parental rights between the parents or the mother of a juvenile born out of wedlock and such juvenile when the court finds such action to be in the best interests of the juvenile and it appears by the evidence that one or more of the following conditions exist:

(1) The parents have abandoned the juvenile for six months or more immediately prior to the filing of the petition;

(2) The parents have substantially and continuously or repeatedly neglected and refused to give the juvenile or a sibling of the juvenile necessary parental care and protection;

(3) The parents, being financially able, have willfully neglected to provide the juvenile with the necessary subsistence, education, or other care necessary for his or her health, morals, or welfare or have neglected to pay for such subsistence, education, or other care when legal custody of the juvenile is lodged with others and such payment ordered by the court;

(4) The parents are unfit by reason of debauchery, habitual use of intoxicating liquor or narcotic drugs, or repeated lewd and lascivious behavior, which conduct is found by the court to be seriously detrimental to the health, morals, or well-being of the juvenile;

(5) The parents are unable to discharge parental responsibilities because of mental illness or mental deficiency and there are reasonable grounds to believe that such condition will continue for a prolonged indeterminate period;

(6) Following a determination that the juvenile is one as described in subdivision (3)(a) of section 43-247, reasonable efforts to preserve and reunify the family if required under section 43-283.01, under the direction of the court, have failed to correct the conditions leading to the determination;

(7) The juvenile has been in an out-of-home placement for fifteen or more months of the most recent twenty-two months;

(8) The parent has inflicted upon the juvenile, by other than accidental means, serious bodily injury;

(9) The parent of the juvenile has subjected the juvenile or another minor child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse;

(10) The parent has (a) committed murder of another child of the parent, (b) committed voluntary manslaughter of another child of the parent, (c) aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent, or (d) committed a felony assault that resulted in serious bodily injury to the juvenile or another minor child of the parent; or

(11) One parent has been convicted of felony sexual assault of the other parent under section 28-319.01 or 28-320.01 or a comparable crime in another state.

Source: Laws 1981, LB 346, § 48; Laws 1992, LB 1184, § 15; Laws 1996, LB 1044, § 143; Laws 1998, LB 1041, § 27; Laws 2009, LB517, § 2.

(h) POSTDISPOSITIONAL PROCEDURES

43-2,102 Repealed. Laws 2010, LB 800, § 40.

43-2,103 Repealed. Laws 2010, LB 800, § 40.

43-2,104 Repealed. Laws 2010, LB 800, § 40.

43-2,105 Repealed. Laws 2010, LB 800, § 40.

43-2,106.01 Judgments or final orders; appeal; parties; cost.

(1) Any final order or judgment entered by a juvenile court may be appealed to the Court of Appeals in the same manner as an appeal from district court to the Court of Appeals. The appellate court shall conduct its review in an expedited manner and shall render the judgment and write its opinion, if any, as speedily as possible.

(2) An appeal may be taken by:

(a) The juvenile;

(b) The guardian ad litem;

(c) The juvenile's parent, custodian, or guardian. For purposes of this subdivision, custodian or guardian shall include, but not be limited to, the Department of Health and Human Services, an association, or an individual to whose care the juvenile has been awarded pursuant to the Nebraska Juvenile Code; or

(d) The county attorney or petitioner, except that in any case determining delinquency issues in which the juvenile has been placed legally in jeopardy, an appeal of such issues may only be taken by exception proceedings pursuant to sections 29-2317 to 29-2319.

(3) In all appeals from the county court sitting as a juvenile court, the judgment of the appellate court shall be certified without cost to the juvenile court for further proceedings consistent with the determination of the appellate court.

Source: Laws 1959, c. 189, § 11, p. 686; Laws 1972, LB 1305, § 1; R.S.1943, (1978), § 43-238; Laws 1981, LB 346, § 83; Laws 1989, LB 182, § 18; Laws 1991, LB 732, § 104; Laws 1992, LB 360, § 11; R.S.Supp.,1992, § 43-2,126; Laws 1994, LB 1106, § 6; Laws 1996, LB 1044, § 149; Laws 2010, LB800, § 25.
Effective date July 15, 2010.

(i) MISCELLANEOUS PROVISIONS

43-2,108.01 Sealing of records; juveniles eligible.

Sections 43-2,108.01 to 43-2,108.05 apply only to persons who were under the age of eighteen years when the offense took place and the county attorney

or city attorney offered juvenile pretrial diversion or mediation to the juvenile under the Nebraska Juvenile Code or filed a juvenile court petition describing the juvenile as a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 or the county attorney or city attorney filed a criminal complaint in county court against such juvenile for a misdemeanor or infraction, other than for a traffic offense that may be waived, under the laws of this state or a city or village ordinance.

Source: Laws 2010, LB800, § 26.
Effective date July 15, 2010.

43-2,108.02 Sealing of records; notice to juvenile; contents.

For a juvenile described in section 43-2,108.01, the county attorney or city attorney shall, in addition to the filings or actions described in such section, provide the juvenile with written notice that:

(1) States in plain language that the juvenile may petition the court to seal the record when the juvenile has satisfactorily completed the diversion, mediation, probation, supervision, or other treatment or rehabilitation program provided to the juvenile under the Nebraska Juvenile Code or has satisfactorily completed the diversion or sentence ordered by a county court; and

(2) Explains in plain language what sealing the record means.

Source: Laws 2010, LB800, § 27.
Effective date July 15, 2010.

43-2,108.03 Sealing of records; county attorney or city attorney; duties; motion to seal record authorized.

(1) Notwithstanding subsection (2) of this section, if the juvenile was taken into custody or arrested but no juvenile petition or criminal complaint was filed against the juvenile with respect to the arrest or custody, the county attorney or city attorney shall notify the appropriate public office or agency responsible for the arrest or custody that no criminal charge or juvenile court petition was filed.

(2) If the county attorney or city attorney has offered and the juvenile has agreed to pretrial diversion or mediation, the county attorney or city attorney shall notify the appropriate public office or agency responsible for the arrest or custody that the juvenile has satisfactorily completed the resulting diversion or mediation.

(3) Upon receiving notice under subsection (1) or (2) of this section, the public office or agency shall immediately seal all original records housed at that public office or agency pertaining to the citation, arrest, record of custody, complaint, disposition, diversion, or mediation.

(4) If a juvenile described in section 43-2,108.01 has satisfactorily completed such juvenile's probation, supervision, or other treatment or rehabilitation program provided under the Nebraska Juvenile Code or has satisfactorily completed such juvenile's diversion or sentence in county court and the juvenile has attained at least the age of seventeen years, the court shall initiate proceedings to seal the record pertaining to such disposition, adjudication, or diversion or sentence of the county court.

(5) At any time after a juvenile described in section 43-2,108.01 has satisfactorily completed probation, supervision, or other treatment or rehabilitation

program under the code or has satisfactorily completed diversion or sentence of the county court, the court may, upon the motion of the juvenile or the court's own motion, initiate proceedings to seal the record pertaining to such disposition, dismissal following pretrial diversion under section 43-260.04, or disposition under section 43-286 or any county court records pertaining to such county court diversion or sentence.

Source: Laws 2010, LB800, § 28.
Effective date July 15, 2010.

43-2,108.04 Sealing of records; notification of proceedings; order of court; hearing; notice; findings; considerations; verbal notice; written notice.

(1) The county attorney or city attorney involved in the case that is the subject of the proceeding to seal the record shall be promptly notified of the proceedings, and the Department of Health and Human Services shall also be promptly notified of the proceedings if the juvenile whose record is the subject of the proceeding to seal the record is a ward of the state or if the department was a party in the case.

(2) A party notified under subsection (1) of this section may file a response with the court within thirty days after receiving such notice.

(3) If a party notified under subsection (1) of this section does not file a response with the court or files a response that indicates there is no objection to the sealing of the record, the court may order the record of the juvenile under consideration be sealed without conducting a hearing on the motion. If the court decides in its discretion to conduct a hearing on the motion, the court shall conduct the hearing within thirty days after making that decision and shall give notice, by regular mail, of the date, time, and location of the hearing to the parties receiving notice under subsection (1) of this section and to the juvenile who is the subject of the record under consideration.

(4) If a party receiving notice under subsection (1) of this section files a response with the court objecting to the sealing of the record, the court shall conduct a hearing on the motion within thirty days after the court receives the response. The court shall give notice, by regular mail, of the date, time, and location of the hearing to the parties receiving notice under subsection (1) of this section and to the juvenile who is the subject of the record under consideration.

(5) After conducting a hearing in accordance with this section, the court may order the record of the juvenile that is the subject of the motion to be sealed if it finds that the juvenile has been rehabilitated to a satisfactory degree. In determining whether the juvenile has been rehabilitated to a satisfactory degree, the court may consider all of the following:

(a) The age of the juvenile;

(b) The nature of the offense and the role of the juvenile in the offense;

(c) The behavior of the juvenile after the adjudication and the juvenile's response to treatment and rehabilitation programs;

(d) The education and employment history of the juvenile; and

(e) Any other circumstances that may relate to the rehabilitation of the juvenile who is the subject of the record under consideration.

(6) If, after conducting the hearing in accordance with this section, the juvenile is not found to be satisfactorily rehabilitated such that the record is not ordered to be sealed, a juvenile who is a person described in section 43-2,108.01 may not move the court to seal the record for a period of one year, unless waived by the court.

(7) The juvenile court or county court shall provide verbal notice to a juvenile whose record is sealed, if that juvenile is present in the court at the time the court issues a sealing order, and explain what sealing a record means.

(8) The juvenile court or county court shall provide written notice to a juvenile whose record is sealed under this section by regular mail to the juvenile's last-known address, if that juvenile is not present in the court at the time the court issues a sealing order, that explains what sealing a record means.

Source: Laws 2010, LB800, § 29.
Effective date July 15, 2010.

43-2,108.05 Sealing of records; effect; court; duties; inspection of records; prohibited acts.

(1) If the court orders the records of a juvenile sealed pursuant to section 43-2,108.04, the juvenile who is the subject of the order properly may, and the court, county attorneys, city attorneys, and institutions, persons, or agencies shall, reply that no record exists with respect to the juvenile upon any public inquiry in the matter, and the court shall do all of the following:

(a) Order that any information or other data concerning any proceedings relating to the arrest, taking into custody, petition, complaint, indictment, information, trial, hearing, adjudication, correctional supervision, dismissal, or disposition be deemed never to have occurred; and

(b) Send notice of the order to seal the record to the Nebraska Commission on Law Enforcement and Criminal Justice and, if the record includes impoundment or prohibition to obtain a license or permit pursuant to section 43-287, to the Department of Motor Vehicles and to any law enforcement agencies and county attorneys or city attorneys and institutions, persons, or agencies, including treatment providers, therapists, or other service providers, referenced in the court record and order that all original records of the case be sealed.

(2) Except as provided in subsection (3) of this section, an order to seal the record applies to every public office or agency that has a record relating to the case, regardless of whether it receives notice of the hearing on the sealing of the record or a copy of the order. Upon the written request of a person whose record has been sealed and the presentation of a copy of such order, a public office or agency shall seal all original records relating to the case.

(3) A sealed record is still accessible to law enforcement officers, county attorneys, city attorneys, and the sentencing judge in the investigation of crimes and in the prosecution and sentencing of criminal defendants. Inspection of records that have been ordered sealed under section 43-2,108.04 may be made only by the following persons or for the following purposes:

(a) By the court or by any person allowed to inspect such records by an order of the court for good cause shown;

(b) By the Nebraska Probation System for purposes of juvenile intake services, for presentence and other probation investigations, and for the direct supervision of persons placed on probation;

(c) By the Department of Health and Human Services for purposes of juvenile intake services, the preparation of case plans and reports, the preparation of evaluations, or the supervision and protection of persons placed with the department or for licensing or certification purposes under sections 71-1901 to 71-1906.01 or the Child Care Licensing Act;

(d) Upon application, by the juvenile who is the subject of the sealed record and by the person that is named in that application;

(e) At the request of a party in a civil action that is based on a case the record for which is the subject of a sealing order issued under section 43-2,108.04, as needed for the civil action. The party also may copy the record as needed for the civil action. The sealed record shall be used solely in the civil action and is otherwise confidential and subject to this section; or

(f) By persons engaged in bona fide research, with the permission of the court, only if the research results in no disclosure of a juvenile's identity and protects the confidentiality of the record.

(4) No person shall knowingly release, disseminate, or make available, for any purpose involving employment, bonding, licensing, or education, to any person or to any department, agency, or other instrumentality of the state or of any of its political subdivisions, any information or other data concerning any arrest, taking into custody, petition, complaint, indictment, information, trial, hearing, adjudication, correctional supervision, dismissal, or disposition, the record of which has been sealed pursuant to section 43-2,108.04 and the release, dissemination, or making available of which is not expressly permitted by this section or court order. Nothing in this section shall prohibit the Department of Health and Human Services from releasing, disseminating, or making available information from sealed records in the performance of its duties with respect to the supervision and protection of persons served by the department. Any person who violates this section may be held in contempt of court.

(5) In any application for employment, license, or other right or privilege, any appearance as a witness, or any other inquiry, a person cannot be questioned with respect to any arrest or taking into custody for which the record is sealed. If an inquiry is made in violation of this subsection, the person may respond as if the sealed arrest or taking into custody did not occur, and the person is not subject to any adverse action because of the arrest or taking into custody or the response. Applications for employment shall contain specific language that states that the applicant is not obligated to disclose a sealed juvenile record or sentence. Employers shall not ask if an applicant has had a juvenile record sealed. The Department of Labor shall develop a link on the department's web site to inform employers that employers cannot ask if an applicant had a juvenile record sealed and that an application for employment shall contain specific language that states that the applicant is not obligated to disclose a sealed juvenile record of arrest, custody, complaint, disposition, diversion, adjudication, or sentence.

Source: Laws 2010, LB800, § 30.
Effective date July 15, 2010.

Cross References

Child Care Licensing Act, see section 71-1908.

(k) CITATION AND CONSTRUCTION OF CODE

43-2,129 Code, how cited.

Sections 43-245 to 43-2,129 shall be known and may be cited as the Nebraska Juvenile Code.

Source: Laws 1981, LB 346, § 85; Laws 1985, LB 447, § 35; Laws 1989, LB 182, § 19; Laws 1994, LB 1106, § 8; Laws 1997, LB 622, § 74; Laws 1998, LB 1041, § 31; Laws 1998, LB 1073, § 27; Laws 2000, LB 1167, § 23; Laws 2003, LB 43, § 16; Laws 2006, LB 1115, § 32; Laws 2008, LB1014, § 42; Laws 2010, LB800, § 31.
Effective date July 15, 2010.

ARTICLE 4

OFFICE OF JUVENILE SERVICES

Section
43-415. Evaluation; time limitation; extension; hearing.

43-415 Evaluation; time limitation; extension; hearing.

A juvenile placed for evaluation with the Office of Juvenile Services shall be returned to the court upon the completion of the evaluation or at the end of thirty days, whichever comes first. When the office finds that an extension of the thirty-day period is necessary to complete the evaluation, the court may order an extension not to exceed an additional thirty days. The court shall hold a hearing within ten days after the evaluation is completed and returned to the court by the office.

Source: Laws 1969, c. 814, § 5, p. 3060; Laws 1973, LB 563, § 52; Laws 1993, LB 31, § 50; Laws 1994, LB 988, § 39; R.S.1943, (1994), § 83-4,104; Laws 1998, LB 1073, § 47; Laws 2010, LB800, § 32.
Effective date July 15, 2010.

ARTICLE 5

ASSISTANCE FOR CERTAIN CHILDREN

Section
43-512. Application for assistance; procedure; maximum monthly allowance; payment; transitional benefits; terms, defined.
43-512.03. County attorney or authorized attorney; duties; enumerated; department; powers; actions; real party in interest; representation; section, how construed.
43-512.07. Assignment of child, spousal, or medical support payments; when; duration; notice; unpaid court-ordered support; how treated.
43-512.12. Title IV-D child support order; review by Department of Health and Human Services; when.
43-512.15. Title IV-D child support order; modification; when; procedures.
43-512.16. Title IV-D child support order; review of health care coverage provisions.
43-512.17. Title IV-D child support order; financial information; disclosure; contents.

43-512 Application for assistance; procedure; maximum monthly allowance; payment; transitional benefits; terms, defined.

(1) Any dependent child as defined in section 43-504 or any relative or eligible caretaker of such a dependent child may file with the Department of Health and Human Services a written application for financial assistance for such child on forms furnished by the department.

(2) The department, through its agents and employees, shall make such investigation pursuant to the application as it deems necessary or as may be required by the county attorney or authorized attorney. If the investigation or the application for financial assistance discloses that such child has a parent or stepparent who is able to contribute to the support of such child and has failed to do so, a copy of the finding of such investigation and a copy of the application shall immediately be filed with the county attorney or authorized attorney.

(3) The department shall make a finding as to whether the application referred to in subsection (1) of this section should be allowed or denied. If the department finds that the application should be allowed, the department shall further find the amount of monthly assistance which should be paid with reference to such dependent child. Except as may be otherwise provided, payments shall be made by state warrant, and the amount of payments shall not exceed three hundred dollars per month when there is but one dependent child and one eligible caretaker in any home, plus an additional seventy-five dollars per month on behalf of each additional eligible person. No payments shall be made for amounts totaling less than ten dollars per month except in the recovery of overpayments.

(4) The amount which shall be paid as assistance with respect to a dependent child shall be based in each case upon the conditions disclosed by the investigation made by the department. An appeal shall lie from the finding made in each case to the chief executive officer of the department or his or her designated representative. Such appeal may be taken by any taxpayer or by any relative of such child. Proceedings for and upon appeal shall be conducted in the same manner as provided for in section 68-1016.

(5)(a) For the purpose of preventing dependency, the department shall adopt and promulgate rules and regulations providing for services to former and potential recipients of aid to dependent children and medical assistance benefits. The department shall adopt and promulgate rules and regulations establishing programs and cooperating with programs of work incentive, work experience, job training, and education. The provisions of this section with regard to determination of need, amount of payment, maximum payment, and method of payment shall not be applicable to families or children included in such programs.

(b) If a recipient of aid to dependent children becomes ineligible for aid to dependent children as a result of increased hours of employment or increased income from employment after having participated in any of the programs established pursuant to subdivision (a) of this subsection, the recipient may be eligible for the following benefits, as provided in rules and regulations of the department in accordance with sections 402, 417, and 1925 of the federal Social Security Act, as amended, Public Law 100-485, in order to help the family during the transition from public assistance to independence:

(i) An ongoing transitional payment that is intended to meet the family's ongoing basic needs which may include food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses during the

five months following the time the family becomes ineligible for assistance under the aid to dependent children program, if the family's earned income is at or below one hundred eighty-five percent of the federal poverty level at the time the family becomes ineligible for the aid to dependent children program. Payments shall be made in five monthly payments, each equal to one-fifth of the aid to dependent children payment standard for the family's size at the time the family becomes ineligible for the aid to dependent children program. If during the five-month period, (A) the family's earnings exceed one hundred eighty-five percent of the federal poverty level, (B) the family members are no longer working, (C) the family ceases to be Nebraska residents, (D) there is no longer a minor child in the family's household, or (E) the family again becomes eligible for the aid to dependent children program, the family shall become ineligible for any remaining transitional benefits under this subdivision;

(ii) Child care as provided in subdivision (1)(c) of section 68-1724; and

(iii) Except as may be provided in accordance with subsection (2) of section 68-1713 and subdivision (1)(c) of section 68-1724, medical assistance for up to twelve months after the month the recipient becomes employed and is no longer eligible for aid to dependent children.

(6) For purposes of sections 43-512 to 43-512.18:

(a) Authorized attorney shall mean an attorney, employed by the county subject to the approval of the county board, employed by the department, or appointed by the court, who is authorized to investigate and prosecute child, spousal, and medical support cases. An authorized attorney shall represent the state as provided in section 43-512.03;

(b) Child support shall be defined as provided in section 43-1705;

(c) Medical support shall include all expenses associated with the birth of a child, cash medical support as defined in section 42-369, health care coverage as defined in section 44-3,144, and medical and hospital insurance coverage or membership in a health maintenance organization or preferred provider organization;

(d) Spousal support shall be defined as provided in section 43-1715;

(e) State Disbursement Unit shall be defined as provided in section 43-3341; and

(f) Support shall be defined as provided in section 43-3313.

Source: Laws 1935, Spec. Sess., c. 30, § 12, p. 185; C.S.Supp.,1941, § 43-512; R.S.1943, § 43-512; Laws 1945, c. 104, § 1, p. 338; Laws 1947, c. 158, § 1, p. 436; Laws 1951, c. 130, § 1, p. 549; Laws 1951, c. 79, § 5, p. 240; Laws 1953, c. 233, § 1, p. 809; Laws 1959, c. 191, § 1, p. 694; Laws 1967, c. 252, § 1, p. 671; Laws 1971, LB 639, § 1; Laws 1974, LB 834, § 1; Laws 1975, LB 192, § 1; Laws 1977, LB 179, § 1; Laws 1977, LB 425, § 1; Laws 1980, LB 789, § 1; Laws 1982, LB 942, § 3; Laws 1982, LB 522, § 13; Laws 1983, LB 371, § 12; Laws 1985, Second Spec. Sess., LB 7, § 65; Laws 1987, LB 573, § 2; Laws 1988, LB 518, § 1; Laws 1989, LB 362, § 3; Laws 1990, LB 536, § 1; Laws 1991, LB 457, § 5; Laws 1991, LB 715, § 7; Laws 1994, LB 1224, § 50; Laws 1995, LB 455, § 2; Laws 1996, LB 1044, § 156; Laws 1997, LB 864, § 4; Laws 2000, LB 972, § 17; Laws 2007, LB296, § 115; Laws 2007, LB351, § 2; Laws 2009, LB288, § 7.

43-512.03 County attorney or authorized attorney; duties; enumerated; department; powers; actions; real party in interest; representation; section, how construed.

(1) The county attorney or authorized attorney shall:

(a) On request by the Department of Health and Human Services as described in subsection (2) of this section or when the investigation or application filed under section 43-512 or 43-512.02 justifies, file a complaint against a nonsupporting party in the district, county, or separate juvenile court praying for an order for child or medical support in cases when there is no existing child or medical support order. After notice and hearing, the court shall adjudicate the child and medical support liability of either party and enter an order accordingly;

(b) Enforce child, spousal, and medical support orders by an action for income withholding pursuant to the Income Withholding for Child Support Act;

(c) In addition to income withholding, enforce child, spousal, and medical support orders by other civil actions or administrative actions, citing the defendant for contempt, or filing a criminal complaint;

(d) Establish paternity and collect child and medical support on behalf of children born out of wedlock; and

(e) Carry out sections 43-512.12 to 43-512.18.

(2) The department may periodically review cases of individuals receiving enforcement services and make referrals to the county attorney or authorized attorney.

(3) In any action brought by or intervened in by a county attorney or authorized attorney under the Income Withholding for Child Support Act, the License Suspension Act, the Uniform Interstate Family Support Act, or sections 42-347 to 42-381, 43-290, 43-512 to 43-512.18, 43-1401 to 43-1418, and 43-3328 to 43-3339, such attorneys shall represent the State of Nebraska.

(4) The State of Nebraska shall be a real party in interest in any action brought by or intervened in by a county attorney or authorized attorney for the purpose of establishing paternity or securing, modifying, suspending, or terminating child or medical support or in any action brought by or intervened in by a county attorney or authorized attorney to enforce an order for child, spousal, or medical support.

(5) Nothing in this section shall be construed to interpret representation by a county attorney or an authorized attorney as creating an attorney-client relationship between the county attorney or authorized attorney and any party or witness to the action, other than the State of Nebraska, regardless of the name in which the action is brought.

Source: Laws 1976, LB 926, § 5; Laws 1977, LB 425, § 3; Laws 1981, LB 345, § 3; Laws 1982, LB 522, § 14; Laws 1983, LB 371, § 15; Laws 1985, Second Spec. Sess., LB 7, § 68; Laws 1986, LB 600, § 12; Laws 1987, LB 37, § 1; Laws 1991, LB 457, § 7; Laws 1991, LB 715, § 8; Laws 1994, LB 1224, § 51; Laws 1995, LB 3, § 1; Laws 1996, LB 1044, § 158; Laws 1997, LB 229, § 36; Laws 1997, LB 307, § 60; Laws 1997, LB 752, § 98; Laws 2004, LB 1207, § 37; Laws 2009, LB288, § 8.

Cross References

Income Withholding for Child Support Act, see section 43-1701.
License Suspension Act, see section 43-3301.
Uniform Interstate Family Support Act, see section 42-701.

43-512.07 Assignment of child, spousal, or medical support payments; when; duration; notice; unpaid court-ordered support; how treated.

(1) Any action, payment, aid, or assistance listed in this subsection shall constitute an assignment by operation of law to the Department of Health and Human Services of any right to spousal or medical support, when ordered by the court, and to child support, whether or not ordered by the court, which a person may have in his or her own behalf or on behalf of any other person for whom such person receives such payments, aid, or assistance:

(a) Application for and acceptance of one or more aid to dependent children payments by a parent, another relative, or a custodian;

(b) Receipt of aid by or on behalf of any dependent child as defined in section 43-504; or

(c) Receipt of aid from child welfare funds.

The assignment under this section is the right to support payments that become due while the person is receiving payments, aid, or assistance listed in this subsection. The department shall be entitled to retain such child, spousal, or other support up to the amount of payments, aid, or assistance provided to a recipient. For purposes of this section, the right to receive child support shall belong to the child and the assignment shall be effective as to any such support even if the recipient of the payments, aid, or assistance is not the same as the payee of court-ordered support.

(2) After notification of the State Disbursement Unit receiving the child, spousal, or other support payments made pursuant to a court order that the person for whom such support is ordered is a recipient of payments, aid, or assistance listed in subsection (1) of this section, the department shall also give notice to the payee named in the court order at his or her last-known address.

(3) Upon written or other notification from the department or from another state of such assignment of child, spousal, or other support payments, the State Disbursement Unit shall transmit the support payments received to the department or the other state without the requirement of a subsequent order by the court. The State Disbursement Unit shall continue to transmit the support payments for as long as the payments, aid, or assistance listed in subsection (1) of this section continues.

(4) Any court-ordered child, spousal, or other support remaining unpaid for the months during which such payments, aid, or assistance was made shall constitute a debt and a continuing assignment at the termination of payments, aid, or assistance listed in subsection (1) of this section, collectible by the department or other state as reimbursement for such payments, aid, or assistance. The continuing assignment shall only apply to support payments made during a calendar period which exceed the specific amount of support ordered for that period. When payments, aid, or assistance listed in subsection (1) of this section have ceased and upon notice by the department or the other state, the State Disbursement Unit shall continue to transmit to the department or the other state any support payments received in excess of the amount of support

ordered for that specific calendar period until notified by the department or the other state that the debt has been paid in full.

Source: Laws 1976, LB 926, § 9; Laws 1981, LB 345, § 5; Laws 1985, Second Spec. Sess., LB 7, § 71; Laws 1986, LB 600, § 13; Laws 1987, LB 599, § 13; Laws 1991, LB 457, § 11; Laws 1993, LB 435, § 3; Laws 1995, LB 524, § 1; Laws 1996, LB 1044, § 161; Laws 1997, LB 307, § 63; Laws 2000, LB 972, § 18; Laws 2009, LB288, § 9.

43-512.12 Title IV-D child support order; review by Department of Health and Human Services; when.

(1) Child support orders in cases in which a party has applied for services under Title IV-D of the federal Social Security Act, as amended, shall be reviewed by the Department of Health and Human Services to determine whether to refer such orders to the county attorney or authorized attorney for filing of an application for modification. An order shall be reviewed by the department upon its own initiative or at the request of either parent when such review is required by Title IV-D of the federal Social Security Act, as amended. After review the department shall refer an order to a county attorney or authorized attorney when the verifiable financial information available to the department indicates:

(a) The present child support obligation varies from the Supreme Court child support guidelines pursuant to section 42-364.16 by more than the percentage, amount, or other criteria established by Supreme Court rule, and the variation is due to financial circumstances which have lasted at least three months and can reasonably be expected to last for an additional six months; or

(b) Health care coverage meeting the requirements of subsection (2) of section 42-369 is available to either party and the children do not have health care coverage other than the medical assistance program under the Medical Assistance Act.

Health care coverage cases may be modified within three years of entry of the order.

(2) Orders that are not addressed under subsection (1) of this section shall not be reviewed by the department if it has not been three years since the present child support obligation was ordered unless the requesting party demonstrates a substantial change in circumstances that is expected to last for the applicable time period established by subdivision (1)(a) of this section. Such substantial change in circumstances may include, but is not limited to, change in employment, earning capacity, or income or receipt of an ongoing source of income from a pension, gift, or lottery winnings. An order may be reviewed after one year if the department's determination after the previous review was not to refer to the county attorney or authorized attorney for filing of an application for modification because financial circumstances had not lasted or were not expected to last for the time periods established by subdivision (1)(a) of this section.

Source: Laws 1991, LB 715, § 13; Laws 1993, LB 523, § 8; Laws 1996, LB 1044, § 163; Laws 1997, LB 307, § 64; Laws 1997, LB 752, § 99; Laws 2006, LB 1248, § 54; Laws 2009, LB288, § 10; Laws 2010, LB712, § 25.
Operative date April 14, 2010.

43-512.15 Title IV-D child support order; modification; when; procedures.

(1) The county attorney or authorized attorney, upon referral from the Department of Health and Human Services, shall file a complaint to modify a child support order unless the attorney determines in the exercise of independent professional judgment that:

(a) The variation from the Supreme Court child support guidelines pursuant to section 42-364.16 is based on material misrepresentation of fact concerning any financial information submitted to the attorney;

(b) The variation from the guidelines is due to a voluntary reduction in net monthly income. For purposes of this section, a person who has been incarcerated for a period of one year or more in a county or city jail or a federal or state correctional facility shall be considered to have an involuntary reduction of income unless (i) the incarceration is a result of a conviction for criminal nonsupport pursuant to section 28-706 or a conviction for a violation of any federal law or law of another state substantially similar to section 28-706, (ii) the incarcerated individual has a documented record of willfully failing or neglecting to provide proper support which he or she knew or reasonably should have known he or she was legally obligated to provide when he or she had sufficient resources to provide such support, or (iii) the incarceration is a result of a conviction for a crime in which the child who is the subject of the child support order was victimized; or

(c) When the amount of the order is considered with all the other undisputed facts in the case, no variation from the criteria set forth in subdivisions (1)(a) and (b) of section 43-512.12 exists.

(2) The department, a county attorney, or an authorized attorney shall not in any case be responsible for reviewing or filing an application to modify child support for individuals incarcerated as described in subdivision (1)(b) of this section.

(3) The proceedings to modify a child support order shall comply with section 42-364, and the county attorney or authorized attorney shall represent the state in the proceedings.

(4) After a complaint to modify a child support order is filed, any party may choose to be represented personally by private counsel. Any party who retains private counsel shall so notify the county attorney or authorized attorney in writing.

Source: Laws 1991, LB 715, § 16; Laws 1993, LB 523, § 10; Laws 1996, LB 1044, § 166; Laws 1997, LB 307, § 67; Laws 2004, LB 1207, § 39; Laws 2007, LB554, § 42; Laws 2008, LB1014, § 43; Laws 2009, LB288, § 11; Laws 2010, LB712, § 26.
Operative date April 14, 2010.

43-512.16 Title IV-D child support order; review of health care coverage provisions.

The county attorney or authorized attorney shall review the health care coverage provisions contained in any child support order which is subject to review under section 43-512.12 and shall include in any application for modification a request that the court order health care coverage or cash medical support as provided in subsection (2) of section 42-369.

Source: Laws 1991, LB 715, § 17; Laws 2009, LB288, § 12.

43-512.17 Title IV-D child support order; financial information; disclosure; contents.

Any financial information provided to the Department of Health and Human Services, the county attorney, or the authorized attorney by either parent for the purpose of facilitating a modification proceeding under sections 43-512.12 to 43-512.18 may be disclosed to the other parties to the case or to the court. Financial information shall include the following:

(1) An affidavit of financial status provided by the party requesting review;

(2) An affidavit of financial status of the nonrequesting party provided by the nonrequesting party or by the requesting party at the request of the county attorney or authorized attorney;

(3) Supporting documentation such as state and federal income tax returns, paycheck stubs, W-2 forms, 1099 forms, bank statements, and other written evidence of financial status; and

(4) Information relating to health care coverage as provided in subsection (2) of section 42-369.

Source: Laws 1991, LB 715, § 18; Laws 1993, LB 523, § 11; Laws 1996, LB 1044, § 167; Laws 1996, LB 1296, § 23; Laws 1997, LB 307, § 68; Laws 2009, LB288, § 13.

ARTICLE 10

INTERSTATE COMPACT FOR JUVENILES

Section
43-1001. Repealed. Laws 2009, LB 237, § 5.
43-1002. Repealed. Laws 2009, LB 237, § 5.
43-1003. Repealed. Laws 2009, LB 237, § 5.
43-1004. Repealed. Laws 2009, LB 237, § 5.
43-1005. Expense of returning juvenile to state; how paid.
43-1006. Repealed. Laws 2009, LB 237, § 5.
43-1007. Repealed. Laws 2009, LB 237, § 5.
43-1008. Repealed. Laws 2009, LB 237, § 5.
43-1009. Repealed. Laws 2009, LB 237, § 5.
43-1010. Repealed. Laws 2009, LB 237, § 5.
43-1011. Interstate Compact for Juveniles.

43-1001 Repealed. Laws 2009, LB 237, § 5.

43-1002 Repealed. Laws 2009, LB 237, § 5.

43-1003 Repealed. Laws 2009, LB 237, § 5.

43-1004 Repealed. Laws 2009, LB 237, § 5.

43-1005 Expense of returning juvenile to state; how paid.

The expense of returning juveniles to this state pursuant to the Interstate Compact for Juveniles shall be paid as follows:

(1) In the case of a runaway, the court making the requisition shall inquire summarily regarding the financial ability of the petitioner to bear the expense and if it finds he or she is able to do so shall order that he or she pay all such expenses; otherwise the court shall arrange for the transportation at the expense of the county and order that the county reimburse the person, if any, who returns the juvenile for his or her actual and necessary expenses; and the

court may order that the petitioner reimburse the county for so much of said expense as the court finds he or she is able to pay. If the petitioner fails, without good cause, or refuses to pay such sum, he or she may be proceeded against for contempt.

(2) In the case of an escapee or absconder, if the juvenile is in the legal custody of the Department of Health and Human Services it shall bear the expense of his or her return; otherwise the appropriate court shall, on petition of the person entitled to his or her custody or charged with his or her supervision, arrange for the transportation at the expense of the county and order that the county reimburse the person, if any, who returns the juvenile, for his or her actual and necessary expenses. In this subdivision appropriate court means the juvenile court which adjudged the juvenile to be delinquent or, if the juvenile is under supervision for another state, then the juvenile court of the county of the juvenile's residence during such supervision.

(3) In the case of a voluntary return of a runaway without requisition, the person entitled to his or her legal custody shall pay the expense of transportation and the actual and necessary expenses of the person, if any, who returns such juvenile; but if he or she is financially unable to pay all the expenses he or she may petition the juvenile court of the county of the petitioner's residence for an order arranging for the transportation as provided in subdivision (1) of this section. The court shall inquire summarily into the financial ability of the petitioner, and, if it finds he or she is unable to bear any or all of the expense, the court shall arrange for such transportation at the expense of the county and shall order the county to reimburse the person, if any, who returns the juvenile, for his or her actual and necessary expenses. The court may order that the petitioner reimburse the county for so much of said expense as the court finds he or she is able to pay. If the petitioner fails, without good cause, or refuses to pay such sum, he or she may be proceeded against for contempt.

Source: Laws 1963, c. 248, § 5, p. 756; Laws 1996, LB 1044, § 192; Laws 2009, LB237, § 2.

Cross References

Interstate Compact for Juveniles, see section 43-1011.

43-1006 Repealed. Laws 2009, LB 237, § 5.

43-1007 Repealed. Laws 2009, LB 237, § 5.

43-1008 Repealed. Laws 2009, LB 237, § 5.

43-1009 Repealed. Laws 2009, LB 237, § 5.

43-1010 Repealed. Laws 2009, LB 237, § 5.

43-1011 Interstate Compact for Juveniles.

ARTICLE I

PURPOSE

The compacting states to this Interstate Compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents and status offenders who are on probation or parole and who have absconded, escaped or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who

have run away from home and in doing so have left their state of residence. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

It is the purpose of this compact, through means of joint and cooperative action among the compacting states to: (A) ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state; (B) ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected; (C) return juveniles who have run away, absconded or escaped from supervision or control or have been accused of an offense to the state requesting their return; (D) make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services; (E) provide for the effective tracking and supervision of juveniles; (F) equitably allocate the costs, benefits and obligations of the compacting states; (G) establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency which has jurisdiction over juvenile offenders; (H) insure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; (I) establish procedures to resolve pending charges (detainers) against juvenile offenders prior to transfer or release to the community under the terms of this compact; (J) establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials; and regular reporting of Compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators; (K) monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance; (L) coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity; and (M) coordinate the implementation and operation of the compact with the Interstate Compact for the Placement of Children, the Interstate Compact for Adult Offender Supervision and other compacts affecting juveniles particularly in those cases where concurrent or overlapping supervision issues arise. It is the policy of the compacting states that the activities conducted by the Interstate Commission created herein are the formation of public policies and therefor are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

ARTICLE II

DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

A. ''Bylaws'' means: those bylaws established by the Interstate Commission for its governance, or for directing or controlling its actions or conduct.

B. ''Compact Administrator'' means: the individual in each compacting state appointed pursuant to the terms of this compact, responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this compact.

C. ''Compacting State'' means: any state which has enacted the enabling legislation for this compact.

D. ''Commissioner'' means: the voting representative of each compacting state appointed pursuant to Article III of this compact.

E. ''Court'' means: any court having jurisdiction over delinquent, neglected, or dependent children.

F. ''Deputy Compact Administrator'' means: the individual, if any, in each compacting state appointed to act on behalf of a Compact Administrator pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this compact.

G. ''Interstate Commission'' means: the Interstate Commission for Juveniles created by Article III of this compact.

H. ''Juvenile'' means: any person defined as a juvenile in any member state or by the rules of the Interstate Commission, including:

(1) Accused Delinquent — a person charged with an offense that, if committed by an adult, would be a criminal offense;

(2) Adjudicated Delinquent — a person found to have committed an offense that, if committed by an adult, would be a criminal offense;

(3) Accused Status Offender — a person charged with an offense that would not be a criminal offense if committed by an adult;

(4) Adjudicated Status Offender — a person found to have committed an offense that would not be a criminal offense if committed by an adult; and

(5) Nonoffender — a person in need of supervision who has not been accused or adjudicated a status offender or delinquent.

I. ''Noncompacting state'' means: any state which has not enacted the enabling legislation for this compact.

J. ''Probation or Parole'' means: any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

K. ''Rule'' means: a written statement by the Interstate Commission promulgated pursuant to Article VI of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the Compact, or an organizational, procedural, or practice requirement of the Commission, and has the force and effect of statutory law in a compacting state, and includes the amendment, repeal, or suspension of an existing rule.

L. ''State'' means: a state of the United States, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

ARTICLE III
INTERSTATE COMMISSION FOR JUVENILES

A. The compacting states hereby create the ''Interstate Commission for Juveniles.'' The commission shall be a body corporate and joint agency of the compacting states. The commission shall have all the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

B. The Interstate Commission shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the State Council for Interstate Juvenile Supervision created hereunder. The commissioner shall be the compact administrator, deputy compact administrator or designee from that state who shall serve on the Interstate Commission in such capacity under or pursuant to the applicable law of the compacting state.

C. In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners, but who are members of interested organizations. Such noncommissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general, Interstate Compact for Adult Offender Supervision, Interstate Compact for the Placement of Children, juvenile justice and juvenile corrections officials, and crime victims. All noncommissioner members of the Interstate Commission shall be ex officio (nonvoting) members. The Interstate Commission may provide in its bylaws for such additional ex officio (nonvoting) members, including members of other national organizations, in such numbers as shall be determined by the commission.

D. Each compacting state represented at any meeting of the commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

E. The commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

F. The Interstate Commission shall establish an executive committee, which shall include commission officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rulemaking and/or amendment to the compact. The executive committee shall oversee the day-to-day activities of the administration of the compact managed by an executive director and Interstate Commission staff; administers enforcement and compliance with the provisions of the compact, its bylaws and rules, and performs such other duties as directed by the Interstate Commission or set forth in the bylaws.

G. Each member of the Interstate Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another

authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

H. The Interstate Commission's bylaws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

I. Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the Rules or as otherwise provided in the Compact. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

1. Relate solely to the Interstate Commission's internal personnel practices and procedures;

2. Disclose matters specifically exempted from disclosure by statute;

3. Disclose trade secrets or commercial or financial information which is privileged or confidential;

4. Involve accusing any person of a crime, or formally censuring any person;

5. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

6. Disclose investigative records compiled for law enforcement purposes;

7. Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the Interstate Commission with respect to a regulated person or entity for the purpose of regulation or supervision of such person or entity;

8. Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or

9. Specifically relate to the Interstate Commission's issuance of a subpoena, or its participation in a civil action or other legal proceeding.

J. For every meeting closed pursuant to this provision, the Interstate Commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

K. The Interstate Commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements. Such methods of data collection, exchange and reporting shall insofar as is reasonably possible conform to up-to-date technology and coordinate its information functions with the appropriate repository of records.

ARTICLE IV
POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The commission shall have the following powers and duties:

1. To provide for dispute resolution among compacting states.

2. To promulgate rules to effect the purposes and obligations as enumerated in this compact, which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

3. To oversee, supervise and coordinate the interstate movement of juveniles subject to the terms of this compact and any bylaws adopted and rules promulgated by the Interstate Commission.

4. To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process.

5. To establish and maintain offices which shall be located within one or more of the compacting states.

6. To purchase and maintain insurance and bonds.

7. To borrow, accept, hire or contract for services of personnel.

8. To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

9. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation, and qualifications of personnel.

10. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.

11. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed.

12. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed.

13. To establish a budget and make expenditures and levy dues as provided in Article VIII of this compact.

14. To sue and be sued.

15. To adopt a seal and bylaws governing the management and operation of the Interstate Commission.

16. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

17. To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

18. To coordinate education, training and public awareness regarding the interstate movement of juveniles for officials involved in such activity.

19. To establish uniform standards of the reporting, collecting and exchanging of data.

20. The Interstate Commission shall maintain its corporate books and records in accordance with the bylaws.

ARTICLE V

ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

Section A. Bylaws

1. The Interstate Commission shall, by a majority of the members present and voting, within twelve months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

a. Establishing the fiscal year of the Interstate Commission;

b. Establishing an executive committee and such other committees as may be necessary;

c. Provide for the establishment of committees governing any general or specific delegation of any authority or function of the Interstate Commission;

d. Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;

e. Establishing the titles and responsibilities of the officers of the Interstate Commission;

f. Providing a mechanism for concluding the operations of the Interstate Commission and the return of any surplus funds that may exist upon the termination of the Compact after the payment and/or reserving of all of its debts and obligations;

g. Providing ''startup'' rules for initial administration of the compact; and

h. Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

Section B. Officers and Staff

1. The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson and a vice-chairperson, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

2. The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a Member and shall hire and supervise such other staff as may be authorized by the Interstate Commission.

Section C. Qualified Immunity, Defense and Indemnification

1. The Commission's executive director and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided, that any such person shall not be protected from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

2. The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. Nothing in this subsection shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

3. The Interstate Commission shall defend the executive director or the employees or representatives of the Interstate Commission and, subject to the approval of the Attorney General of the state represented by any commissioner of a compacting state, shall defend such commissioner or the commissioner's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

4. The Interstate Commission shall indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees, or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

ARTICLE VI

RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

A. The Interstate Commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

B. Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the ''Model State Administrative Procedures Act,'' 1981 Act, Uniform Laws Annotated, Vol. 15, p. 1 (2000), or such other administrative procedures act, as the Interstate Commission deems appropriate consistent with due process requirements under the U.S. Constitution as now or hereafter interpreted by the U.S. Supreme Court. All rules and amendments

shall become binding as of the date specified, as published with the final version of the rule as approved by the Commission.

C. When promulgating a rule, the Interstate Commission shall, at a minimum:

1. publish the proposed rule's entire text stating the reason(s) for that proposed rule;

2. allow and invite any and all persons to submit written data, facts, opinions and arguments, which information shall be added to the record, and be made publicly available;

3. provide an opportunity for an informal hearing if petitioned by ten (10) or more persons; and

4. promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

D. Allow, not later than sixty days after a rule is promulgated, any interested person to file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principal office is located for judicial review of such rule. If the court finds that the Interstate Commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedures Act.

E. If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that such rule shall have no further force and effect in any compacting state.

F. The existing rules governing the operation of the Interstate Compact on Juveniles superceded by this compact shall be null and void twelve (12) months after the first meeting of the Interstate Commission created hereunder.

G. Upon determination by the Interstate Commission that a state of emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, but no later than ninety (90) days after the effective date of the emergency rule.

ARTICLE VII

OVERSIGHT, ENFORCEMENT AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION

Section A. Oversight

1. The Interstate Commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor such activities being administered in noncompacting states which may significantly affect compacting states.

2. The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice

of the compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the Interstate Commission, it shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

Section B. Dispute Resolution

1. The compacting states shall report to the Interstate Commission on all issues and activities necessary for the administration of the compact as well as issues and activities pertaining to compliance with the provisions of the compact and its bylaws and rules.

2. The Interstate Commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and between compacting and noncompacting states. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

3. The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in Article XI of this compact.

ARTICLE VIII

FINANCE

A. The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

B. The Interstate Commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state and shall promulgate a rule binding upon all compacting states which governs said assessment.

C. The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

D. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE IX

THE STATE COUNCIL

Each member state shall create a State Council for Interstate Juvenile Supervision. While each state may determine the membership of its own state council, its membership must include at least one representative from the

legislative, judicial, and executive branches of government, victims groups, and the compact administrator, deputy compact administrator or designee. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each state council will advise and may exercise oversight and advocacy concerning that state's participation in Interstate Commission activities and other duties as may be determined by that state, including but not limited to, development of policy concerning operations and procedures of the compact within that state.

ARTICLE X

COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

A. Any state, the District of Columbia (or its designee), the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands as defined in Article II of this compact is eligible to become a compacting state.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date shall be the later of July 1, 2004, or upon enactment into law by the 35th jurisdiction. Thereafter it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. The governors of nonmember states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

C. The Interstate Commission may propose amendments to the compact for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XI

WITHDRAWAL, DEFAULT, TERMINATION AND JUDICIAL ENFORCEMENT

Section A. Withdrawal

1. Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

2. The effective date of withdrawal is the effective date of the repeal.

3. The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.

4. The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

5. Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

Section B. Technical Assistance, Fines, Suspension, Termination and Default

1. If the Interstate Commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, or the bylaws or duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:

a. Remedial training and technical assistance as directed by the Interstate Commission;

b. Alternative Dispute Resolution;

c. Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission; and

d. Suspension or termination of membership in the compact, which shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the Interstate Commission has therefor determined that the offending state is in default. Immediate notice of suspension shall be given by the Interstate Commission to the Governor, the Chief Justice or the Chief Judicial Officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council. The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, the bylaws, or duly promulgated rules and any other grounds designated in commission bylaws and rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission and of the default pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination.

2. Within sixty days of the effective date of termination of a defaulting state, the Commission shall notify the Governor, the Chief Justice or Chief Judicial Officer, the Majority and Minority Leaders of the defaulting state's legislature, and the state council of such termination.

3. The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

4. The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

5. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

Section C. Judicial Enforcement

The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its offices, to enforce compliance with the provisions of the compact, its duly promulgated rules and bylaws, against any compacting

state in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

Section D. Dissolution of Compact

1. The compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the compact to one compacting state.

2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and any surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XII

SEVERABILITY AND CONSTRUCTION

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

ARTICLE XIII

BINDING EFFECT OF COMPACT AND OTHER LAWS

Section A. Other Laws

1. Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

2. All compacting states' laws other than state Constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.

Section B. Binding Effect of the Compact

1. All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the compacting states.

2. All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.

3. Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the compacting states, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.

4. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.

Source: Laws 2009, LB237, § 1.

Cross References

Interstate Compact for Adult Offender Supervision, see section 29-2639.
Interstate Compact for the Placement of Children, see section 43-1103.

ARTICLE 11

INTERSTATE COMPACT FOR THE PLACEMENT OF CHILDREN

Section
43-1101. Repealed. Laws 2009, LB 237, § 5.
43-1102. Repealed. Laws 2009, LB 237, § 5.
43-1103. Interstate Compact for the Placement of Children.

43-1101 Repealed. Laws 2009, LB 237, § 5.

43-1102 Repealed. Laws 2009, LB 237, § 5.

43-1103 Interstate Compact for the Placement of Children.

ARTICLE I.

PURPOSE

The purpose of this Interstate Compact for the Placement of Children is to:

A. Provide a process through which children subject to this compact are placed in safe and suitable homes in a timely manner.

B. Facilitate ongoing supervision of a placement, the delivery of services, and communication between the states.

C. Provide operating procedures that will ensure that children are placed in safe and suitable homes in a timely manner.

D. Provide for the promulgation and enforcement of administrative rules implementing the provisions of this compact and regulating the covered activities of the member states.

E. Provide for uniform data collection and information sharing between member states under this compact.

F. Promote coordination between this compact, the Interstate Compact for Juveniles, the Interstate Compact on Adoption and Medical Assistance and other compacts affecting the placement of and which provide services to children otherwise subject to this compact.

G. Provide for a state's continuing legal jurisdiction and responsibility for placement and care of a child that it would have had if the placement were intrastate.

H. Provide for the promulgation of guidelines, in collaboration with Indian tribes, for interstate cases involving Indian children as is or may be permitted by federal law.

ARTICLE II.

DEFINITIONS

As used in this compact,

A. ''Approved placement'' means the public child-placing agency in the receiving state has determined that the placement is both safe and suitable for the child.

B. ''Assessment'' means an evaluation of a prospective placement by a public child-placing agency in the receiving state to determine if the placement meets

the individualized needs of the child, including, but not limited to, the child's safety and stability, health and well-being, and mental, emotional, and physical development. An assessment is only applicable to a placement by a public child-placing agency.

C. ''Child'' means an individual who has not attained the age of eighteen (18).

D. ''Certification'' means to attest, declare or swear to before a judge or notary public.

E. ''Default'' means the failure of a member state to perform the obligations or responsibilities imposed upon it by this compact, the bylaws or rules of the Interstate Commission.

F. ''Home study'' means an evaluation of a home environment conducted in accordance with the applicable requirements of the state in which the home is located, and documents the preparation and the suitability of the placement resource for placement of a child in accordance with the laws and requirements of the state in which the home is located.

G. ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaskan native village as defined in section 3(c) of the Alaska Native Claims Settlement Act, 43 U.S.C. 11 section 1602(c).

H. ''Interstate Commission for the Placement of Children'' means the commission that is created under Article VIII of this compact and which is generally referred to as the Interstate Commission.

I. ''Jurisdiction'' means the power and authority of a court to hear and decide matters.

J. ''Legal Risk Placement'' (''Legal Risk Adoption'') means a placement made preliminary to an adoption where the prospective adoptive parents acknowledge in writing that a child can be ordered returned to the sending state or the birth mother's state of residence, if different from the sending state, and a final decree of adoption shall not be entered in any jurisdiction until all required consents are obtained or are dispensed with in accordance with applicable law.

K. ''Member state'' means a state that has enacted this compact.

L. ''Noncustodial parent'' means a person who, at the time of the commencement of court proceedings in the sending state, does not have sole legal custody of the child or has joint legal custody of a child, and who is not the subject of allegations or findings of child abuse or neglect.

M. ''Nonmember state'' means a state which has not enacted this compact.

N. ''Notice of residential placement'' means information regarding a placement into a residential facility provided to the receiving state including, but not limited to, the name, date, and place of birth of the child, the identity and address of the parent or legal guardian, evidence of authority to make the placement, and the name and address of the facility in which the child will be placed. Notice of residential placement shall also include information regarding a discharge and any unauthorized absence from the facility.

O. ''Placement'' means the act by a public or private child-placing agency intended to arrange for the care or custody of a child in another state.

P. ''Private child-placing agency'' means any private corporation, agency, foundation, institution, or charitable organization, or any private person or

attorney that facilitates, causes, or is involved in the placement of a child from one state to another and that is not an instrumentality of the state or acting under color of state law.

Q. ''Provisional placement'' means a determination made by the public child-placing agency in the receiving state that the proposed placement is safe and suitable, and, to the extent allowable, the receiving state has temporarily waived its standards or requirements otherwise applicable to prospective foster or adoptive parents so as to not delay the placement. Completion of the receiving state requirements regarding training for prospective foster or adoptive parents shall not delay an otherwise safe and suitable placement.

R. ''Public child-placing agency'' means any government child welfare agency or child protection agency or a private entity under contract with such an agency, regardless of whether they act on behalf of a state, county, municipality or other governmental unit and which facilitates, causes, or is involved in the placement of a child from one state to another.

S. ''Receiving state'' means the state to which a child is sent, brought, or caused to be sent or brought.

T. ''Relative'' means someone who is related to the child as a parent, stepparent, sibling by half or whole blood or by adoption, grandparent, aunt, uncle, or first cousin or a nonrelative with such significant ties to the child that they may be regarded as relatives as determined by the court in the sending state.

U. ''Residential Facility'' means a facility providing a level of care that is sufficient to substitute for parental responsibility or foster care and is beyond what is needed for assessment or treatment of an acute condition. For purposes of the compact, residential facilities do not include institutions primarily educational in character, hospitals, or other medical facilities.

V. ''Rule'' means a written directive, mandate, standard, or principle issued by the Interstate Commission promulgated pursuant to Article XI of this compact that is of general applicability and that implements, interprets, or prescribes a policy or provision of the compact. ''Rule'' has the force and effect of an administrative rule in a member state, and includes the amendment, repeal, or suspension of an existing rule.

W. ''Sending state'' means the state from which the placement of a child is initiated.

X. ''Service member's permanent duty station'' means the military installation where an active duty Armed Services member is currently assigned and is physically located under competent orders that do not specify the duty as temporary.

Y. ''Service member's state of legal residence'' means the state in which the active duty Armed Services member is considered a resident for tax and voting purposes.

Z. ''State'' means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other territory of the United States.

AA. ''State court'' means a judicial body of a state that is vested by law with responsibility for adjudicating cases involving abuse, neglect, deprivation, de-

linquency, or status offenses of individuals who have not attained the age of eighteen (18).

BB. ''Supervision'' means monitoring provided by the receiving state once a child has been placed in a receiving state pursuant to this compact.

ARTICLE III.

APPLICABILITY

A. Except as otherwise provided in Article III, Section B, this compact shall apply to:

1. The interstate placement of a child subject to ongoing court jurisdiction in the sending state, due to allegations or findings that the child has been abused, neglected, or deprived as defined by the laws of the sending state, provided, however, that the placement of such a child into a residential facility shall only require notice of residential placement to the receiving state prior to placement.

2. The interstate placement of a child adjudicated delinquent or unmanageable based on the laws of the sending state and subject to ongoing court jurisdiction of the sending state if:

a. the child is being placed in a residential facility in another member state and is not covered under another compact; or

b. the child is being placed in another member state and the determination of safety and suitability of the placement and services required is not provided through another compact.

3. The interstate placement of any child by a public child-placing agency or private child-placing agency as defined in this compact as a preliminary step to a possible adoption.

B. The provisions of this compact shall not apply to:

1. The interstate placement of a child in a custody proceeding in which a public child-placing agency is not a party, provided the placement is not intended to effectuate an adoption.

2. The interstate placement of a child with a nonrelative in a receiving state by a parent with the legal authority to make such a placement provided, however, that the placement is not intended to effectuate an adoption.

3. The interstate placement of a child by one relative with the lawful authority to make such a placement directly with a relative in a receiving state.

4. The placement of a child, not subject to Article III, Section A, into a residential facility by his or her parent.

5. The placement of a child with a noncustodial parent provided that:

a. The noncustodial parent proves to the satisfaction of a court in the sending state a substantial relationship with the child; and

b. The court in the sending state makes a written finding that placement with the noncustodial parent is in the best interests of the child; and

c. The court in the sending state dismisses its jurisdiction in interstate placements in which the public child-placing agency is a party to the proceeding.

6. A child entering the United States from a foreign country for the purpose of adoption or leaving the United States to go to a foreign country for the purpose of adoption in that country.

7. Cases in which a U.S. citizen child living overseas with his family, at least one of whom is in the U.S. Armed Services, and who is stationed overseas, is removed and placed in a state.

8. The sending of a child by a public child-placing agency or a private child-placing agency for a visit as defined by the rules of the Interstate Commission.

C. For purposes of determining the applicability of this compact to the placement of a child with a family in the Armed Services, the public child-placing agency or private child-placing agency may choose the state of the service member's permanent duty station or the service member's declared legal residence.

D. Nothing in this compact shall be construed to prohibit the concurrent application of the provisions of this compact with other applicable interstate compacts, including the Interstate Compact for Juveniles and the Interstate Compact on Adoption and Medical Assistance. The Interstate Commission may in cooperation with other interstate compact commissions having responsibility for the interstate movement, placement, or transfer of children, promulgate like rules to ensure the coordination of services, timely placement of children, and the reduction of unnecessary or duplicative administrative or procedural requirements.

ARTICLE IV.

JURISDICTION

A. Except as provided in Article IV, Section H, and Article V, Section B, paragraph two and three, concerning private and independent adoptions, and in interstate placements in which the public child-placing agency is not a party to a custody proceeding, the sending state shall retain jurisdiction over a child with respect to all matters of custody and disposition of the child which it would have had if the child had remained in the sending state. Such jurisdiction shall also include the power to order the return of the child to the sending state.

B. When an issue of child protection or custody is brought before a court in the receiving state, such court shall confer with the court of the sending state to determine the most appropriate forum for adjudication.

C. In cases that are before courts and subject to this compact, the taking of testimony for hearings before any judicial officer may occur in person or by telephone, audio-video conference, or such other means as approved by the rules of the Interstate Commission; and Judicial officers may communicate with other judicial officers and persons involved in the interstate process as may be permitted by their Canons of Judicial Conduct and any rules promulgated by the Interstate Commission.

D. In accordance with its own laws, the court in the sending state shall have authority to terminate its jurisdiction if:

1. The child is reunified with the parent in the receiving state who is the subject of allegations or findings of abuse or neglect, only with the concurrence of the public child-placing agency in the receiving state; or

2. The child is adopted; or

3. The child reaches the age of majority under the laws of the sending state; or

4. The child achieves legal independence pursuant to the laws of the sending state; or

5. A guardianship is created by a court in the receiving state with the concurrence of the court in the sending state; or

6. An Indian tribe has petitioned for and received jurisdiction from the court in the sending state; or

7. The public child-placing agency of the sending state requests termination and has obtained the concurrence of the public child-placing agency in the receiving state.

E. When a sending state court terminates its jurisdiction, the receiving state child-placing agency shall be notified.

F. Nothing in this article shall defeat a claim of jurisdiction by a receiving state court sufficient to deal with an act of truancy, delinquency, crime, or behavior involving a child as defined by the laws of the receiving state committed by the child in the receiving state which would be a violation of its laws.

G. Nothing in this article shall limit the receiving state's ability to take emergency jurisdiction for the protection of the child.

H. The substantive laws of the state in which an adoption will be finalized shall solely govern all issues relating to the adoption of the child and the court in which the adoption proceeding is filed shall have subject matter jurisdiction regarding all substantive issues relating to the adoption, except:

1. when the child is a ward of another court that established jurisdiction over the child prior to the placement; or

2. when the child is in the legal custody of a public agency in the sending state; or

3. when a court in the sending state has otherwise appropriately assumed jurisdiction over the child, prior to the submission of the request for approval of placement.

I. A final decree of adoption shall not be entered in any jurisdiction until the placement is authorized as an ''approved placement'' by the public child-placing agency in the receiving state.

ARTICLE V.

PLACEMENT EVALUATION

A. Prior to sending, bringing, or causing a child to be sent or brought into a receiving state, the public child-placing agency shall provide a written request for assessment to the receiving state.

B. For placements by a private child-placing agency, a child may be sent or brought, or caused to be sent or brought, into a receiving state, upon receipt and immediate review of the required content in a request for approval of a placement in both the sending and receiving state public child-placing agency. The required content to accompany a request for approval shall include all of the following:

1. A request for approval identifying the child, the birth parent(s), the prospective adoptive parent(s), and the supervising agency, signed by the person requesting approval; and

2. The appropriate consents or relinquishments signed by the birth parents in accordance with the laws of the sending state, or, where permitted, the laws of the state where the adoption will be finalized; and

3. Certification by a licensed attorney or authorized agent of a private adoption agency that the consent or relinquishment is in compliance with the applicable laws of the sending state, or where permitted the laws of the state where finalization of the adoption will occur; and

4. A home study; and

5. An acknowledgment of legal risk signed by the prospective adoptive parents.

C. The sending state and the receiving state may request additional information or documents prior to finalization of an approved placement, but they may not delay travel by the prospective adoptive parents with the child if the required content for approval has been submitted, received, and reviewed by the public child-placing agency in both the sending state and the receiving state.

D. Approval from the public child-placing agency in the receiving state for a provisional or approved placement is required as provided for in the rules of the Interstate Commission.

E. The procedures for making and the request for an assessment shall contain all information and be in such form as provided for in the rules of the Interstate Commission.

F. Upon receipt of a request from the public child-placing agency of the sending state, the receiving state shall initiate an assessment of the proposed placement to determine its safety and suitability. If the proposed placement is a placement with a relative, the public child-placing agency of the sending state may request a determination for a provisional placement.

G. The public child-placing agency in the receiving state may request from the public child-placing agency or the private child-placing agency in the sending state, and shall be entitled to receive supporting or additional information necessary to complete the assessment or approve the placement.

H. The public child-placing agency in the receiving state shall approve a provisional placement and complete or arrange for the completion of the assessment within the timeframes established by the rules of the Interstate Commission.

I. For a placement by a private child-placing agency, the sending state shall not impose any additional requirements to complete the home study that are not required by the receiving state, unless the adoption is finalized in the sending state.

J. The Interstate Commission may develop uniform standards for the assessment of the safety and suitability of interstate placements.

ARTICLE VI.

PLACEMENT AUTHORITY

A. Except as otherwise provided in this compact, no child subject to this compact shall be placed into a receiving state until approval for such placement is obtained.

B. If the public child-placing agency in the receiving state does not approve the proposed placement then the child shall not be placed. The receiving state

shall provide written documentation of any such determination in accordance with the rules promulgated by the Interstate Commission. Such determination is not subject to judicial review in the sending state.

C. If the proposed placement is not approved, any interested party shall have standing to seek an administrative review of the receiving state's determination.

1. The administrative review and any further judicial review associated with the determination shall be conducted in the receiving state pursuant to its applicable administrative procedures act.

2. If a determination not to approve the placement of the child in the receiving state is overturned upon review, the placement shall be deemed approved, provided, however, that all administrative or judicial remedies have been exhausted or the time for such remedies has passed.

ARTICLE VII.

PLACING AGENCY RESPONSIBILITY

A. For the interstate placement of a child made by a public child-placing agency or state court:

1. The public child-placing agency in the sending state shall have financial responsibility for:

a. the ongoing support and maintenance for the child during the period of the placement, unless otherwise provided for in the receiving state; and

b. as determined by the public child-placing agency in the sending state, services for the child beyond the public services for which the child is eligible in the receiving state.

2. The receiving state shall only have financial responsibility for:

a. any assessment conducted by the receiving state; and

b. supervision conducted by the receiving state at the level necessary to support the placement as agreed upon by the public child-placing agencies of the receiving and sending state.

3. Nothing in this provision shall prohibit public child-placing agencies in the sending state from entering into agreements with licensed agencies or persons in the receiving state to conduct assessments and provide supervision.

B. For the placement of a child by a private child-placing agency preliminary to a possible adoption, the private child-placing agency shall be:

1. Legally responsible for the child during the period of placement as provided for in the law of the sending state until the finalization of the adoption.

2. Financially responsible for the child absent a contractual agreement to the contrary.

C. The public child-placing agency in the receiving state shall provide timely assessments, as provided for in the rules of the Interstate Commission.

D. The public child-placing agency in the receiving state shall provide, or arrange for the provision of, supervision and services for the child, including timely reports, during the period of the placement.

E. Nothing in this compact shall be construed as to limit the authority of the public child-placing agency in the receiving state from contracting with a licensed agency or person in the receiving state for an assessment or the provision of supervision or services for the child or otherwise authorizing the

provision of supervision or services by a licensed agency during the period of placement.

F. Each member state shall provide for coordination among its branches of government concerning the state's participation in, and compliance with, the compact and Interstate Commission activities, through the creation of an advisory council or use of an existing body or board.

G. Each member state shall establish a central state compact office, which shall be responsible for state compliance with the compact and the rules of the Interstate Commission.

H. The public child-placing agency in the sending state shall oversee compliance with the provisions of the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., for placements subject to the provisions of this compact, prior to placement.

I. With the consent of the Interstate Commission, states may enter into limited agreements that facilitate the timely assessment and provision of services and supervision of placements under this compact.

ARTICLE VIII.

INTERSTATE COMMISSION FOR THE PLACEMENT OF CHILDREN

The member states hereby establish, by way of this compact, a commission known as the ''Interstate Commission for the Placement of Children.'' The activities of the Interstate Commission are the formation of public policy and are a discretionary state function. The Interstate Commission shall:

A. Be a joint commission of the member states and shall have the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by subsequent concurrent action of the respective legislatures of the member states.

B. Consist of one commissioner from each member state who shall be appointed by the executive head of the state human services administration with ultimate responsibility for the child welfare program. The appointed commissioner shall have the legal authority to vote on policy related matters governed by this compact binding the state.

1. Each member state represented at a meeting of the Interstate Commission is entitled to one vote.

2. A majority of the member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

3. A representative shall not delegate a vote to another member state.

4. A representative may delegate voting authority to another person from their state for a specified meeting.

C. In addition to the commissioners of each member state, the Interstate Commission shall include persons who are members of interested organizations as defined in the bylaws or rules of the Interstate Commission. Such members shall be ex officio and shall not be entitled to vote on any matter before the Interstate Commission.

D. Establish an executive committee which shall have the authority to administer the day-to-day operations and administration of the Interstate Commission. It shall not have the power to engage in rulemaking.

ARTICLE IX.

POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The Interstate Commission shall have the following powers:

A. To promulgate rules and take all necessary actions to effect the goals, purposes, and obligations as enumerated in this compact.

B. To provide for dispute resolution among member states.

C. To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact, its bylaws, rules, or actions.

D. To enforce compliance with this compact or the bylaws or rules of the Interstate Commission pursuant to Article XII of this compact.

E. To collect standardized data concerning the interstate placement of children subject to this compact as directed through its rules which shall specify the data to be collected, the means of collection and data exchange and reporting requirements.

F. To establish and maintain offices as may be necessary for the transacting of its business.

G. To purchase and maintain insurance and bonds.

H. To hire or contract for services of personnel or consultants as necessary to carry out its functions under the compact and establish personnel qualification policies, and rates of compensation.

I. To establish and appoint committees and officers, including, but not limited to, an executive committee as required by Article X of this compact.

J. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose thereof.

K. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed.

L. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

M. To establish a budget and make expenditures.

N. To adopt a seal and bylaws governing the management and operation of the Interstate Commission.

O. To report annually to the legislatures, governors, the judiciary, and state advisory councils of the member states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

P. To coordinate and provide education, training and public awareness regarding the interstate movement of children for officials involved in such activity.

Q. To maintain books and records in accordance with the bylaws of the Interstate Commission.

R. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

ARTICLE X.

ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

A. Bylaws

1. Within twelve months after the first Interstate Commission meeting, the Interstate Commission shall adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact.

2. The Interstate Commission's bylaws and rules shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

B. Meetings

1. The Interstate Commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states shall call additional meetings.

2. Public notice shall be given by the Interstate Commission of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and its committees may close a meeting, or portion thereof, where it determines by two-thirds vote that an open meeting would be likely to:

a. relate solely to the Interstate Commission's internal personnel practices and procedures; or

b. disclose matters specifically exempted from disclosure by federal law; or

c. disclose financial or commercial information which is privileged, proprietary, or confidential in nature; or

d. involve accusing a person of a crime, or formally censuring a person; or

e. disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy or physically endanger one or more persons; or

f. disclose investigative records compiled for law enforcement purposes; or

g. specifically relate to the Interstate Commission's participation in a civil action or other legal proceeding.

3. For a meeting, or portion of a meeting, closed pursuant to this provision, the Interstate Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exemption provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Interstate Commission or by court order.

4. The bylaws may provide for meetings of the Interstate Commission to be conducted by telecommunication or other electronic communication.

C. Officers and Staff

1. The Interstate Commission may, through its executive committee, appoint or retain a staff director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The staff director shall serve as secretary to the Interstate Commission, but shall not have a vote. The staff director may hire and supervise such other staff as may be authorized by the Interstate Commission.

2. The Interstate Commission shall elect, from among its members, a chairperson and a vice-chairperson of the executive committee and other necessary officers, each of whom shall have such authority and duties as may be specified in the bylaws.

D. Qualified Immunity, Defense and Indemnification

1. The Interstate Commission's staff director and its employees shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided, that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by a criminal act or the intentional or willful and wanton misconduct of such person.

a. The liability of the Interstate Commission's staff director and employees or Interstate Commission representatives, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. The Interstate Commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by a criminal act or the intentional or willful and wanton misconduct of such person.

b. The Interstate Commission shall defend the staff director and its employees and, subject to the approval of the Attorney General or other appropriate legal counsel of the member state shall defend the commissioner of a member state in a civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

c. To the extent not covered by the state involved, member state, or the Interstate Commission, the representatives or employees of the Interstate Commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

ARTICLE XI.

RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

A. The Interstate Commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

B. Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the ''Model State Administrative Procedures Act,'' 1981 Act, Uniform Laws Annotated, Vol. 15, p. 1 (2000), or such other administrative procedure acts as the Interstate Commission deems appropriate consistent with due process requirements under the United States Constitution as now or hereafter interpreted by the United States Supreme Court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the Interstate Commission.

C. When promulgating a rule, the Interstate Commission shall, at a minimum:

1. Publish the proposed rule's entire text stating the reason(s) for that proposed rule; and

2. Allow and invite any and all persons to submit written data, facts, opinions, and arguments, which information shall be added to the record, and be made publicly available; and

3. Promulgate a final rule and its effective date, if appropriate, based on input from state or local officials, or interested parties.

D. Rules promulgated by the Interstate Commission shall have the force and effect of administrative rules and shall be binding in the compacting states to the extent and in the manner provided for in this compact.

E. Not later than sixty days after a rule is promulgated, an interested person may file a petition in the U.S. District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principal office is located for judicial review of such rule. If the court finds that the Interstate Commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside.

F. If a majority of the legislatures of the member states rejects a rule, those states may by enactment of a statute or resolution in the same manner used to adopt the compact cause that such rule shall have no further force and effect in any member state.

G. The existing rules governing the operation of the Interstate Compact on the Placement of Children superseded by this compact shall be null and void no less than twelve but no more than twenty-four months after the first meeting of the Interstate Commission created hereunder, as determined by the members during the first meeting.

H. Within the first twelve months of operation, the Interstate Commission shall promulgate rules addressing the following:

1. Transition rules

2. Forms and procedures

3. Timelines

4. Data collection and reporting

5. Rulemaking

6. Visitation

7. Progress reports/supervision

8. Sharing of information/confidentiality

9. Financing of the Interstate Commission

10. Mediation, arbitration, and dispute resolution

11. Education, training, and technical assistance

12. Enforcement

13. Coordination with other interstate compacts

I. Upon determination by a majority of the members of the Interstate Commission that an emergency exists:

1. The Interstate Commission may promulgate an emergency rule only if it is required to:

a. Protect the children covered by this compact from an imminent threat to their health, safety and well-being; or

b. Prevent loss of federal or state funds; or

c. Meet a deadline for the promulgation of an administrative rule required by federal law.

2. An emergency rule shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, but no later than ninety days after the effective date of the emergency rule.

3. An emergency rule shall be promulgated as provided for in the rules of the Interstate Commission.

ARTICLE XII.

OVERSIGHT, DISPUTE RESOLUTION, ENFORCEMENT

A. Oversight

1. The Interstate Commission shall oversee the administration and operation of the compact.

2. The executive, legislative and judicial branches of state government in each member state shall enforce this compact and the rules of the Interstate Commission and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The compact and its rules shall be binding in the compacting states to the extent and in the manner provided for in this compact.

3. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact.

4. The Interstate Commission shall be entitled to receive service of process in any action in which the validity of a compact provision or rule is the issue for which a judicial determination has been sought and shall have standing to intervene in any proceedings. Failure to provide service of process to the Interstate Commission shall render any judgment, order or other determination, however so captioned or classified, void as to the Interstate Commission, this compact, its bylaws or rules of the Interstate Commission.

B. Dispute Resolution

1. The Interstate Commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states and between member and nonmember states.

2. The Interstate Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among compacting states. The costs of such mediation or dispute resolution shall be the responsibility of the parties to the dispute.

C. Enforcement

1. If the Interstate Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, its bylaws, or rules, the Interstate Commission may:

a. Provide remedial training and specific technical assistance; or

b. Provide written notice to the defaulting state and other member states, of the nature of the default and the means of curing the default. The Interstate Commission shall specify the conditions by which the defaulting state must cure its default; or

c. By majority vote of the members, initiate against a defaulting member state legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its principal office, to enforce compliance with the provisions of the compact, its bylaws or rules. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees; or

d. Avail itself of any other remedies available under state law or the regulation of official or professional conduct.

ARTICLE XIII.

FINANCING OF THE COMMISSION

A. The Interstate Commission shall pay, or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

B. The Interstate Commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved by its members each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission which shall promulgate a rule binding upon all member states.

C. The Interstate Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the member states, except by and with the authority of the member state.

D. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE XIV.

MEMBER STATES, EFFECTIVE DATE, AND AMENDMENT

A. Any state is eligible to become a member state.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five states. The effective date shall be the later of July 1, 2007, or upon enactment of the compact into law by the thirty-fifth state. Thereafter it shall become effective and binding as to any other member state upon enactment of the compact into law by that state. The executive heads of the state human services administration with ultimate responsibility for the child welfare program of nonmember states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the compact by all states.

C. The Interstate Commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding on the member states unless and until it is enacted into law by unanimous consent of the member states.

ARTICLE XV.

WITHDRAWAL AND DISSOLUTION

A. Withdrawal

1. Once effective, the compact shall continue in force and remain binding upon each and every member state; provided that a member state may withdraw from the compact specifically repealing the statute which enacted the compact into law.

2. Withdrawal from this compact shall be by the enactment of a statute repealing the same. The effective date of withdrawal shall be the effective date of the repeal of the statute.

3. The withdrawing state shall immediately notify the president of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall then notify the other member states of the withdrawing state's intent to withdraw.

4. The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal.

5. Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the members of the Interstate Commission.

B. Dissolution of compact

1. This compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one member state.

2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XVI.

SEVERABILITY AND CONSTRUCTION

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

C. Nothing in this compact shall be construed to prohibit the concurrent applicability of other interstate compacts to which the states are members.

ARTICLE XVII.

BINDING EFFECT OF COMPACT AND OTHER LAWS

A. Other Laws

1. Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with this compact.

B. Binding Effect of the compact

1. All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the member states.

2. All agreements between the Interstate Commission and the member states are binding in accordance with their terms.

3. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

ARTICLE XVIII.

INDIAN TRIBES

Notwithstanding any other provision in this compact, the Interstate Commission may promulgate guidelines to permit Indian tribes to utilize the compact to achieve any or all of the purposes of the compact as specified in Article I of this compact. The Interstate Commission shall make reasonable efforts to consult with Indian tribes in promulgating guidelines to reflect the diverse circumstances of the various Indian tribes.

Source: Laws 2009, LB237, § 3.

Cross References

Interstate Compact for Juveniles, see section 43-1011.

ARTICLE 12

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

Section
43-1230. International application of act.

43-1230 International application of act.

(a) A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying sections 43-1226 to 43-1247.

(b) Except as otherwise provided in subsection (c) or (d) of this section, a child custody determination made in a foreign country under factual circum-

stances in substantial conformity with the jurisdictional standards of the Uniform Child Custody Jurisdiction and Enforcement Act shall be recognized and enforced under sections 43-1248 to 43-1264.

(c) A court of this state need not apply the act if the child custody law of a foreign country violates fundamental principles of human rights.

(d) A court of this state need not recognize and enforce an otherwise valid child custody determination of a foreign court under the act if it determines (1) that the child is a habitual resident of Nebraska as defined under the provisions of the Hague Convention on the Civil Aspects of International Child Abduction, as implemented by the International Child Abduction Remedies Act, 42 U.S.C. 11601 et seq., and (2) that the child would be at significant and demonstrable risk of child abuse or neglect as defined in section 28-710 if the foreign child custody determination is recognized and enforced. Such a determination shall create a rebuttable presumption against recognition and enforcement of the foreign child custody determination and, thereafter, a court of this state may exercise child custody jurisdiction pursuant to subdivision (a)(1) and subsection (c) of section 43-1238.

(e) The changes made to this section by Laws 2007, LB 341, shall be deemed remedial and shall apply to all cases pending on or before February 2, 2007, and to all cases initiated subsequent thereto.

(f) A court of this state shall have initial and continuing jurisdiction to make any determinations and to grant any relief set forth in subsection (d) of this section upon the motion or complaint seeking such, filed by any parent or custodian of a child who is the subject of a foreign court's custody determination and a habitual resident of Nebraska. The absence or dismissal, either voluntary or involuntary, of an action for the recognition and enforcement of a foreign court's custody determination under subsection (b) of this section shall in no way deprive the court of jurisdiction set forth in this subsection. Subsection (c) of section 43-1238 shall apply to any proceeding under this subsection.

This subsection shall be deemed remedial and shall apply to all cases pending on or before March 6, 2009, and to all cases initiated subsequent thereto.

Source: Laws 2003, LB 148, § 5; Laws 2007, LB341, § 13; Laws 2009, LB201, § 1.

ARTICLE 13

FOSTER CARE

(a) FOSTER CARE REVIEW ACT

Section
43-1302. State Foster Care Review Board; established; members; disclosure required; terms; expenses.
43-1314.02. Caregiver information form; development; provided to caregiver.

(a) FOSTER CARE REVIEW ACT

43-1302 State Foster Care Review Board; established; members; disclosure required; terms; expenses.

(1) The State Foster Care Review Board shall be comprised of eleven members appointed by the Governor with the approval of a majority of the members elected to the Legislature, consisting of: Three members of local foster care review boards, one from each congressional district; one practitioner of

pediatric medicine, licensed under the Uniform Credentialing Act; one practitioner of child clinical psychology, licensed under the Uniform Credentialing Act; one social worker certified under the Uniform Credentialing Act, with expertise in the area of child welfare; one attorney who is or has been a guardian ad litem; one representative of a statewide child advocacy group; one director of a child advocacy center; one director of a court appointed special advocate program; and one member of the public who has a background in business or finance. Prior to appointment, each potential member shall disclose any and all funding he or she or his or her employer receives from the Department of Health and Human Services.

The terms of members appointed pursuant to this subsection shall be three years, except that of the initial members of the state board, one-third shall be appointed for terms of one year, one-third for terms of two years, and one-third for terms of three years, as determined by the Governor. No person appointed by the Governor to the state board shall serve more than two consecutive three-year terms. An appointee to a vacancy occurring from an unexpired term shall serve out the term of his or her predecessor. Members whose terms have expired shall continue to serve until their successors have been appointed and qualified. Members serving on the state board on December 31, 2005, shall continue in office until the members appointed under this subsection take office. The members of the state board shall, to the extent possible, represent the three congressional districts equally.

(2) The state board shall select a chairperson, vice-chairperson, and such other officers as the state board deems necessary. Members of the state board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. The state board shall employ or contract for services from such persons as are necessary to aid it in carrying out its duties.

Source: Laws 1982, LB 714, § 2; Laws 1987, LB 239, § 2; Laws 1990, LB 1222, § 5; Laws 2005, LB 761, § 1; Laws 2007, LB463, § 1133; Laws 2009, LB679, § 1.

Cross References

Uniform Credentialing Act, see section 38-101.

43-1314.02 Caregiver information form; development; provided to caregiver.

(1) The court shall provide a caregiver information form or directions on downloading such form from the Supreme Court Internet web site to the foster parent, preadoptive parent, guardian, or relative providing care for the child when giving notice of a court review described in section 43-1314. The form is to be dated and signed by the caregiver and shall, at a minimum, request the following:

(a) The child's name, age, and date of birth;

(b) The name of the caregiver, his or her telephone number and address, and whether the caregiver is a foster parent, preadoptive parent, guardian, or relative;

(c) How long the child has been in the caregiver's care;

(d) A current picture of the child;

(e) The current status of the child's medical, dental, and general physical condition;

(f) The current status of the child's emotional condition;

(g) The current status of the child's education;

(h) Whether or not the child is a special education student and the date of the last individualized educational plan;

(i) A brief description of the child's social skills and peer relationships;

(j) A brief description of the child's special interests and activities;

(k) A brief description of the child's reactions before, during, and after visits;

(l) Whether or not the child is receiving all necessary services;

(m) The date and place of each visit by the caseworker with the child;

(n) A description of the method by which the guardian ad litem has acquired information about the child; and

(o) Whether or not the caregiver can make a permanent commitment to the child if the child does not return home.

(2) A caregiver information form shall be developed by the Supreme Court. Such form shall be made a part of the record in each court that reviews the child's foster care proceedings.

Source: Laws 2007, LB457, § 1; Laws 2009, LB35, § 28.

ARTICLE 17

INCOME WITHHOLDING FOR CHILD SUPPORT ACT

Section
43-1701. Act, how cited.
43-1702. Purpose of act.
43-1703. Definitions, where found.
43-1712.02. Monetary judgment, defined.
43-1717. Support order, defined.
43-1718.02. Obligor; subject to income withholding; when; notice; employer or other payor; prohibited acts; violation; penalty; termination or modification; notice; enforcement.
43-1720. Notice to employer, payor, or obligor; contents.
43-1722. Assignment; statement of amount.
43-1723. Notice to employer or other payor; contents; compliance; effect.
43-1724. Employer or other payor; failure to withhold and remit income; effect.
43-1726. Notice to withhold income; termination; exception; procedure.
43-1727. Income withholding notice; modification or revocation; notice.

43-1701 Act, how cited.

Sections 43-1701 to 43-1743 shall be known and may be cited as the Income Withholding for Child Support Act.

Source: Laws 1985, Second Spec. Sess., LB 7, § 21; Laws 1991, LB 457, § 17; Laws 1994, LB 1224, § 64; Laws 2000, LB 972, § 19; Laws 2010, LB712, § 27.
Operative date July 15, 2010.

43-1702 Purpose of act.

It is the intent of the Legislature to encourage the use of all proven techniques for the collection of child, spousal, and medical support and monetary judgments. While income withholding is the preferred technique, other techniques such as liens on property and contempt proceedings should be used when appropriate. The purpose of the Income Withholding for Child Support Act is to provide a simplified and relatively automatic procedure for

implementing income withholding in order to guarantee that child, spousal, and medical support obligations and monetary judgments are met when income is available for that purpose, to encourage voluntary withholding by obligors, and to facilitate the implementation of income withholding based on foreign support orders.

Source: Laws 1985, Second Spec. Sess., LB 7, § 22; Laws 1991, LB 457, § 18; Laws 2010, LB712, § 28.
Operative date July 15, 2010.

43-1703 Definitions, where found.

For purposes of the Income Withholding for Child Support Act, unless the context otherwise requires, the definitions found in sections 43-1704 to 43-1717 shall be used.

Source: Laws 1985, Second Spec. Sess., LB 7, § 23; Laws 1991, LB 457, § 19; Laws 2000, LB 972, § 20; Laws 2010, LB712, § 29.
Operative date July 15, 2010.

43-1712.02 Monetary judgment, defined.

Monetary judgment shall mean a monetary judgment against an obligor that is unsatisfied and is owed to the federal or state governmental unit in a case in which services are being provided under Title IV-D of the federal Social Security Act, as amended, and the judgment is related to the support of a child. Monetary judgment includes, but is not limited to, the cost of genetic testing that the obligor has been ordered to pay by a court, plus any accumulated interest on the judgment under sections 45-103 to 45-103.04, whether the order was issued prior to, on, or after July 15, 2010.

Source: Laws 2010, LB712, § 30.
Operative date July 15, 2010.

43-1717 Support order, defined.

Support order shall mean any order, decree, or judgment for child, spousal, or medical support or for payment of any arrearage for such support issued by a court or agency of competent jurisdiction, whether issued prior to, on, or after November 16, 1985, whether for temporary or permanent support, whether interlocutory or final, whether or not modifiable, and whether or not incidental to a proceeding for dissolution of marriage, judicial or legal separation, separate maintenance, paternity, guardianship, or civil protection or any other action. A support order may include payment for any monetary judgment.

Source: Laws 1985, Second Spec. Sess., LB 7, § 37; Laws 1991, LB 457, § 25; Laws 2010, LB712, § 31.
Operative date July 15, 2010.

43-1718.02 Obligor; subject to income withholding; when; notice; employer or other payor; prohibited acts; violation; penalty; termination or modification; notice; enforcement.

(1) In any case in which services are not provided under Title IV-D of the federal Social Security Act, as amended, and a support order has been issued or modified on or after July 1, 1994, the obligor's income shall be subject to income withholding regardless of whether or not payments pursuant to such

order are in arrears, and the court shall require such income withholding in its order unless:

(a) One of the parties demonstrates and the court finds that there is good cause not to require immediate income withholding; or

(b) A written agreement between the parties providing an alternative arrangement is incorporated into the support order.

(2) If the court pursuant to subsection (1) of this section orders income withholding regardless of whether or not payments are in arrears, the obligor shall prepare a notice to withhold income. The notice to withhold income shall be substantially similar to a prototype prepared by the department and made available by the department to the State Court Administrator and the clerks of the district courts. The notice to withhold shall direct:

(a) That the employer or other payor shall withhold from the obligor's disposable income the amount stated in the notice to withhold for the purpose of satisfying the obligor's ongoing obligation for support payments as they become due, if there are arrearages, to reduce such arrearages in child, spousal, or medical support payments arising from the obligor's failure to fully comply with a support order, and after the obligor's support obligation is current, to satisfy any monetary judgment against the obligor;

(b) That the employer or other payor shall pay to the obligor, on his or her regularly scheduled payday, such income then due which is not required to be withheld as stated on the notice or pursuant to any court order;

(c) That the employer or other payor shall not withhold more than the maximum amount permitted to be withheld under section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. 1673(b)(2)(A) and (B), and the amount withheld, including interest, to satisfy an arrearage of child, spousal, or medical support or any monetary judgment when added to the amount withheld to pay current support and the fee provided for in subdivision (2)(d) of this section shall not exceed such maximum amount;

(d) That the employer or other payor may assess an additional administrative fee from the obligor's disposable income not to exceed two dollars and fifty cents in any calendar month as compensation for the employer's or other payor's reasonable cost incurred in complying with the notice;

(e) That the employer or other payor shall remit, within seven days after the date the obligor is paid and in the manner specified in the notice, the income withheld, less the deduction allowed as an administrative fee by subdivision (2)(d) of this section, to the State Disbursement Unit and shall notify the unit of the date such income was withheld;

(f) That the notice to withhold income shall terminate with respect to the employer or other payor without any court action or action by the obligor thirty days after the obligor ceases employment with or is no longer entitled to income from such employer or other payor;

(g) That the employer or other payor may combine amounts required to be withheld from the income of two or more obligors in a single payment to the unit if the portion of the single payment which is attributable to each individual obligor is separately identified;

(h) That an employer or other payor who fails to withhold and remit income of an obligor after receiving proper notice or who discriminates, demotes, disciplines, or terminates an employee or payee after receiving a notice to

withhold income shall be subject to the penalties prescribed in subsections (4) and (5) of this section; and

(i) That if the employer or other payor receives more than one notice to withhold income of a single obligor and the amount of income available to be withheld pursuant to the limits specified in subdivision (c) of this subsection is insufficient to satisfy the total support amount stated in the notices, the income available shall first be applied to current support. If the total amount of income available to be withheld is insufficient to satisfy the total amount of current support stated by the notices, the employer or other payor shall withhold for each notice the proportion that the amount of the current support stated in such notice bears to the total amount of current support stated in all notices received for the obligor. Any remaining income available to be withheld after current support is satisfied for all notices shall be applied to arrearages. If arrearages are stated in more than one notice, the employer or other payor shall withhold for each notice the proportion that the amount of the arrearage stated in such notice bears to the total amount of arrearage stated in all notices received for the obligor. Any income available to be withheld after the obligor's support obligation is current shall be applied to any monetary judgment. If a monetary judgment is stated in more than one notice, the employer or other payor shall withhold for each notice the proportion that the amount of the monetary judgments stated in such notice bears to the total amount of monetary judgments stated in all notices received for the obligor.

Compliance with the order by the employer or other payor shall operate as a discharge of the employer's or other payor's liability to the obligor as to the portion of the obligor's income withheld.

(3) The obligor shall deliver the notice to withhold income to his or her current employer or other payor and provide a copy of such notice to the clerk of the district court.

(4) Any employer or other payor who fails to withhold and remit any income of an obligor receiving income from the employer or other payor, after proper notice as provided in subsection (2) of this section, shall be required to pay to the unit the amount specified in the notice.

(5)(a) An employer or other payor shall not use an order or notice to withhold income or order or the possibility of income withholding as a basis for (i) discrimination in hiring, (ii) demotion of an employee or payee, (iii) disciplinary action against an employee or payee, or (iv) termination of an employee or payee.

(b) Upon application by the obligor and after a hearing on the matter, the court may impose a civil fine of up to five hundred dollars for each violation of this subsection.

(c) An employer or other payor who violates this subsection shall be required to make full restitution to the aggrieved employee or payee, including reinstatement and backpay.

(6) When an obligor ceases employment with or is no longer entitled to income from an employer or other payor, the notice to withhold income shall not cease to operate against the obligor and income withholding shall continue to apply to any subsequent employment or income of the obligor. The notice to withhold income shall terminate with respect to the employer or other payor without any court action or action by the obligor thirty days after the obligor ceases employment with or is no longer entitled to income from such employer

or other payor. A notice to withhold income shall also terminate when the child, spousal, or medical support obligation terminates, all past-due support has been paid, and any monetary judgment has been paid, in which case the obligor shall notify the employer or other payor to cease withholding income.

(7) A notice to withhold income may be modified or revoked by a court of competent jurisdiction as a result of modification of the support order. A notice to withhold income may also be modified or revoked by a court of competent jurisdiction, for other good cause shown, after notice and a hearing on the issue.

(8) The obligee or obligor may file an action in district court to enforce this section.

(9) If after an order is issued in any case under this section the case becomes one in which services are provided under Title IV-D of the federal Social Security Act, as amended, the county attorney or authorized attorney or the Department of Health and Human Services shall implement income withholding as otherwise provided in the Income Withholding for Child Support Act.

Source: Laws 1994, LB 1224, § 67; Laws 1996, LB 1044, § 204; Laws 1996, LB 1155, § 11; Laws 1997, LB 307, § 80; Laws 1997, LB 752, § 104; Laws 2000, LB 972, § 23; Laws 2007, LB296, § 130; Laws 2010, LB712, § 32.
Operative date July 15, 2010.

43-1720 Notice to employer, payor, or obligor; contents.

If the department has previously sent a notice of assignment and opportunity for hearing on the same support order under section 48-647, the county attorney, authorized attorney, or the department shall state the amount to be withheld from an obligor's disposable income pursuant to section 43-1722 and shall notify the obligor's employer or other payor pursuant to section 43-1723. If the department has not previously sent such notice, and except in cases in which the court has ordered income withholding pursuant to subsection (1) of section 43-1718.01 or section 43-1718.02, upon receiving certification pursuant to section 42-358 or notice of delinquent payments of medical support, the county attorney, the authorized attorney, or the department shall send a notice by certified mail to the last-known address of the obligor stating:

(1) That an assignment of his or her income by means of income withholding will go into effect within fifteen days after the date the notice is sent;

(2) That the income withholding will continue to apply to any subsequent employer or other payor of the obligor;

(3) The amount of support and any monetary judgment the obligor owes;

(4) The amount of income that will be withheld; and

(5) That within the fifteen-day period, the obligor may request a hearing in the manner specified in the notice to contest a mistake of fact. For purposes of this subdivision, mistake of fact shall mean (a) an error in the amount of current or overdue support or the amount of any monetary judgment, (b) an error in the identity of the obligor, or (c) an error in the amount to be withheld as provided in section 43-1722.

Source: Laws 1985, Second Spec. Sess., LB 7, § 40; Laws 1986, LB 600, § 3; Laws 1991, LB 457, § 29; Laws 1993, LB 523, § 15; Laws 1994, LB 1224, § 68; Laws 1996, LB 1044, § 205; Laws 1996, LB

1155, § 12; Laws 1997, LB 307, § 81; Laws 2007, LB296, § 131; Laws 2010, LB712, § 33.
Operative date July 15, 2010.

43-1722 Assignment; statement of amount.

(1) If no hearing is requested by the obligor, (2) if after a hearing the department determines that the assignment should go into effect, (3) in cases in which the court has ordered income withholding pursuant to subsection (1) of section 43-1718.01, or (4) in cases in which the court has ordered income withholding pursuant to section 43-1718.02, which case subsequently becomes one in which services are being provided under Title IV-D of the federal Social Security Act, as amended, the county attorney, the authorized attorney, or the department shall state the amount to be withheld from the obligor's disposable income. Such amount shall not in any case exceed the maximum amount permitted to be withheld under section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. 1673(b)(2)(A) and (B), and the amount withheld, including interest, to satisfy an arrearage of child, spousal, or medical support or any monetary judgment when added to the amount withheld to pay current support and the fee provided for in section 43-1723 shall not exceed such maximum amount.

Source: Laws 1985, Second Spec. Sess., LB 7, § 42; Laws 1991, LB 457, § 31; Laws 1993, LB 523, § 16; Laws 1994, LB 1224, § 69; Laws 1996, LB 1155, § 13; Laws 2010, LB712, § 34.
Operative date July 15, 2010.

43-1723 Notice to employer or other payor; contents; compliance; effect.

Except as otherwise provided in this section, the county attorney, the authorized attorney, or the department shall notify the obligor's employer or other payor, by first-class mail or by electronic means, within the time determined by the department which shall comply with the requirements of Title IV-D of the federal Social Security Act, as amended. The notice shall specify the basis for the assignment of income and shall direct:

(1) That the employer or other payor shall withhold from the obligor's disposable income the amount stated by the county attorney, the authorized attorney, or the department for the purpose of reducing and satisfying the obligor's (a) previous arrearage in child, spousal, or medical support payments arising from the obligor's failure to fully comply with a support order previously entered, (b) ongoing obligation for support payments as they become due, and (c) then any monetary judgment;

(2) That the employer or other payor shall implement income withholding no later than the first pay period that begins following the date on the notice;

(3) That the employer or other payor shall pay to the obligor, on his or her regularly scheduled payday, such income then due which is not stated to be withheld pursuant to section 43-1722 or any court order;

(4) That the employer or other payor may assess an additional administrative fee from the obligor's disposable income not to exceed two dollars and fifty cents in any calendar month as compensation for the employer's or other payor's reasonable cost incurred in complying with the notice;

(5) That the employer or other payor shall remit, within seven days after the date the obligor is paid and in the manner specified in the notice, the income withheld, less the deduction allowed as an administrative expense by subdivision (4) of this section, to the State Disbursement Unit as designated in the notice and shall notify the unit of the date such income was withheld;

(6) That the employer or other payor shall notify the county attorney, the authorized attorney, or the department in writing of the termination of the employment or income of the obligor, the last-known address of the obligor, and the name and address of the obligor's new employer or other payor, if known, and shall provide such written notification within thirty days after the termination of employment or income;

(7) That income withholding is binding on the employer or other payor until further notice by the county attorney, the authorized attorney, or the department;

(8) That the employer or other payor may combine amounts required to be withheld from the income of two or more obligors in a single payment to the unit as designated in an income withholding notice if the portion of the single payment which is attributable to each individual obligor is separately identified;

(9) That an employer or other payor who fails to withhold and remit income of an obligor after receiving proper notice or who discriminates, demotes, disciplines, or terminates an employee or payee after receiving an income withholding notice shall be subject to the penalties prescribed in sections 43-1724 and 43-1725; and

(10) That if the employer or other payor receives more than one notice to withhold income of a single obligor and the amount of income available to be withheld pursuant to the limits specified in section 43-1722 is insufficient to satisfy the total support amount stated in the notices, the income available shall first be applied to current support. If the total amount of income available to be withheld is insufficient to satisfy the total amount of current support stated by the notices, the employer or other payor shall withhold for each notice the proportion that the amount of the current support stated in such notice bears to the total amount of current support stated in all notices received for the obligor. Any remaining income available to be withheld after current support is satisfied for all notices shall be applied to arrearages. If arrearages are stated in more than one notice, the employer or other payor shall withhold for each notice the proportion that the amount of the arrearage stated in such notice bears to the total amount of arrearage stated in all notices received for the obligor. Any income available to be withheld after the obligor's support obligation is current shall be applied to any monetary judgment. If a monetary judgment is stated in more than one notice, the employer or other payor shall withhold for each notice the proportion that the amount of the monetary judgments stated in such notice bears to the total amount of monetary judgments stated in all notices received for the obligor.

Compliance with the order by the employer or other payor shall operate as a discharge of the employer's or other payor's liability to the obligor as to the portion of the obligor's income withheld. The county attorney, the authorized attorney, or the department need not notify the Commissioner of Labor as a

payor if the commissioner is withholding for child support from the obligor under section 48-647 for the same support order.

Source: Laws 1985, Second Spec. Sess., LB 7, § 43; Laws 1986, LB 600, § 5; Laws 1991, LB 457, § 32; Laws 1993, LB 523, § 17; Laws 1996, LB 1155, § 14; Laws 1997, LB 752, § 105; Laws 2000, LB 972, § 24; Laws 2003, LB 245, § 3; Laws 2010, LB712, § 35. Operative date July 15, 2010.

43-1724 Employer or other payor; failure to withhold and remit income; effect.

Any employer or other payor who fails to withhold and remit any income of an obligor receiving income from the employer or other payor, after proper notice as provided in section 43-1723, shall be required to pay the stated amount to the State Disbursement Unit. The county attorney or authorized attorney may file an action in district court to enforce this section. The court may sanction an employer or other payor twenty-five dollars per day, up to five hundred dollars per incident, for failure to comply with proper notice.

Source: Laws 1985, Second Spec. Sess., LB 7, § 44; Laws 1991, LB 457, § 33; Laws 1993, LB 523, § 18; Laws 2005, LB 116, § 20; Laws 2010, LB712, § 36.
Operative date July 15, 2010.

43-1726 Notice to withhold income; termination; exception; procedure.

When an obligor ceases employment with or is no longer entitled to income from an employer or other payor, the notice to withhold income shall not cease to operate against the obligor and income withholding shall continue to apply to any subsequent employment or income of the obligor. The notice to withhold income shall terminate with respect to the employer or other payor without any court action or action by the county attorney, the authorized attorney, or the department thirty days after the obligor ceases employment with or is no longer entitled to income from such employer or other payor, except that a notice to withhold income shall not terminate with respect to unemployment compensation benefits being withheld by the Commissioner of Labor pursuant to section 48-647. The employer or other payor shall return a copy of the notice to withhold income to the county attorney, the authorized attorney, or the department, indicate that the employment or obligation to pay income has ceased, and cooperate in providing any known forwarding information. The county attorney, the authorized attorney, or the department shall notify the clerk of the appropriate district court that such employment or obligation to pay income has ceased. A notice to withhold income shall also terminate when the child, spousal, or medical support obligation terminates, all past-due support has been paid, and any monetary judgments have been paid, in which case the county attorney, the authorized attorney, or the department shall notify the employer or other payor to cease withholding income.

Source: Laws 1985, Second Spec. Sess., LB 7, § 46; Laws 1986, LB 600, § 6; Laws 1991, LB 457, § 35; Laws 1993, LB 523, § 20; Laws 1996, LB 1155, § 15; Laws 2010, LB712, § 37.
Operative date July 15, 2010.

43-1727 Income withholding notice; modification or revocation; notice.

(1) An income withholding notice may be modified or revoked by a court of competent jurisdiction or by the county attorney, the authorized attorney, or the department as a result of a review conducted pursuant to sections 43-512.12 to 43-512.18. An income withholding notice may also be modified or revoked by a court of competent jurisdiction, for other good cause shown, after notice and a hearing on the issue. An income withholding notice may also be modified or revoked by the county attorney, the authorized attorney, or the department as provided in subsection (2) of this section or for other good cause. Payment by the obligor of overdue support or any monetary judgment, other than through income withholding, after receipt of notice of income withholding shall not by itself constitute good cause for modifying or revoking an income withholding notice.

(2) When income withholding has been implemented and, as a result, a support delinquency has been eliminated, the Title IV-D Division or its designee shall notify the county attorney, the authorized attorney, or the department. Upon receipt of such notification, the county attorney, the authorized attorney, or the department shall modify the income withholding notice to require income withholding for current support and any monetary judgments and shall notify the employer or other payor of the change in the same manner as provided in section 43-1723.

Source: Laws 1985, Second Spec. Sess., LB 7, § 47; Laws 1991, LB 457, § 36; Laws 1991, LB 715, § 24; Laws 1996, LB 1155, § 16; Laws 2000, LB 972, § 25; Laws 2010, LB712, § 38.
Operative date July 15, 2010.

ARTICLE 20

MISSING CHILDREN IDENTIFICATION ACT

Section
43-2007. Schools; exempt school; duties.

43-2007 Schools; exempt school; duties.

(1) Upon notification by the patrol of a missing person, any school in which the missing person is currently or was previously enrolled shall flag the school records of such person in such school's possession. The school shall report immediately any request concerning a flagged record or any knowledge of the whereabouts of the missing person.

(2) Upon enrollment of a student for the first time in a public school district or private school system, the school of enrollment shall notify in writing the person enrolling the student that within thirty days he or she must provide either (a) a certified copy of the student's birth certificate or (b) other reliable proof of the student's identity and age accompanied by an affidavit explaining the inability to produce a copy of the birth certificate.

(3) Upon enrollment of a student who is receiving his or her education in an exempt school subject to sections 79-1601 to 79-1607, the parent or guardian of such student shall provide to the Commissioner of Education either (a) a certified copy of the student's birth certificate or (b) other reliable proof of the student's identity and age accompanied by an affidavit explaining the inability to produce a copy of the birth certificate.

(4) Upon failure of the person, parent, or guardian to comply with subsection (2) or (3) of this section, the school or Commissioner of Education shall notify

such person, parent, or guardian in writing that unless he or she complies within ten days the matter shall be referred to the local law enforcement agency for investigation. If compliance is not obtained within such ten-day period, the school or commissioner shall immediately report such matter. Any affidavit received pursuant to subsection (2) or (3) of this section that appears inaccurate or suspicious in form or content shall be reported immediately to the local law enforcement agency by the school or commissioner.

(5) Any school requested to forward a copy of a transferred student's record shall not forward a copy of such record to the requesting school if the record has been flagged pursuant to subsection (1) of this section. If such record has been flagged, the school to whom such request is made shall notify the local law enforcement agency of the request and that such student is a reported missing person.

Source: Laws 1987, LB 599, § 7; Laws 1991, LB 511, § 3; Laws 1992, LB 245, § 9; Laws 1996, LB 900, § 1047; Laws 2009, LB549, § 2.

ARTICLE 21

AGE OF MAJORITY

Section
43-2101. Persons under nineteen years of age declared minors; marriage, effect; person eighteen years of age or older; rights and responsibility.

43-2101 Persons under nineteen years of age declared minors; marriage, effect; person eighteen years of age or older; rights and responsibility.

All persons under nineteen years of age are declared to be minors, but in case any person marries under the age of nineteen years, his or her minority ends. Upon becoming the age of majority, a person is considered an adult and acquires all rights and responsibilities granted or imposed by statute or common law, except that a person eighteen years of age or older and who is not a ward of the state may enter into a binding contract or lease of whatever kind or nature and shall be legally responsible therefor.

Source: R.S.1866, c. 23, § 1, p. 178; R.S.1913, § 1627; Laws 1921, c. 247, § 1, p. 853; C.S.1922, § 1576; C.S.1929, § 38-101; R.S.1943, § 38-101; Laws 1965, c. 207, § 1, p. 613; Laws 1969, c. 298, § 1, p. 1072; Laws 1972, LB 1086, § 1; R.S.1943, (1984), § 38-101; Laws 1988, LB 790, § 6; Laws 2010, LB226, § 2.
Effective date March 4, 2010.

Cross References

Juvenile committed under Nebraska Juvenile Code, marriage under age of nineteen years does not make juvenile age of majority, see section 43-289.

ARTICLE 24

JUVENILE SERVICES

Section
43-2404.02. County Juvenile Services Aid Program; created; use; reports.

43-2404.02 County Juvenile Services Aid Program; created; use; reports.

(1) There is created a separate and distinct budgetary program within the commission to be known as the County Juvenile Services Aid Program. Funding

acquired from participation in the federal act, state General Funds, and funding acquired from other sources which may be used for purposes consistent with the Juvenile Services Act and the federal act shall be used to aid counties in the establishment and provision of community-based services for accused and adjudicated juvenile offenders and to increase capacity for community-based services to juveniles.

(2) The annual General Fund appropriation to the County Juvenile Services Aid Program shall be apportioned to the counties as aid in accordance with a formula established in rules and regulations adopted and promulgated by the commission. The formula shall be based on the total number of residents per county who are twelve years of age through eighteen years of age and other relevant factors as determined by the commission. The commission may require a local match of up to forty percent from counties receiving aid under such program. Any local expenditures for community-based programs for juveniles may be applied toward such match requirement.

(3) Funds provided to counties under the County Juvenile Services Aid Program shall be used exclusively to assist counties in implementation and operation of programs or services identified in their comprehensive juvenile services plan, including, but not limited to, programs for assessment and evaluation, prevention of delinquent behavior, diversion, shelter care, intensive juvenile probation services, restitution, family support services, and family group conferencing. In distributing funds provided under the County Juvenile Services Aid Program, counties shall prioritize programs and services that will reduce the juvenile detention population. No funds appropriated or distributed under the County Juvenile Services Aid Program shall be used for construction of secure detention facilities, secure youth treatment facilities, or secure youth confinement facilities. Aid received under this section shall not be used for capital construction or the lease or acquisition of facilities and shall not be used to replace existing funding for programs or services. Any funds not distributed to counties under this subsection shall be retained by the commission to be distributed on a competitive basis under the County Juvenile Services Aid Program.

(4) Any county receiving funding under the County Juvenile Services Aid Program shall file an annual report as required by rules and regulations adopted and promulgated by the commission. The report shall include, but not be limited to, information on the total number of juveniles served, the units of service provided, a listing of the county's annual juvenile justice budgeted and actual expenditures, and a listing of expenditures for detention, residential treatment, and nonresidential treatment.

(5) The commission shall report annually to the Governor and the Legislature on the distribution and use of funds appropriated under the County Juvenile Services Aid Program.

(6) The commission shall adopt and promulgate rules and regulations to implement this section.

Source: Laws 2001, LB 640, § 7; Laws 2005, LB 193, § 2; Laws 2008, LB1014, § 54; Laws 2010, LB800, § 33.
Effective date July 15, 2010.

ARTICLE 29
PARENTING ACT

Section
43-2923. Best interests of the child requirements.
43-2937. Court referral to mediation or specialized alternative dispute resolution; temporary relief; specialized alternative dispute resolution rule; approval; mandatory court order; when; waiver.

43-2923 Best interests of the child requirements.

The best interests of the child require:

(1) A parenting arrangement and parenting plan or other court-ordered arrangement which provides for a child's safety, emotional growth, health, stability, and physical care and regular and continuous school attendance and progress for school-age children;

(2) When a preponderance of the evidence indicates domestic intimate partner abuse, a parenting and visitation arrangement that provides for the safety of a victim parent;

(3) That the child's families and those serving in parenting roles remain appropriately active and involved in parenting with safe, appropriate, continuing quality contact between children and their families when they have shown the ability to act in the best interests of the child and have shared in the responsibilities of raising the child;

(4) That even when parents have voluntarily negotiated or mutually mediated and agreed upon a parenting plan, the court shall determine whether it is in the best interests of the child for parents to maintain continued communications with each other and to make joint decisions in performing parenting functions as are necessary for the care and healthy development of the child. If the court rejects a parenting plan, the court shall provide written findings as to why the parenting plan is not in the best interests of the child;

(5) That certain principles provide a basis upon which education of parents is delivered and upon which negotiation and mediation of parenting plans are conducted. Such principles shall include: To minimize the potentially negative impact of parental conflict on children; to provide parents the tools they need to reach parenting decisions that are in the best interests of a child; to provide alternative dispute resolution or specialized alternative dispute resolution options that are less adversarial for the child and the family; to ensure that the child's voice is heard and considered in parenting decisions; to maximize the safety of family members through the justice process; and, in cases of domestic intimate partner abuse or child abuse or neglect, to incorporate the principles of victim safety and sensitivity, offender accountability, and community safety in parenting plan decisions; and

(6) In determining custody and parenting arrangements, the court shall consider the best interests of the minor child, which shall include, but not be limited to, consideration of the foregoing factors and:

(a) The relationship of the minor child to each parent prior to the commencement of the action or any subsequent hearing;

(b) The desires and wishes of the minor child, if of an age of comprehension but regardless of chronological age, when such desires and wishes are based on sound reasoning;

(c) The general health, welfare, and social behavior of the minor child;

(d) Credible evidence of abuse inflicted on any family or household member. For purposes of this subdivision, abuse and family or household member shall have the meanings prescribed in section 42-903; and

(e) Credible evidence of child abuse or neglect or domestic intimate partner abuse. For purposes of this subdivision, the definitions in section 43-2922 shall be used.

Source: Laws 2007, LB554, § 4; Laws 2008, LB1014, § 56; Laws 2010, LB901, § 2.
Operative date July 1, 2010.

43-2937 Court referral to mediation or specialized alternative dispute resolution; temporary relief; specialized alternative dispute resolution rule; approval; mandatory court order; when; waiver.

(1) In addition to those cases that are mandatorily referred to mediation or specialized alternative dispute resolution under subsection (3) of this section, a court may, at any time in the proceedings upon its own motion or upon the motion of either party, refer a case to mediation or specialized alternative dispute resolution in order to attempt resolution of any relevant matter. The court may state a date for the case to return to court, and the court shall not grant an extension of such date except for cause. If the court refers a case to mediation or specialized alternative dispute resolution, the court may, if appropriate, order temporary relief, including necessary support and provision for payment of mediation costs. Court referral shall be to a mediator agreed to by the parties and approved by the court, an approved mediation center, or a court conciliation program. The State Court Administrator's office shall develop a process to approve mediators under the Parenting Act.

(2) Prior to July 1, 2010, if there are allegations of domestic intimate partner abuse or unresolved parental conflict between the parties in any proceeding, mediation shall not be required pursuant to the Parenting Act or by local court rule, unless the court has established a specialized alternative dispute resolution rule approved by the State Court Administrator. The specialized alternative dispute resolution process shall include a method for court consideration of precluding or disqualifying parties from participating; provide an opportunity to educate both parties about the process; require informed consent from both parties in order to proceed; provide safety protocols, including separate individual sessions for each participant, informing each party about the process, and obtaining informed consent from each party to continue the process; allow support persons to attend sessions; and establish opt-out-for-cause provisions. On and after July 1, 2010, all trial courts shall have a mediation and specialized alternative dispute resolution rule in accordance with the act.

(3) Except as provided in subsection (4) of this section, for cases filed on or after July 1, 2010, all parties who have not submitted a parenting plan to the court within the time specified by the court shall be ordered to participate in mediation or specialized alternative dispute resolution with a mediator, a court conciliation program, or an approved mediation center as provided in section 43-2939.

(4) For good cause shown and (a) when both parents agree and such parental agreement is bona fide and not asserted to avoid the purposes of the Parenting Act, or (b) when mediation or specialized alternative dispute resolution is not

possible without undue delay or hardship to either parent, the mediation or specialized alternative dispute resolution requirement may be waived by the court. In such a case where waiver of the mediation or specialized alternative dispute resolution is sought, the court shall hold an evidentiary hearing and the burden of proof for the party or parties seeking waiver is by clear and convincing evidence.

Source: Laws 2007, LB554, § 18; Laws 2008, LB1014, § 65; Laws 2010, LB901, § 3.
Operative date July 1, 2010.

ARTICLE 30

ACCESS TO INFORMATION AND RECORDS

Section
43-3001. Child in state custody; court records and information; court order authorized; information confidential; immunity from liability; school records as evidence; violation; penalty.

43-3001 Child in state custody; court records and information; court order authorized; information confidential; immunity from liability; school records as evidence; violation; penalty.

(1) Notwithstanding any other provision of law regarding the confidentiality of records and when not prohibited by the federal Privacy Act of 1974, as amended, juvenile court records and any other pertinent information that may be in the possession of school districts, school personnel, county attorneys, the Attorney General, law enforcement agencies, child advocacy centers, state probation personnel, state parole personnel, youth detention facilities, medical personnel, treatment or placement programs, the Department of Health and Human Services, the Department of Correctional Services, the State Foster Care Review Board, child abuse and neglect investigation teams, child abuse and neglect treatment teams, or other multidisciplinary teams for abuse, neglect, or delinquency concerning a child who is in the custody of the state may be shared with individuals and agencies who have been identified in a court order authorized by this section.

(2) In any judicial proceeding concerning a child who is currently, or who may become at the conclusion of the proceeding, a ward of the court or state or under the supervision of the court, an order may be issued which identifies individuals and agencies who shall be allowed to receive otherwise confidential information concerning the child for legitimate and official purposes. The individuals and agencies who may be identified in the court order are the child's attorney or guardian ad litem, the parents' attorney, foster parents, appropriate school personnel, county attorneys, the Attorney General, authorized court personnel, law enforcement agencies, state probation personnel, state parole personnel, youth detention facilities, medical personnel, court appointed special advocate volunteers, treatment or placement programs, the Department of Health and Human Services, the Office of Juvenile Services, the Department of Correctional Services, the State Foster Care Review Board, child abuse and neglect investigation teams, child abuse and neglect treatment teams, other multidisciplinary teams for abuse, neglect, or delinquency, and other individuals and agencies for which the court specifically finds, in writing, that it would be in the best interest of the juvenile to receive such information.

Unless the order otherwise states, the order shall be effective until the child leaves the custody of the state or until a new order is issued.

(3) All information acquired by an individual or agency pursuant to this section shall be confidential and shall not be disclosed except to other persons who have a legitimate and official interest in the information and are identified in the court order issued pursuant to this section with respect to the child in question. A person who receives such information or who cooperates in good faith with other individuals and agencies identified in the appropriate court order by providing information or records about a child shall be immune from any civil or criminal liability. The provisions of this section granting immunity from liability shall not be extended to any person alleged to have committed an act of child abuse or neglect.

(4) In any proceeding under this section relating to a child of school age, certified copies of school records relating to attendance and academic progress of such child are admissible in evidence.

(5) Except as provided in subsection (4) of this section, any person who publicly discloses information received pursuant to this section shall be guilty of a Class III misdemeanor.

Source: Laws 1993, LB 719, § 1; Laws 1994, LB 988, § 27; Laws 1996, LB 1044, § 233; Laws 2006, LB 1113, § 42; Laws 2008, LB1014, § 67; Laws 2009, LB35, § 29.

ARTICLE 33

SUPPORT ENFORCEMENT

(c) BANK MATCH SYSTEM

Section
43-3330. Listing of obligors; financial institution; duties; confidentiality.

(c) BANK MATCH SYSTEM

43-3330 Listing of obligors; financial institution; duties; confidentiality.

A financial institution shall receive from the department a listing of obligors to be used in matches within the financial institution's system. The listing from the department shall include the name and social security number or taxpayer identification number of each obligor to be used in matches within the financial institution's system. The financial institution shall receive the listing within thirty days after the end of each calendar quarter subsequent to January 1, 1998, and shall match the listing to its records of accounts held in one or more individuals' names which are open accounts and such accounts closed within the preceding calendar quarter within thirty days after receiving the listing and provide the department with a match listing of all matches made within five working days of the match. The match listing from the financial institution shall include the name, address, and social security number or taxpayer identification number of each obligor matched and the balance of each account. The financial institution shall also provide the names and addresses of all other owners of accounts in the match listing as reflected on a signature card or other similar document on file with the financial institution. The financial institution shall submit all match listings by disk, magnetic tape, or other medium approved by the department. Nothing in this section shall (1) require a financial institution to disclose the account number assigned to the account of

any individual or (2) serve to encumber the ownership interest of any person in or impact any right of setoff against an account. The financial institution shall maintain the confidentiality of all records supplied and shall use the records only for the purposes of this section. To maintain the confidentiality of the listing and match listing, the department shall implement appropriate security provisions for the listing and match listing which are as stringent as those established under the Federal Tax Information Security Guidelines for federal, state, and local agencies.

Source: Laws 1997, LB 752, § 30; Laws 2010, LB712, § 39.
Operative date July 15, 2010.

ARTICLE 37

COURT APPOINTED SPECIAL ADVOCATE ACT

Section
43-3713. Cooperation; notice required.

43-3713 Cooperation; notice required.

(1) All government agencies, service providers, professionals, school districts, school personnel, parents, and families shall cooperate with all reasonable requests of the court appointed special advocate volunteer. The volunteer shall cooperate with all government agencies, service providers, professionals, school districts, school personnel, parents, and families.

(2) The volunteer shall be notified in a timely manner of all hearings, meetings, and any other proceeding concerning the case to which he or she has been appointed. The court in its discretion may proceed notwithstanding failure to notify the volunteer or failure of the volunteer to appear.

Source: Laws 2000, LB 1167, § 36; Laws 2009, LB35, § 30.

ARTICLE 40

CHILDREN'S BEHAVIORAL HEALTH

Section
43-4001. Children's Behavioral Health Task Force; created; members; expenses; chairperson.

43-4001 Children's Behavioral Health Task Force; created; members; expenses; chairperson.

(1) The Children's Behavioral Health Task Force is created. The task force shall consist of the following members:

(a) The chairperson of the Health and Human Services Committee of the Legislature or another member of the committee as his or her designee;

(b) The chairperson of the Appropriations Committee of the Legislature or another member of the committee as his or her designee;

(c) Two providers of community-based behavioral health services to children, appointed by the chairperson of the Health and Human Services Committee of the Legislature;

(d) One regional administrator appointed under section 71-808, appointed by the chairperson of the Health and Human Services Committee of the Legislature;

(e) Two representatives of organizations advocating on behalf of consumers of children's behavioral health services and their families, appointed by the chairperson of the Health and Human Services Committee of the Legislature;

(f) One juvenile court judge, appointed by the Chief Justice of the Supreme Court; and

(g) The probation administrator or his or her designee.

(2) Members of the task force shall serve without compensation but shall be reimbursed from the Nebraska Health Care Cash Fund for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(3) The chairperson of the Health and Human Services Committee of the Legislature or his or her designee shall serve as chairperson of the task force. Administrative and staff support for the task force shall be provided by the Health and Human Services Committee of the Legislature and the Appropriations Committee of the Legislature.

Source: Laws 2007, LB542, § 1; Laws 2008, LB928, § 14; Laws 2009, LB540, § 1.